

Version No. 244
Crimes Act 1958

No. 6231 of 1958

Version incorporating amendments as at
1 July 2014

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Version No. 244
Crimes Act 1958
No. 6231 of 1958

Version incorporating amendments as at
1 July 2014

An Act to consolidate the Law Relating to Crimes and Criminal
Offenders.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

This Act may be cited as the **Crimes Act 1958**
and shall come into operation on a day to be fixed
by proclamation of the Governor in Council
published in the Government Gazette.

S. 1
amended by
Nos 6731
s. 2(1), 6958
s. 8(4)(a), 7088
s. 2(g), 7703
s. 5, 7884
s. 2(1), 8280
s. 2, 8338 ss 2,
7(a), 8425
s. 2(1), 8493
s. 33(a)(i)(ii),
8679 s. 3(1)
(a)(i)(ii), 8870
s. 6(3), 9019
s. 2(1)(Sch.
item 34), 9073
s. 2(c), 9155
s. 4(c), 9228
s. 2(1)(a)(b),
9407 s. 2(c)
(i)(ii), 9509
s. 3(1)(2), 9549
s. 2(1)(Sch.
item 50), 9576
s. 11(1), 10026
s. 2(a)(b),
10079 s. 7(1)
(a)(b), 10084
s. 15(a)(i)(ii),
25/1989 s. 4.

s. 2

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
 - (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation rule order application determination decision validation offence disqualification warrant instrument presentment direction appointment action prosecution proceeding liability or right made effected issued granted committed given presented passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

S. 2(3)
repealed by
No. 8493
s. 33(b).

* * * * *

2A Definitions

(1) In this Act unless inconsistent with the context or subject-matter—

aircraft means every type of machine or structure used or intended to be used for navigation of the air;

* * * * *

drug of addiction means a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**;

incite includes command, request, propose, advise, encourage or authorize;

Juries Commissioner has the same meaning as in the **Juries Act 2000**;

legal practitioner means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

S. 2A inserted by No. 7088 s. 2(a), amended by No. 9509 s. 4(a).

S. 2A(1) def. of *brothel* inserted by No. 9509 s. 4(b), repealed by No. 124/1986 s. 74(a).

S. 2A(1) def. of *drug of addiction* inserted by No. 9509 s. 4(b), substituted by No. 9719 s. 135.

S. 2A(1) def. of *incite* inserted by No. 10079 s. 8(a).

S. 2A(1) def. of *Juries Commissioner* inserted by No. 53/2000 s. 94(1).

S. 2A(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 27.1).

s. 2A

S. 2A(1) def. of
*member of
Victoria Police
personnel*
inserted by
No. 37/2014
s. 10(Sch.
item 36.1(a)).

member of Victoria Police personnel has the
same meaning as in the **Victoria Police Act
2013**;

S. 2A(1) def. of
motor car
inserted by
No. 8338 s. 3,
repealed by
No. 127/1986
s. 102(Sch. 4
item 5.1).

* * * * *

S. 2A(1) def. of
motor vehicle
inserted by
No. 127/1986
s. 102(Sch. 4
item 5.1).

motor vehicle has the same meaning as in the
Road Safety Act 1986;

S. 2A(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 36.1(a)).

police officer has the same meaning as in the
Victoria Police Act 2013;

S. 2A(1) def. of
*prostitute,
prostitution*
inserted by
No. 9509
s. 4(c),
repealed by
No. 124/1986
s. 74(a).

* * * * *

S. 3(1) def. of
*protective
services
officer*
inserted by
No. 43/2011
s. 14,
substituted by
No. 37/2014
s. 10(Sch.
item 36.1(b)).

protective services officer has the same meaning
as in the **Victoria Police Act 2013**;

Crimes Act 1958
No. 6231 of 1958

s. 2B

*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

S. 2A(1) def. of *rape* inserted by No. 9509 s. 4(c), repealed by No. 8/1991 s. 6(a).

S. 2A(1) def. of *Taxing Master* inserted by No. 24/2008 s. 77, repealed by No. 78/2008 s. 25(1).

S. 2A(2)(3) inserted by No. 9509 s. 4(d), repealed by No. 8/1991 s. 6(b).

2B Offences under this Act deemed to be indictable offences

S. 2B inserted by No. 51/1989 s. 143(a).

Offences under this Act are, unless the contrary intention appears, deemed to be indictable offences.

PART I—OFFENCES

Division 1—Offences against the person

(1) *Homicide*

3 Punishment for murder

Notwithstanding any rule of law to the contrary, a person convicted of murder is liable to—

S. 3 substituted by Nos 8679 s. 2, 37/1986 s. 8, amended by No. 49/1991 s. 119(1) (Sch. 2 item 1(a)).

(a) level 1 imprisonment (life); or

S. 3(a) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 1(b)), amended by No. 48/1997 s. 60(1)(Sch. 1 item 1).

(b) imprisonment for such other term as is fixed by the court—

S. 3(b) amended by No. 49/1991 s. 119(1) (Sch. 2 item 1(c)).

as the court determines.

3A Unintentional killing in the course or furtherance of a crime of violence

S. 3A inserted by No. 9576 s. 3(1).

(1) A person who unintentionally causes the death of another person by an act of violence done in the course or furtherance of a crime the necessary elements of which include violence for which a person upon first conviction may, under or by virtue of any enactment, be sentenced to level 1 imprisonment (life) or to imprisonment for a term of 10 years or more shall be liable to be convicted

S. 3A(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 2), 48/1997 s. 60(1)(Sch. 1 item 2(a)(b)).

of murder as though he had killed that person intentionally.

- (2) The rule of law known as the felony-murder rule (whereby a person who unintentionally causes the death of another by an act of violence done in the course or furtherance of a felony of violence is liable to be convicted of murder as though he had killed that person intentionally) is hereby abrogated.

3B Provocation no longer a partial defence to murder

The rule of law that provocation reduces the crime of murder to manslaughter is abolished.

S. 3B
inserted by
No. 77/2005
s. 3.

4 Alternative verdict of defensive homicide on charge for murder

- (1) If on the trial of a person for murder the jury are not satisfied that he or she is guilty of murder but are satisfied that he or she is guilty of an offence against section 9AD (defensive homicide), the jury may acquit the accused of murder and find him or her guilty of defensive homicide and he or she is liable to punishment accordingly.
- (2) This section does not restrict the operation of section 6, 10(3) or 421.

S. 4
amended by
No. 9576
s. 11(1),
repealed by
No. 10079
s. 8(b),
new s. 4
inserted by
No. 77/2005
s. 4.

Note

See section 9AC for "self-defence" exception to murder.

5 Punishment of manslaughter

Whosoever is convicted of manslaughter shall be liable to level 3 imprisonment (20 years maximum) or to a fine in addition to or without any such other punishment as aforesaid.

No. 6103 s. 5.
S. 5
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 3),
48/1997
s. 60(1)(Sch. 1
item 3).

s. 5A

S. 5A
inserted by
No. 7/2008
s. 3.

5A Child homicide

A person who, by his or her conduct, kills a child who is under the age of 6 years in circumstances that, but for this section, would constitute manslaughter is guilty of child homicide, and not of manslaughter, and liable to level 3 imprisonment (20 years maximum).

No. 6103 s. 6.
S. 6
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 4),
48/1997
s. 60(1)(Sch. 1
item 4),
substituted by
No. 77/2005
s. 5.

6 Infanticide

(1) If a woman carries out conduct that causes the death of her child in circumstances that would constitute murder and, at the time of carrying out the conduct, the balance of her mind was disturbed because of—

- (a) her not having fully recovered from the effect of giving birth to that child within the preceding 2 years; or
- (b) a disorder consequent on her giving birth to that child within the preceding 2 years—

she is guilty of infanticide, and not of murder, and liable to level 6 imprisonment (5 years maximum).

(2) On an indictment for murder, a woman found not guilty of murder may be found guilty of infanticide.

Note

See sections 10(3) and 421 for other alternative verdicts.

(3) Nothing in this Act affects the power of the jury on a charge of murder of a child to return a verdict of not guilty because of mental impairment.

S. 6(2)
amended by
No. 68/2009
s. 97(Sch.
item 40.1).

6A Suicide no longer a crime

The rule of law whereby it is a crime for a person to commit or to attempt to commit suicide is hereby abrogated.

S. 6A
inserted by
No. 7546 s. 2.

6B Survivor of suicide pact who kills deceased party is guilty of manslaughter

S. 6B
inserted by
No. 7546 s. 2.

(1) Where upon the trial of a person for the murder of another person the jury are satisfied that the accused caused or was a party to causing the death of that other person by a wilful act or omission but are satisfied on the balance of probabilities that the act was done or the omission made in pursuance of a suicide pact then the jury shall, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return a verdict of manslaughter in lieu thereof.

(1A) Despite section 5, a person convicted of manslaughter under subsection (1) is only liable to level 5 imprisonment (10 years maximum).

S. 6B(1A)
inserted by
No. 49/1991
s. 119(1)
(Sch. 2
item 5(a)),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 5).

(2) Any person who—

S. 6B(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 5(b)),
48/1997
s. 60(1)(Sch. 1
item 6(a)(b)).

(a) incites any other person to commit suicide and that other person commits or attempts to commit suicide in consequence thereof; or

S. 6B(2)(a)
amended by
No. 10079
s. 8(c).

(b) aids or abets any other person in the commission of suicide or in an attempt to commit suicide—

shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum); but if the jury are satisfied on the balance of probabilities that the acts constituting the offence were done pursuant to a suicide pact the jury shall return a verdict of guilty of the indictable offence of being a party to a suicide pact and the convicted person shall be liable to level 6 imprisonment (5 years maximum).

- (3) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question of whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.
- (4) For the purposes of this section *suicide pact* means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

S. 7
repealed by
No. 9576
s. 11(1).

* * * * *

No. 6103 s. 8.

8 Petit treason

Every offence which before the twenty-seventh day of June in the year of our Lord One thousand eight hundred and twenty-eight would have amounted to petit treason shall be deemed to be

murder only; and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with indicted tried and punished as principals and accessories in murder.

9 Provision for trial for murder or manslaughter in Victoria where death or cause of death only happens in Victoria

No. 6103 s. 9.
S. 9
amended by
Nos 9576
s. 11(1),
77/2005
s. 8(3)(a)(i)(ii),
7/2008
s. 7(3)(a).

Where any person being criminally stricken poisoned or otherwise hurt upon the sea or at any place out of Victoria dies of such stroke poisoning or hurt in Victoria, or being criminally stricken poisoned or otherwise hurt at any place in Victoria dies of such stroke poisoning or hurt upon the sea or at any place out of Victoria, every offence committed in respect of any such case, whether the same amounts to the offence of murder or of manslaughter or of child homicide or of defensive homicide or of being accessory to murder or manslaughter or child homicide or defensive homicide, may be dealt with inquired of tried determined and punished in Victoria in the same manner in all respects as if such offence had been wholly committed in Victoria.

9AA Abolition of year-and-a-day rule

S. 9AA
inserted by
No. 65/1991
s. 3.

- (1) The rule of law known as the year-and-a-day rule (under which an act or omission that in fact causes death is not regarded as the cause of death if the death occurs more than a year and a day after the act or omission) is abolished.
- (2) This section does not apply to acts or omissions alleged to have occurred—
 - (a) before the commencement of the **Crimes (Year and a Day Rule) Act 1991**; or
 - (b) between two dates, one before and one after that commencement.

s. 9AB

(1AA) *Exceptions to homicide offences*

Pt 1 Div. 1
Subdiv. (1AA)
(Heading and
ss 9AB–9AJ)
inserted by
No. 77/2005
s. 6.

S. 9AB
inserted by
No. 77/2005
s. 6.

9AB Definitions and application of Subdivision

(1) In this Subdivision—

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

relevant offence means murder, manslaughter or defensive homicide.

(2) Without taking away from the law relating to any other offences and except as otherwise expressly provided by this Subdivision, this Subdivision applies only to relevant offences.

S. 9AC
inserted by
No. 77/2005
s. 6.

9AC Murder—"self-defence"

A person is not guilty of murder if he or she carries out the conduct that would otherwise constitute murder while believing the conduct to be necessary to defend himself or herself or another person from the infliction of death or really serious injury.

Notes

- 1 See section 4 for alternative verdict of defensive homicide where the accused had no reasonable grounds for the belief.
- 2 This section does not apply where the response is to lawful conduct—see section 9AF.
- 3 See section 9AH as to belief in circumstances where family violence is alleged.

9AD Defensive homicide

A person who, by his or her conduct, kills another person in circumstances that, but for section 9AC, would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.

S. 9AD
inserted by
No. 77/2005
s. 6.

Note

See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.

9AE Manslaughter—"self-defence"

A person is not guilty of manslaughter if he or she carries out the conduct that would otherwise constitute manslaughter while believing the conduct to be necessary—

- (a) to defend himself or herself or another person; or
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—

and he or she had reasonable grounds for that belief.

S. 9AE
inserted by
No. 77/2005
s. 6.

Notes

- 1 See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.
- 2 This section does not apply where the response is to lawful conduct—see section 9AF.

s. 9AF

S. 9AF
inserted by
No. 77/2005
s. 6.

9AF Self-defence exceptions do not apply in the case of lawful conduct

Sections 9AC and 9AE do not apply if—

- (a) the person is responding to lawful conduct; and
- (b) at the time of his or her response, the person knows that the conduct is lawful.

S. 9AG
inserted by
No. 77/2005
s. 6.

9AG Duress

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her under duress.
- (2) A person carries out conduct under duress if and only if the person reasonably believes that—
 - (a) subject to subsection (3), a threat has been made that will be carried out unless an offence is committed; and
 - (b) carrying out the conduct is the only reasonable way that the threatened harm can be avoided; and
 - (c) the conduct is a reasonable response to the threat.
- (3) However, a person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating for the purpose of carrying out violent conduct.
- (4) This section only applies in the case of murder if the threat is to inflict death or really serious injury.

Note

See section 9AH for evidentiary provisions where family violence is alleged.

9AH Family violence

S. 9AH
inserted by
No. 77/2005
s. 6.

- (1) Without limiting section 9AC, 9AD or 9AE, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary—
- (a) to defend himself or herself or another person; or
 - (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—
- even if—
- (c) he or she is responding to a harm that is not immediate; or
 - (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.
- (2) Without limiting the evidence that may be adduced, in circumstances where family violence is alleged evidence of a kind referred to in subsection (3) may be relevant in determining whether—
- (a) a person has carried out conduct while believing it to be necessary for a purpose referred to in subsection (1)(a) or (b); or
 - (b) a person had reasonable grounds for a belief held by him or her that conduct is necessary for a purpose referred to in subsection (1)(a) or (b); or
 - (c) a person has carried out conduct under duress.

(3) Evidence of—

- (a) the history of the relationship between the person and a family member, including violence by the family member towards the person or by the person towards the family member or by the family member or the person in relation to any other family member;
- (b) the cumulative effect, including psychological effect, on the person or a family member of that violence;
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
- (d) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
- (e) the psychological effect of violence on people who are or have been in a relationship affected by family violence;
- (f) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

(4) In this section—

child means a person who is under the age of 18 years;

family member, in relation to a person, includes—

- (a) a person who is or has been married to the person; or
- (b) a person who has or has had an intimate personal relationship with the person; or

-
- (c) a person who is or has been the father, mother, step-father or step-mother of the person; or
 - (d) a child who normally or regularly resides with the person; or
 - (e) a guardian of the person; or
 - (f) another person who is or has been ordinarily a member of the household of the person;

family violence, in relation to a person, means violence against that person by a family member;

violence means—

- (a) physical abuse;
- (b) sexual abuse;
- (c) psychological abuse (which need not involve actual or threatened physical or sexual abuse), including but not limited to—
 - (i) intimidation;
 - (ii) harassment;
 - (iii) damage to property;
 - (iv) threats of physical abuse, sexual abuse or psychological abuse;
 - (v) in relation to a child—
 - (A) causing or allowing the child to see or hear the physical, sexual or psychological abuse of a person by a family member; or

(B) putting the child, or allowing the child to be put, at real risk of seeing or hearing that abuse occurring.

- (5) Without limiting the definition of *violence* in subsection (4)—
- (a) a single act may amount to abuse for the purposes of that definition;
 - (b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

S. 9AI
inserted by
No. 77/2005
s. 6.

9AI Sudden or extraordinary emergency

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies if and only if the person carrying out the conduct reasonably believes that—
 - (a) circumstances of sudden or extraordinary emergency exist; and
 - (b) committing the offence is the only reasonable way to deal with the emergency; and
 - (c) the conduct is a reasonable response to the emergency.
- (3) This section only applies in the case of murder if the emergency involves a risk of death or really serious injury.

9AJ Intoxication

S. 9AJ
inserted by
No. 77/2005
s. 6.

- (1) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.
- (2) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on a person having reasonable grounds for a belief, in determining whether those reasonable grounds existed, regard must be had to the standard of a reasonable person who is not intoxicated.
- (3) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable response, in determining whether that response was reasonable, regard must be had to the standard of a reasonable person who is not intoxicated.
- (4) If a person's intoxication is not self-induced, in determining whether any part of an element of a relevant offence, or of a defence to a relevant offence, relying on reasonable belief, having reasonable grounds for a belief or reasonable response exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.
- (5) For the purposes of this section, intoxication is self-induced unless it came about—
 - (a) involuntarily; or
 - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or

s. 9A

- (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
 - (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.
- (6) Despite subsection (5), intoxication is self-induced in the circumstances referred to in subsection (5)(c) or (d) if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.

(1A) *Treasonable offences*

Pt 1 Div. 1
Subdiv. (1A)
(Heading)
inserted by
No. 9407
s. 2(a).
(1351–2) 25
Edward III
St V., c. II
(1695–6) 7 and
8 William III
c. III (1708)
7 Anne c. 21
s. 14. (1795)
36 George III
c. VII (1817)
57 George III
c. VI ss 1, 4
and 5.

S. 9A
inserted by
No. 9407
s. 2(a).

9A Treason

S. 9A(1)
amended by
Nos 37/1986
s. 9, 49/1991
s. 119(1)
(Sch. 2
item 6(a)(i)).

- (1) A person who—
- (a) kills the Sovereign, does the Sovereign any bodily harm tending to the death or destruction of the Sovereign or maims,

-
- wounds, imprisons or restrains the Sovereign;
- (b) kills the eldest son and heir apparent, or the Consort, of the Sovereign;
 - (c) levies war, or does any act preparatory to levying war, against the Commonwealth of Australia;
 - (d) assists by any means whatever, with intent to assist, an enemy at war with the Commonwealth of Australia, whether or not the existence of a state of war has been declared;
 - (e) instigates a foreigner to make an armed invasion of the Commonwealth or any Territory not forming part of the Commonwealth; or
 - (f) forms an intention to do any act referred to in a preceding paragraph of this subsection and manifests that intention by an overt act—

shall be guilty of an indictable offence, called treason, and liable to—

- (g) level 1 imprisonment (life); or

S. 9A(1)(a)
inserted by
No. 37/1986
s. 9,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 6(a)(ii)),
substituted as
s. 9A(1)(g) by
No. 48/1997
s. 60(1)(Sch. 1
item 7).

s. 9A

S. 9A(1)(b)
inserted by
No. 37/1986
s. 9,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 6(a)(iii)),
re-numbered
as s. 9A(1)(h)
by No.
48/1997
s. 62(1).

(h) imprisonment for such other term as is fixed
by the court—

as the court determines.

S. 9A(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 6(b)),
48/1997
s. 60(1)(Sch. 1
item 8).

(2) A person who—

- (a) receives or assists another person who is to
his knowledge guilty of treason in order to
enable him to escape punishment; or
- (b) knowing that a person intends to commit
treason, does not give information thereof
with all reasonable despatch to a constable or
use other reasonable endeavours to prevent
the commission of the offence—

shall be guilty of an indictable offence.

Penalty: Level 3 imprisonment (20 years
maximum).

(3) On the trial of a person charged with treason on
the ground that he formed an intention to do an act
referred to in paragraph (a), (b), (c), (d) or (e) of
subsection (1) of this section and manifested that
intention by an overt act, evidence of the overt act
shall not be admitted unless the overt act was
alleged in the indictment.

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Pt 1 Div. 1
Subdiv. (2)
(Heading and
s. 10)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 7),
48/1997
s. 60(1)(Sch. 1
item 9), 7/2008
s. 7(3)(b),
repealed by
No. 58/2008
s. 9.

* * * * *

Pt 1 Div. 1
Subdiv. (3)
repealed.¹

(4) Offences against the person

No. 6103 s. 15.
Pt 1 Div. 1
Subdiv. (4)
(Heading and
s. 15)
amended by
No. 9576
s. 11(1),
substituted as
Pt 1 Div. 1
Subdiv. (4)
(Heading and
ss 15–31) by
No. 10233
s. 8(2).

15 Definitions

In this subdivision—

S. 15
substituted by
No. 10233
s. 8(2).

abortion has the meaning given in the **Abortion
Law Reform Act 2008**;

S. 15 def. of
abortion
inserted by
No. 58/2008
s. 10(1).

s. 15

S. 15 def. of
child
inserted by
No. 46/1996
s. 3.

child means any person under the age of 18 years;

S. 15 def. of
female genital mutilation
inserted by
No. 46/1996
s. 3.

female genital mutilation means all or any of the following—

- (a) infibulation;
- (b) the excision or mutilation of the whole or a part of the clitoris;
- (c) the excision or mutilation of the whole or a part of the labia minora or labia majora;
- (d) any procedure to narrow or close the vaginal opening;
- (e) the sealing or suturing together of the labia minora or labia majora;
- (f) the removal of the clitoral hood;

S. 15 def. of
firearm
inserted by
No. 6/2013
s. 3(c).

firearm has the same meaning as in the **Firearms Act 1996**;

S. 15 def. of
harm to mental health
inserted by
No. 6/2013
s. 3(c).

harm to mental health includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm;

S. 15 def. of
imitation firearm
inserted by
No. 6/2013
s. 3(c).

imitation firearm has the same meaning as in section 77(1A);

S. 15 def. of
injury
substituted by
No. 6/2013
s. 3(a).

injury means—

- (a) physical injury; or
- (b) harm to mental health—

whether temporary or permanent;

medical practitioner means—

- (a) a registered medical practitioner; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a person who, in the place in which the female genital mutilation took place, holds an authority to practise medicine which is similar to that of a registered medical practitioner;

S. 15 def. of *medical practitioner* inserted by No. 46/1996 s. 3.

medical procedure, in relation to paragraph (b) of the definition of *serious injury*, means—

- (a) an abortion performed by a registered medical practitioner in accordance with the **Abortion Law Reform Act 2008**; or
- (b) the administration or supply of a drug or drugs by a registered pharmacist or registered nurse in accordance with the **Abortion Law Reform Act 2008** to cause an abortion;

S. 15 def. of *medical procedure* inserted by No. 58/2008 s. 10(1).

midwife means—

- (a) a registered midwife; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a person who, in the place in which the female genital mutilation took place, holds an authority to practise midwifery which is similar to that of registered midwife;

S. 15 def. of *midwife* inserted by No. 46/1996 s. 3.

offensive weapon has the same meaning as in section 77(1A);

S. 15 def. of *offensive weapon* inserted by No. 6/2013 s. 3(c).

s. 15

S. 15 def. of
*physical
injury*
inserted by
No. 6/2013
s. 3(c).

physical injury includes unconsciousness,
disfigurement, substantial pain, infection
with a disease and an impairment of bodily
function;

S. 15 def. of
*prohibited
female genital
mutilation*
inserted by
No. 46/1996
s. 3.

prohibited female genital mutilation means
female genital mutilation the performance of
which would be an offence under this Act if
carried out in the State;

S. 15 def. of
*registered
medical
practitioner*
inserted by
No. 46/1996
s. 3,
substituted by
Nos 97/2005
s. 182(Sch. 4
item 14.1(a)),
13/2010
s. 51(Sch.
item 17.1).

registered medical practitioner means a person
registered under the Health Practitioner
Regulation National Law to practise in the
medical profession (other than as a student);

S. 15 def. of
*registered
midwife*
inserted by
No. 46/1996
s. 3,
amended by
No. 97/2005
s. 182(Sch. 4
item 14.1(b)),
substituted by
No. 13/2010
s. 51(Sch.
item 17.1).

registered midwife means a person registered
under the Health Practitioner Regulation
National Law—

- (a) to practise in the nursing and midwifery
profession as a midwife (other than as a
student); and
- (b) in the register of midwives kept for that
profession;

S. 15 def. of
*registered
nurse*
inserted by
No. 58/2008
s. 10(1),
substituted by
No. 13/2010
s. 51(Sch.
item 17.1).

registered nurse means a person registered under
the Health Practitioner Regulation National
Law to practise in the nursing and midwifery
profession as a nurse (other than as a
student);

registered pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

S. 15 def. of *registered pharmacist* inserted by No. 58/2008 s. 10(1), substituted by No. 13/2010 s. 51(Sch. item 17.1).

serious injury means—

- (a) an injury (including the cumulative effect of more than one injury) that—
 - (i) endangers life; or
 - (ii) is substantial and protracted; or
- (b) the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm;

S. 15 def. of *serious injury* substituted by Nos 58/2008 s. 10(2), 6/2013 s. 3(b).

woman means a female person of any age.

S. 15 def. of *woman* inserted by No. 58/2008 s. 10(1).

15A Causing serious injury intentionally in circumstances of gross violence

S. 15A inserted by No. 6/2013 s. 4.

- (1) A person must not, without lawful excuse, intentionally cause serious injury to another person in circumstances of gross violence.

Penalty: Level 3 imprisonment (20 years maximum).

- (2) For the purposes of subsection (1), any one of the following constitutes circumstances of gross violence—

s. 15A

-
- (a) the offender planned in advance to engage in conduct and at the time of planning—
 - (i) the offender intended that the conduct would cause a serious injury; or
 - (ii) the offender was reckless as to whether the conduct would cause a serious injury; or
 - (iii) a reasonable person would have foreseen that the conduct would be likely to result in a serious injury;
 - (b) the offender in company with 2 or more other persons caused the serious injury;
 - (c) the offender participated in a joint criminal enterprise with 2 or more other persons in causing the serious injury;
 - (d) the offender planned in advance to have with him or her and to use an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm to cause the serious injury;
 - (e) the offender continued to cause injury to the other person after the other person was incapacitated;
 - (f) the offender caused the serious injury to the other person while the other person was incapacitated.

Notes

- 1 See section 422(1) for an alternative verdict.
- 2 Section 10 of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 15A and that a non-parole period of not less than 4 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.

- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10 of that Act do not apply and the court has full sentencing discretion.

15B Causing serious injury recklessly in circumstances of gross violence

S. 15B
inserted by
No. 6/2013
s. 4.

- (1) A person must not, without lawful excuse, recklessly cause serious injury to another person in circumstances of gross violence.

Penalty: Level 4 imprisonment (15 years maximum).

- (2) For the purposes of subsection (1), any one of the following constitutes circumstances of gross violence—

- (a) the offender planned in advance to engage in conduct and at the time of planning—

(i) the offender intended that the conduct would cause a serious injury; or

(ii) the offender was reckless as to whether the conduct would cause a serious injury; or

(iii) a reasonable person would have foreseen that the conduct would be likely to result in a serious injury;

- (b) the offender in company with 2 or more other persons caused the serious injury;

- (c) the offender participated in a joint criminal enterprise with 2 or more other persons in causing the serious injury;

- (d) the offender planned in advance to have with him or her and to use an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm to cause the serious injury;

s. 15C

- (e) the offender continued to cause injury to the other person after the other person was incapacitated;
- (f) the offender caused the serious injury to the other person while the other person was incapacitated.

Notes

- 1 See section 422(2) for an alternative verdict.
- 2 Section 10 of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 15B and that a non-parole period of not less than 4 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.
- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10 of that Act do not apply and the court has full sentencing discretion.

S. 15C
inserted by
No. 6/2013
s. 4.

15C Other offenders need not be prosecuted

A person may be found guilty of an offence against section 15A or 15B whether or not any other person is prosecuted for or found guilty of the offence.

S. 16
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 8),
48/1997
s. 60(1)(Sch. 1
item 10).

16 Causing serious injury intentionally

A person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 3 imprisonment (20 years maximum).

17 Causing serious injury recklessly

A person who, without lawful excuse, recklessly causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

S. 17 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 9), 48/1997 s. 60(1)(Sch. 1 item 11).

18 Causing injury intentionally or recklessly

A person who, without lawful excuse, intentionally or recklessly causes injury to another person is guilty of an indictable offence.

Penalty: If the injury was caused intentionally—level 5 imprisonment (10 years maximum);

If the injury was caused recklessly—level 6 imprisonment (5 years maximum).

S. 18 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 11), 48/1997 s. 60(1)(Sch. 1 item 12).

19 Offence to administer certain substances

S. 19 substituted by No. 10233 s. 8(2).

(1) A person who—

- (a) without lawful excuse, administers to or causes to be taken by another person any substance which is capable, and which the first-mentioned person knows is capable, in the circumstances, of interfering substantially with the bodily functions of the other person; and

S. 19(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 16).

s. 19A

- (b) knows that the other person has not consented to the administration or taking of the substance or is reckless as to whether or not the other person has so consented—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) For the purposes of subsection (1)—

- (a) a person is not to be taken to have consented to the administration or taking of a substance if, had the person known the likely consequences, the person would not be likely to have consented to the administration or taking; and

- (b) a substance shall be taken to interfere substantially with bodily functions if the substance is capable of inducing unconsciousness or sleep.

S. 19A
inserted by
No. 19/1993
s. 3.

19A Intentionally causing a very serious disease

S. 19A(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 13).

- (1) A person who, without lawful excuse, intentionally causes another person to be infected with a very serious disease is guilty of an indictable offence.

Penalty: Level 2 imprisonment (25 years maximum).

S. 19A(2)
substituted by
No. 46/2008
s. 272.

- (2) In subsection (1), *very serious disease* means HIV within the meaning of section 3(1) of the **Public Health and Wellbeing Act 2008**.

20 Threats to kill

A person who, without lawful excuse, makes to another person a threat to kill that other person or any other person—

- (a) intending that that other person would fear the threat would be carried out; or
- (b) being reckless as to whether or not that other person would fear the threat would be carried out—

is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 20 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 14).

21 Threats to inflict serious injury

A person who, without lawful excuse, makes to another person a threat to inflict serious injury on that other person or any other person—

- (a) intending that that other person would fear the threat would be carried out; or
- (b) being reckless as to whether or not that other person would fear the threat would be carried out—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

S. 21 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 13), 48/1997 s. 60(1)(Sch. 1 item 16).

21A Stalking

- (1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 21A inserted by No. 95/1994 s. 3.

S. 21A(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 14).

s. 21A

S. 21A(2)
amended by
Nos 105/2003
s. 4(1),
20/2011
s. 3(3).

S. 21A(2)(b)
substituted by
No. 105/2003
s. 3(1).

S. 21A(2)(ba)
inserted by
No. 105/2003
s. 3(1).

S. 21A(2)(bb)
inserted by
No. 105/2003
s. 3(1).

S. 21A(2)(bc)
inserted by
No. 105/2003
s. 3(1).

S. 21A(2)(da)
inserted by
No. 20/2011
s. 3(1).

- (2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following—
- (a) following the victim or any other person;
 - (b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;
 - (ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material—
 - (i) relating to the victim or any other person; or
 - (ii) purporting to relate to, or to originate from, the victim or any other person;
 - (bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;
 - (bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;
 - (c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;
 - (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);
 - (da) making threats to the victim;

-
- (db) using abusive or offensive words to or in the presence of the victim; S. 21A(2)(db) inserted by No. 20/2011 s. 3(1).
- (dc) performing abusive or offensive acts in the presence of the victim; S. 21A(2)(dc) inserted by No. 20/2011 s. 3(1).
- (dd) directing abusive or offensive acts towards the victim; S. 21A(2)(dd) inserted by No. 20/2011 s. 3(1).
- (e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;
- (f) keeping the victim or any other person under surveillance;
- (g) acting in any other way that could reasonably be expected— S. 21A(2)(g) substituted by No. 20/2011 s. 3(2).
- (i) to cause physical or mental harm to the victim, including self-harm; or
- (ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person—
- with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.
- (3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if— S. 21A(3) substituted by No. 105/2003 s. 4(2), amended by No. 20/2011 s. 3(4).
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s. 21A

- (a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or
 - (b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.
- (4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of—
- (a) the enforcement of the criminal law; or
 - (b) the administration of any Act; or
 - (c) the enforcement of a law imposing a pecuniary penalty; or
 - (d) the execution of a warrant; or
 - (e) the protection of the public revenue—
- that, but for this subsection, would constitute an offence against subsection (1).

S. 21A(4A)
inserted by
No. 105/2003
s. 3(2).

- (4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—
- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
 - (b) for the purpose of an industrial dispute; or

(c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

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S. 21A(5)
repealed by
No. 68/2008
s. 69(1).

* * * * *

S. 21A(5A)
inserted by
No. 52/2008
s. 242,
repealed by
No. 68/2008
s. 69(1).

(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.

S. 21A(6)
inserted by
No. 105/2003
s. 5.

(7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.

S. 21A(7)
inserted by
No. 105/2003
s. 5.

(8) In this section—
mental harm includes—

S. 21A(8)
inserted by
No. 20/2011
s. 3(5).

- (a) psychological harm; and
- (b) suicidal thoughts.

Note

The **Personal Safety Intervention Orders Act 2010** provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

Note to s. 21A
inserted by
No. 68/2008
s. 69(2),
substituted by
No. 53/2010
s. 221(Sch.
item 4).

s. 22

S. 22
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 9),
48/1997
s. 60(1)(Sch. 1
item 14).

22 Conduct endangering life

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of death is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 23
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 14),
48/1997
s. 60(1)(Sch. 1
item 16).

23 Conduct endangering persons

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of serious injury is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

S. 24
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 12),
48/1997
s. 60(1)(Sch. 1
item 16),
7/2008 s. 4.

24 Negligently causing serious injury

A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 25
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 8),
48/1997
s. 60(1)(Sch. 1
item 11).

25 Setting traps etc. to kill

A person who sets a trap or device with the intention of killing another person (whether a trespasser or not) or being reckless as to whether or not another person (whether a trespasser or not) is killed is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

26 Setting traps etc. to cause serious injury

A person who sets a trap or device with the intention of causing, or being reckless as to whether or not there is caused, serious injury to another person (whether a trespasser or not) is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 26 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 9), 48/1997 s. 60(1)(Sch. 1 item 14).

27 Extortion with threat to kill

A person who makes a demand of another person—

- (a) with a threat to kill or inflict injury on a person (other than the offender or an accomplice of the offender); or
- (b) with a threat in circumstances where, if the threat were carried out, the life of a person (other than the offender or an accomplice of the offender) would be endangered—

is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

S. 27 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 14), 48/1997 s. 60(1)(Sch. 1 item 11).

28 Extortion with threat to destroy property etc.

A person who makes a demand of another person with a threat to destroy, or endanger the safety of, a building, structure in the nature of a building, bridge, mine, aircraft, vessel, motor vehicle, railway engine or railway carriage is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 28 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 14).

s. 29

29 Using firearm to resist arrest etc.

S. 29
substituted by
No. 10233
s. 8(2).

S. 29(1)
amended by
Nos 40/1988
s. 22, 49/1991
s. 119(1)
(Sch. 2
item 10),
48/1997
s. 60(1)(Sch. 1
item 15),
69/1997
s. 22(1).

S. 29(2)
amended by
No. 25/1989
s. 20(a).

S. 29(3)(a)
amended by
No. 24/1990
s. 16,
substituted by
No. 66/1996
s. 201(1).

- (1) A person who makes or attempts to make any use of a firearm or imitation firearm with intent to resist or prevent the lawful apprehension or detention of himself or herself or any other person is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum) or level 5 fine (1200 penalty units maximum).

- (2) A person who commits an offence against subsection (1) in respect of the lawful apprehension or detention of himself or herself for any other offence committed by him or her is liable to the penalty provided by that subsection in addition to any penalty to which he or she may be liable for that other offence.

- (3) In this section—

(a) *firearm* has the same meaning as in the **Firearms Act 1996**; and

(b) *imitation firearm* means anything which has the appearance of being a firearm whether or not it is capable of discharging any shot or other missile.

30 Threatening injury to prevent arrest

A person who threatens injury to any other person or to any property with intent—

- (a) to prevent or hinder the lawful apprehension or detention of himself or herself or any other person; or

S. 30 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 16).

- (b) to prevent or hinder a police officer or a protective services officer from investigating in a lawful manner any act or circumstance which reasonably calls for investigation by a police officer or a protective services officer—

S. 30(b) amended by Nos 43/2011 s. 15, 37/2014 s. 10(Sch. item 36.2).

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

31 Assaults

S. 31 substituted by No. 10233 s. 8(2).

(1) A person who—

- (a) assaults or threatens to assault another person with intent to commit an indictable offence; or

S. 31(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 13), 48/1997 s. 60(1)(Sch. 1 item 16).

- (b) assaults or threatens to assault, resists or intentionally obstructs—

S. 31(1)(b) amended by Nos 43/2011 s. 16(3), 37/2014 s. 10(Sch. item 36.3(b)).

s. 31

S. 31(1)(b)(i)
amended by
No. 37/2014
s. 10(Sch.
item 36.3(a)).

(i) a police officer in the due execution of
duty; or

S. 31(1)(b)(ia)
inserted by
No. 43/2011
s. 16(1).

(ia) a protective services officer in the due
execution of duty; or

S. 31(1)(b)(ii)
amended by
Nos 43/2011
s. 16(2),
37/2014
s. 10(Sch.
item 36.3(a)).

(ii) a person acting in aid of a police officer
or in aid of a protective services
officer—

knowing that the police officer, protective
services officer or person is such a police
officer, protective services officer or person;
or

(c) assaults or threatens to assault a person with
intent to resist or prevent the lawful
apprehension or detention of a person—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years
maximum).

(2) In subsection (1), *assault* means the direct or
indirect application of force by a person to the
body of, or to clothing or equipment worn by,
another person where the application of force is—

(a) without lawful excuse; and

(b) with intent to inflict or being reckless as to
the infliction of bodily injury, pain,
discomfort, damage, insult or deprivation of
liberty—

and results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

(3) In subsection (2)—

application of force includes—

- (a) application of heat, light, electric current or any other form of energy; and
- (b) application of matter in solid, liquid or gaseous form.

31A Use of firearms in the commission of offences

S. 31A inserted by No. 66/1996 s. 202 (as amended by Nos 26/1997 s. 35(2), 48/1997 s. 60(2) (as amended by No. 74/2000 s. 3(Sch. 1 item 114)).

(1) A person who is found guilty of an indictable offence and who carried—

S. 31A(1) substituted by No. 50/2007 s. 57.

- (a) a firearm (within the meaning of the **Firearms Act 1996**); or
- (b) an imitation firearm (within the meaning of section 29(3)(b))—

when committing the offence is guilty of a further offence and is liable to level 6 imprisonment (5 years maximum).

(2) Despite anything to the contrary in the **Sentencing Act 1991** or in any other law, a court, in imposing a penalty under subsection (1)—

- (a) must direct that the sentence not be served concurrently with any other sentence; and

s. 31B

(b) must not make an order suspending the whole or any part of the sentence.

S. 31B
inserted by
No. 56/2005
s. 6.

31B Being armed with criminal intent

(1) In this section—

controlled weapon has the same meaning as in the **Control of Weapons Act 1990**;

firearm has the same meaning as in the **Firearms Act 1996**;

imitation firearm has the same meaning as in section 29;

prohibited weapon has the same meaning as in the **Control of Weapons Act 1990**.

(2) A person who, with criminal intent, is armed with a firearm, an imitation firearm, a prohibited weapon or a controlled weapon is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

New s. 32
inserted by
No. 46/1996
s. 4.

32 Offence to perform female genital mutilation

(1) A person must not perform female genital mutilation on a child.

Penalty: Level 4 imprisonment (15 years maximum).

S. 32(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 18).

(2) A person must not perform on a person other than a child any type of female genital mutilation referred to in paragraphs (a) to (e) of the definition of female genital mutilation.

Penalty: Level 4 imprisonment (15 years maximum).

S. 32(2)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 18).

33 Offence to take a person from the State with the intention of having prohibited female genital mutilation performed

New s. 33
inserted by
No. 46/1996
s. 4.

- (1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.

S. 33(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 18).

Penalty: Level 4 imprisonment (15 years maximum).

- (2) In proceedings for an offence under subsection (1), proof that—

S. 33(2)
amended by
No. 68/2009
s. 97(Sch.
item 40.2).

- (a) the accused took the person, or arranged for the person to be taken from the State; and

S. 33(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 40.2).

- (b) the person was subjected, while outside the State, to prohibited female genital mutilation—

is, in the absence of proof to the contrary, proof that the accused took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

34 Consent not a defence to a charge under sections 32 or 33

New s. 34
inserted by
No. 46/1996
s. 4.

It is not a defence to a charge brought under section 32 or 33 to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.

S. 34A
inserted by
No. 46/1996
s. 4.

34A Exceptions to offences under section 32

- (1) It is not an offence against section 32 if the performance of the female genital mutilation is by a surgical operation which is—
 - (a) necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or
 - (b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or
 - (c) is a sexual reassignment procedure which is performed by a medical practitioner.
- (2) For the purposes of subsection (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person.
- (3) The burden of proving that the performance of the female genital mutilation did not occur in any of the circumstances set out in subsection (1) lies with the prosecution.

(5) *Corpses*

Pt 1 Div. 1
Subdiv. (5)
(Heading and
ss 16–35)
amended by
Nos 7088
s. 2(b), 7645
s. 2, 8280 s. 4,
9155 s. 2, 9576
s. 11(1),
repealed by
No. 10233
s. 8(2), new
Pt 1 Div. 1
Subdiv. (5)
(Heading and
s. 34B)
inserted by
No. 80/2003
s. 185.

34B Offence to interfere with corpse of a human being

S. 34B
inserted by
No. 80/2003
s. 185.

- (1) A person must not intentionally—
- (a) interfere sexually or commit an indecent act with a corpse of a human being; or
 - (b) unlawfully remove body parts from a corpse of a human being—

whether that corpse is in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.

Penalty: Level 6 (5 years maximum).

- (2) Subsection (1) does not apply to—
- (a) any person who is engaged in the preparation of a corpse of a human being for the purposes of interment or cremation within the meaning of the **Cemeteries and Crematoria Act 2003**; or
 - (b) any other lawful interference with a corpse of a human being, including a lawful interference for the purposes of a medical, scientific or hygienic procedure.

Crimes Act 1958
 No. 6231 of 1958
 Part I—Offences

s. 36

Pt 1 Div. 1
 Subdiv. (6)
 (Heading and
 s. 36)
 amended by
 Nos 9155 s. 3,
 9576 s. 11(1),
 repealed by
 No. 10233
 s. 8(2).

* * * * *

Pt 1 Div. 1
 Subdiv. (7)
 (Heading and
 ss 37–43)
 amended by
 Nos 6958
 s. 8(4)(b), 7546
 s. 4, 7876
 s. 2(3), 8280
 s. 5, 9576
 s. 11(1),
 repealed by
 No. 10233
 s. 8(2).

* * * * *

Pt 1 Div. 1
 Subdiv. (8)
 (Heading and
 ss 44–62)
 amended by
 Nos 6761
 s. 2, 7332
 s. 2(Sch. 1
 item 18), 7577
 s. 2, 8280 s. 6,
 substituted as
 Pt 1 Div. 1
 Subdiv. (8)
 (Heading and
 ss 44–46) by
 No. 9509 s. 5,
 substituted as
 Pt 1 Div. 1
 Subdiv. (8)
 (Heading and
 ss 36–39) by
 No. 8/1991
 s. 3,
 substituted as
 Pt 1 Div. 1
 Subdiv. (8)
 (Heading and
 ss 35–37) by
 No. 81/1991
 s. 3.

(8) *Sexual offences (general provisions)*

35 Definitions

- (1) In Subdivisions (8A) to (8G)—

de facto spouse means a person who is living with a person of the opposite sex as if they were married although they are not;

domestic partner of a person means—

- (a) a person who is in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

New s. 35
inserted by
No. 81/1991
s. 3.

S. 35(1) def. of
*domestic
partner*
inserted by
No. 2/2006
s. 3(1),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 16.1),
amended by
No. 4/2009
s. 37(Sch. 1
item 9.1).

sexual penetration means—

- (a) the introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen; or
- (b) the introduction (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes;

vagina includes—

- (a) the external genitalia; and
- (b) a surgically constructed vagina.

s. 36

S. 35(1A)
inserted by
No. 2/2006
s. 3(2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 16.2).

(1A) For the purposes of the definition of *domestic partner* in subsection (1)—

S. 35(1A)(a)
amended by
No. 4/2009
s. 37(Sch. 1
item 9.2(a)).

(a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 35(1A)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 9.2(b)).

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

(2) For the purposes of Subdivisions (8B) to (8E) both the person who sexually penetrates another person and the other person are taking part in an act of sexual penetration.

S. 36
substituted by
No. 81/1991
s. 3.

36 Meaning of consent²

For the purposes of Subdivisions (8A) to (8D) *consent* means free agreement. Circumstances in which a person does not freely agree to an act include the following—

- (a) the person submits because of force or the fear of force to that person or someone else;
- (b) the person submits because of the fear of harm of any type to that person or someone else;
- (c) the person submits because she or he is unlawfully detained;

- (d) the person is asleep, unconscious, or so affected by alcohol or another drug as to be incapable of freely agreeing;
- (e) the person is incapable of understanding the sexual nature of the act;
- (f) the person is mistaken about the sexual nature of the act or the identity of the person;
- (g) the person mistakenly believes that the act is for medical or hygienic purposes.

37 Jury directions

- (1) If relevant to the facts in issue in a proceeding the judge must direct the jury on the matters set out in sections 37AAA and 37AA.
- (2) A judge must not give to a jury a direction of a kind referred to in section 37AAA or 37AA if the direction is not relevant to the facts in issue in the proceeding.
- (3) A judge must relate any direction given to the jury of a kind referred to in section 37AAA or 37AA to—
 - (a) the facts in issue in the proceeding; and
 - (b) the elements of the offence being tried in respect of which the direction is given—so as to aid the jury's comprehension of the direction.

S. 37
substituted by
No. 81/1991
s. 3,
amended by
Nos 81/1997
s. 4, 2/2006
s. 4,
substituted by
No. 57/2007
s. 3.

37AAA Jury directions on consent

For the purposes of section 37, the matters relating to consent on which the judge must direct the jury are—

- (a) the meaning of consent set out in section 36;
- (b) that the law deems a circumstance specified in section 36 to be a circumstance in which the complainant did not consent;

S. 37AAA
inserted by
No. 57/2007
s. 4.

-
- (c) that if the jury is satisfied beyond reasonable doubt that a circumstance specified in section 36 exists in relation to the complainant, the jury must find that the complainant was not consenting;
 - (d) that the fact that a person did not say or do anything to indicate free agreement to a sexual act at the time at which the act took place is enough to show that the act took place without that person's free agreement;
 - (e) that the jury is not to regard a person as having freely agreed to a sexual act just because—
 - (i) she or he did not protest or physically resist; or
 - (ii) she or he did not sustain physical injury; or
 - (iii) on that or an earlier occasion, she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person.

S. 37AA
inserted by
No. 57/2007
s. 4.

37AA Jury directions on the accused's awareness

For the purposes of section 37, if evidence is led or an assertion is made that the accused believed that the complainant was consenting to the sexual act, the judge must direct the jury that in considering whether the prosecution has proved beyond reasonable doubt that the accused was aware that the complainant was not consenting or might not have been consenting, the jury must consider—

- (a) any evidence of that belief; and

-
- (b) whether that belief was reasonable in all the relevant circumstances having regard to—
- (i) in the case of a proceeding in which the jury finds that a circumstance specified in section 36 exists in relation to the complainant, whether the accused was aware that that circumstance existed in relation to the complainant; and
 - (ii) whether the accused took any steps to ascertain whether the complainant was consenting or might not be consenting, and if so, the nature of those steps; and
 - (iii) any other relevant matters.

37A Objectives of Subdivisions 8A to 8G

S. 37A
inserted by
No. 2/2006
s. 5.

The objectives of Subdivisions (8A) to (8G) are—

- (a) to uphold the fundamental right of every person to make decisions about his or her sexual behaviour and to choose not to engage in sexual activity;
- (b) to protect children and persons with a cognitive impairment from sexual exploitation.

37B Guiding principles

S. 37B
inserted by
No. 2/2006
s. 5.

It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that—

- (a) there is a high incidence of sexual violence within society; and
- (b) sexual offences are significantly under-reported; and
- (c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment; and

- (d) sexual offenders are commonly known to their victims; and
- (e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

(8A) *Rape and indecent assault*³

Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 47–50)
inserted by
No. 9509 s. 5
amended by
No. 10079
s. 8(1),
substituted as
Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 40–43) by
No. 8/1991
s. 3,
substituted as
Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 38, 39) by
No. 81/1991
s. 3.

38 Rape

S. 38
substituted by
No. 81/1991
s. 3.

S. 38(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 19).

- (1) A person must not commit rape.
Penalty: Level 2 imprisonment (25 years maximum).

- (2) A person commits rape if—

S. 38(2)(a)
substituted by
No. 57/2007
s. 5(1).

- (a) he or she intentionally sexually penetrates another person without that person's consent—
 - (i) while being aware that the person is not consenting or might not be consenting;
or

-
- (ii) while not giving any thought to whether the person is not consenting or might not be consenting; or
- (b) after sexual penetration he or she does not withdraw from a person who is not consenting on becoming aware that the person is not consenting or might not be consenting.
- (3) A person (the offender) also commits rape if he or she compels a person—
- (a) to sexually penetrate the offender or another person, irrespective of whether the person being sexually penetrated consents to the act; or
- (b) who has sexually penetrated the offender or another person, not to cease sexually penetrating the offender or that other person, irrespective of whether the person who has been sexually penetrated consents to the act.
- (4) For the purposes of subsection (3), a person compels another person (the victim) to engage in a sexual act if the person compels the victim (by force or otherwise) to engage in that act—
- (a) without the victim's consent; and
- (b) while—
- (i) being aware that the victim is not consenting or might not be consenting; or
- (ii) not giving any thought to whether the victim is not consenting or might not be consenting.
- S. 38(3)**
inserted by
No. 67/2000
s. 4,
substituted by
No. 2/2006
s. 6(1).
- S. 38(4)**
inserted by
No. 67/2000
s. 4,
amended by
No. 2/2006
s. 6(2).
- S. 38(4)(b)**
substituted by
No. 57/2007
s. 5(2).

s. 38A

S. 38A
inserted by
No. 2/2006
s. 7.

38A Compelling sexual penetration

- (1) A person must not compel another person to take part in an act of sexual penetration.

Penalty: Level 2 imprisonment (25 years maximum).

- (2) A person (the offender) compels another person (the victim) to take part in an act of sexual penetration if—

(a) the offender compels the victim to introduce (to any extent) an object or a part of his or her body into his or her own anus or, in the case of a female victim, her own vagina, other than in the course of a procedure carried out in good faith for medical or hygienic purposes; or

(b) the offender compels the victim to take part in an act of bestiality within the meaning of section 59.

- (3) For the purposes of subsection (2), a person compels another person (the victim) to take part in an act of sexual penetration if the person compels the victim (by force or otherwise) to engage in that act—

(a) without the victim's consent; and

(b) while—

(i) being aware that the victim is not consenting or might not be consenting; or

(ii) not giving any thought to whether the victim is not consenting or might not be consenting.

S. 38A(3)(b)
substituted by
No. 57/2007
s. 6.

39 Indecent assault

S. 39 substituted by No. 81/1991 s. 3, amended by No. 49/1991 s. 119(3) (Sch. 3 item 1) (as amended by No. 81/1991 s. 10(Sch. item 3.1)).

(1) A person must not commit indecent assault.

Penalty: Level 5 imprisonment (10 years maximum).

S. 39(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 20).

(2) A person commits indecent assault if he or she assaults another person in indecent circumstances—

S. 39(2) amended by No. 57/2007 s. 7.

(a) while being aware that the person is not consenting or might not be consenting; or

S. 39(2)(a) inserted by No. 57/2007 s. 7.

(b) while not giving any thought to whether the person is not consenting or might not be consenting.

S. 39(2)(b) inserted by No. 57/2007 s. 7.

40 Assault with intent to rape

New s. 40 inserted by No. 41/1993 s. 20.

(1) A person must not assault or threaten to assault another person with intent to commit rape.

Penalty: Level 5 imprisonment (10 years maximum).

S. 40(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 20).

(2) In subsection (1), *assault* has the same meaning as in section 31(1).

s. 44

(8B) Incest

Pt 1 Div. 1
Subdiv. (8B)
(Heading and
s. 51)
inserted by
No. 9509 s. 5,
amended by
No. 102/1986
s. 9(a)–(c),
substituted as
Pt 1 Div. 1
Subdiv. (8B)
(Heading and
s. 44) by
No. 8/1991
s. 3.

S. 44
substituted by
No. 8/1991
s. 3.

44 Incest

S. 44(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 3A),
48/1997
s. 60(1)(Sch. 1
item 21(a)).

- (1) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child.

Penalty: Level 2 imprisonment (25 years maximum).

S. 44(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 3A),
48/1997
s. 60(1)(Sch. 1
item 21(a)).

- (2) A person must not take part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant or the step-child of his or her de facto spouse.

Penalty: Level 2 imprisonment (25 years maximum).

S. 44(3)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 4),
48/1997
s. 60(1)(Sch. 1
item 21(b)).

- (3) A person who is aged 18 or older must not take part in an act of sexual penetration with a person whom he or she knows to be his or her father or mother or other lineal ancestor or his or her step-father or step-mother.

Penalty: Level 6 imprisonment (5 years maximum).

(4) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her sister, half-sister, brother or half-brother.

Penalty: Level 6 imprisonment (5 years maximum).

S. 44(4) amended by Nos 49/1991 s. 119(3) (Sch. 3 item 4), 48/1997 s. 60(1)(Sch. 1 item 21(b)).

(5) Consent is not a defence to a charge under this section.

(6) A person who is compelled by another person to take part in an act of sexual penetration in any of the circumstances referred to in subsection (1), (2), (3) or (4) is not guilty of an offence against this section.

S. 44(6) substituted by No. 2/2006 s. 8.

(6A) For the purposes of this section, a person compels another person (the victim) to take part in an act of sexual penetration if the person compels the victim (by force or otherwise) to engage in that act without the victim's consent.

S. 44(6A) inserted by No. 2/2006 s. 8, amended by No. 57/2007 s. 8.

(7) In all proceedings for offences under this section (except under subsection (2)) it shall be presumed in the absence of evidence to the contrary—

(a) that the accused knew that he or she was related to the other person in the way alleged; and

(b) that people who are reputed to be related to each other in a particular way are in fact related in that way.

s. 45

(8C) *Sexual offences against children*

Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 52, 53)
inserted by
No. 9509 s. 5,
amended by
No. 9848
s. 18(1),
substituted as
Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 45–49) by
No. 8/1991
s. 3.

S. 45
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 4A),
48/1997
s. 60(1)(Sch. 1
item 22),
substituted by
No. 67/2000
s. 5.

S. 45(2)(a)
amended by
No. 7/2010
s. 3(1).

S. 45(2)(b)
amended by
No. 7/2010
s. 3(2).

S. 45(2)(c)
substituted by
No. 7/2010
s. 3(3).

45 Sexual penetration of child under the age of 16

- (1) A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence.
- (2) A person who is guilty of an offence against subsection (1) is liable—
 - (a) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 12, to level 2 imprisonment (25 years maximum); or
 - (b) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 12 and 16 and under the care, supervision or authority of the accused, to level 4 imprisonment (15 years maximum); or
 - (c) in any other case of sexual penetration of a child between the ages of 12 and 16, to level 5 imprisonment (10 years maximum).

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- (3) Subsection (1) does not apply to an act of sexual penetration if—
- (a) the child is aged between 12 and 16; and S. 45(3)(a)
amended by
No. 7/2010
s. 3(4).
 - (b) the persons taking part in the act are married to each other.
- (4) Consent is not a defence to a charge under subsection (1) unless at the time of the alleged offence the child was aged 12 or older and—
- (a) the accused satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that the child was aged 16 or older; or S. 45(4)
amended by
No. 7/2010
s. 3(5).
 - (a) the accused satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that the child was aged 16 or older; or S. 45(4)(a)
amended by
No. 2/2006
s. 9(1).
 - (b) the accused was not more than 2 years older than the child; or
 - (c) the accused satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that he or she was married to the child. S. 45(4)(c)
amended by
No. 2/2006
s. 9(1).
- (4A) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent. S. 45(4A)
inserted by
No. 2/2006
s. 9(2).
- (5) A circumstance of aggravation described in subsection (2) is not an element of an offence against subsection (1) but must be stated in the indictment. S. 45(5)
amended by
No. 68/2009
s. 97(Sch.
item 40.3).
- (6) An accused who takes issue with a circumstance of aggravation described in subsection (2) and who wishes to have the matter determined on the trial may do so by pleading not guilty to the offence with which he or she is charged even if he or she does not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt.
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- (7) A circumstance of aggravation described in subsection (2)—
- (a) is to be determined by the jury if the accused pleads not guilty to the offence; and
 - (b) is to be determined by the trial judge if the accused pleads guilty to the offence.
- (8) An offender who pleads not guilty to an offence against subsection (1) is to be taken to have pleaded guilty to the offence for the purposes of section 5(2)(e) of the **Sentencing Act 1991** if—
- (a) he or she—
 - (i) took issue with a circumstance of aggravation described in subsection (2); and
 - (ii) did not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt; and
 - (b) the circumstance of aggravation is not proved.
- (9) For the avoidance of doubt it is declared that it is the intention of the Parliament that an offence against subsection (1) is not an offence to which section 28 of the **Criminal Procedure Act 2009** applies even though the offence is punishable by level 5 imprisonment where a circumstance of aggravation described in subsection (2) is not present.

S. 45(9)
amended by
No. 68/2009
s. 97(Sch.
item 40.4).

* * * * *

S. 46 substituted by No. 8/1991 s. 3, amended by Nos 49/1991 s. 119(3) (Sch. 3 item 5), 48/1997 s. 60(1)(Sch. 1 item 23), repealed by No. 67/2000 s. 5.

47 Indecent act with child under the age of 16

S. 47 substituted by No. 8/1991 s. 3.

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married.

S. 47(1) amended by Nos 49/1991 s. 119(3) (Sch. 3 item 6), 48/1997 s. 60(1)(Sch. 1 item 24).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) Consent is not a defence to a charge under subsection (1) unless at the time of the alleged offence—

- (a) the accused satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that the child was aged 16 or older; or
- (b) the accused was not more than 2 years older than the child; or
- (c) the accused satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that he or she was married to the child.

S. 47(2)(a) amended by No. 2/2006 s. 10(1).

S. 47(2)(c) amended by No. 2/2006 s. 10(1).

s. 47A

S. 47(3)
inserted by
No. 2/2006
s. 10(2).

- (3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

S. 47A
(Heading)
inserted by
No. 2/2006
s. 11(1).

47A Persistent sexual abuse of child under the age of 16

S. 47A
inserted by
No. 8/1991
s. 3.

S. 47A(1)
amended by
Nos 81/1997
s. 5(1)(a),
2/2006
s. 11(2).

- (1) A person who persistently sexually abuses a child under the age of 16 to whom he or she is not married is guilty of an indictable offence.

- (2) To prove an offence under subsection (1) it is necessary to prove—

S. 47A(2)(a)
amended by
No. 81/1997
s. 5(1)(b)(2).

- (a) that the accused during a particular period (while the child was under the age of 16) did an act in relation to the child which would constitute an offence under a provision of this Subdivision or Subdivision (8A) or (8B); and

S. 47A(2)(b)
amended by
No. 81/1997
s. 5(3).

- (b) that an act which would constitute an offence under a provision of this Subdivision or Subdivision (8A) or (8B) took place between the accused and the child on at least two other occasions during that period.

S. 47A(2A)
inserted by
No. 81/1997
s. 5(4).

- (2A) It is not necessary that the alleged acts be of a similar nature or constitute an offence under the same provision.

S. 47A(3)
substituted by
No. 81/1997
s. 5(5).

- (3) It is not necessary to prove an act referred to in subsection (2)(a) or (b) with the same degree of specificity as to date, time, place, circumstances or occasion as would be required if the accused were charged with an offence constituted by that act instead of an offence against subsection (1).

(4) A person who is guilty of an offence under subsection (1) is liable to level 2 imprisonment (25 years maximum).

S. 47A(4)
substituted by
No. 48/1997
s. 60(1)(Sch. 1
item 25).

(5) If on the trial of a person charged with an offence against subsection (1) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that the accused did an act during that period which constitutes an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I, the jury must acquit the accused of the offence charged but may find him or her guilty of that other offence and he or she is liable to punishment accordingly.

(6) Subsection (5) does not restrict the operation of section 421 or 422.

(7) A prosecution for an offence under subsection (1) must not be commenced without the consent of the Director of Public Prosecutions.

48 Sexual penetration of 16 or 17 year old child

S. 48
(Heading)
inserted by
No. 2/2006
s. 12(1).

S. 48
substituted by
No. 8/1991
s. 3.

(1) A person must not take part in an act of sexual penetration with a 16 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

Penalty: Level 5 imprisonment (10 years maximum).

S. 48(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 7),
48/1997
s. 60(1)(Sch. 1
item 24).

s. 48

S. 48(2)
amended by
No. 2/2006
s. 12(2).

(2) Consent is not a defence to a charge under subsection (1) unless the accused satisfies the court on the balance of probabilities that at the time of the alleged offence the accused believed on reasonable grounds—

- (a) that the child was aged 18 or older; or
- (b) that he or she was married to the child.

S. 48(3)
inserted by
No. 2/2006
s. 12(3).

(3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

S. 48(4)
inserted by
No. 2/2006
s. 12(3).

(4) For the purposes of subsection (1), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is—

- (a) the child's teacher;
- (b) the child's foster parent;
- (c) the child's legal guardian;
- (d) a minister of religion with pastoral responsibility for the child;
- (e) the child's employer;
- (f) the child's youth worker;
- (g) the child's sports coach;
- (h) the child's counsellor;
- (i) the child's health professional;
- (j) a police officer acting in the course of his or her duty in respect of the child;

S. 48(4)(j)
amended by
No. 37/2014
s. 10(Sch.
item 36.4).

S. 48(4)(k)
amended by
No. 8/2008
s. 22(1).

(k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

49 Indecent act with 16 or 17 year old child

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a 16 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) Consent is not a defence to a charge under subsection (1) unless the accused satisfies the court on the balance of probabilities that at the time of the alleged offence the accused believed on reasonable grounds—
- (a) that the child was aged 18 or older; or
 - (b) that he or she was married to the child.
- (3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.
- (4) For the purposes of subsection (1), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is—
- (a) the child's teacher;
 - (b) the child's parent, adoptive parent, foster parent or step parent;
 - (c) the child's legal guardian;
 - (d) a minister of religion with pastoral responsibility for the child;
 - (e) the child's employer;

S. 49 substituted by No. 8/1991 s. 3, amended by Nos 49/1991 s. 119(3) (Sch. 3 item 8), 48/1997 s. 60(1)(Sch. 1 item 26), substituted by No. 2/2006 s. 13.

s. 49A

- (f) the child's youth worker;
- (g) the child's sports coach;
- (h) the child's counsellor;
- (i) the child's health professional;
- (j) a police officer acting in the course of his or her duty in respect of the child;
- (k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

S. 49(4)(j)
amended by
No. 37/2014
s. 10(Sch.
item 36.4).

S. 49(4)(k)
amended by
No. 8/2008
s. 22(1).

S. 49A
inserted by
No. 102/1994
s. 93.

49A Facilitating sexual offences against children

- (1) Subject to this section, a person who in Victoria makes travel arrangements for another person or does or omits to do any other act that aids, facilitates or contributes to in any way whatever the commission by another person of an offence against this Subdivision (other than this section) or against Division 2 of Part IIIA of the Crimes Act 1914 of the Commonwealth or against a law in force only in a place outside Victoria the necessary elements of which consist of or include elements which, if present or occurring in Victoria, would constitute an offence against this Subdivision (other than this section) is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum).

S. 49A(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 27).

-
- (2) For a person to be guilty of an offence against subsection (1) the person—
- (a) must make the travel arrangements or do or omit to do the other act with a view to personal gain or gain for another person; and
 - (b) must—
 - (i) intend that the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person; or
 - (ii) be reckless as to whether or not the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person.

49B Grooming for sexual conduct with child under the age of 16 years

S. 49B
inserted by
No. 7/2014
s. 3.

- (1) In this section—

communication includes an electronic communication;

sexual offence means—

- (a) an offence under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) of Division 1 of Part I or under any corresponding previous enactment; or
 - (b) an attempt to commit an offence referred to in paragraph (a); or
 - (c) an assault with intent to commit an offence referred to in paragraph (a).
- (2) A person of or over the age of 18 years must not communicate, by words or conduct, with a child under the age of 16 years or a person under whose care, supervision or authority the child is (whether or not a response is made to the communication)

with the intention of facilitating the child's engagement in or involvement in a sexual offence with that person or another person who is of or over the age of 18 years.

Penalty: Level 5 imprisonment (10 years maximum).

- (3) For the purposes of subsection (2) and without limiting that subsection, a person who has a child under his or her care, supervision or authority includes—
- (a) the child's parent or step-parent; and
 - (b) the child's teacher; and
 - (c) the child's legal guardian; and
 - (d) a religious official or spiritual leader (however described and including a lay member) who provides religious care or religious instruction to the child; and
 - (e) the child's employer; and
 - (f) the child's youth worker; and
 - (g) the child's sports coach; and
 - (h) an out of home carer (within the meaning of section 74 of the **Children, Youth and Families Act 2005**) in relation to the child; and
 - (i) a person employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison who is acting in the course of his or her duty in respect of the child.
- (4) For the avoidance of doubt, a person does not intend to facilitate a child's engagement in or involvement in a sexual offence with that person or another person where, if the child were to engage in or be involved in the sexual activity

intended, that person or the other person would not commit a sexual offence because he or she would have a defence or satisfy an exception to that sexual offence.

- (5) It is immaterial that some or all of the communication constituting an offence against subsection (2) occurred outside Victoria, so long as the child was in Victoria at the time at which that communication occurred.
- (6) It is immaterial that the child was outside Victoria at the time at which some or all of the communication constituting an offence against subsection (2) occurred, so long as the accused was in Victoria at the time of sending the communication or engaging in the conduct that constitutes the communication.
- (7) It is immaterial that both the accused and the child were outside Victoria at the time at which some or all of the communication constituting an offence against subsection (2) occurred, so long as the intended sexual offence would occur in Victoria.

s. 50

(8D) *Sexual offences against persons with a cognitive impairment*

Pt 1 Div. 1
Subdiv. (8D)
(Heading)
substituted by
No. 2/2006
s. 14.

Pt 1 Div. 1
Subdiv. (8D)
(Heading and
ss 54–57)
inserted by
No. 9509 s. 5,
substituted as
Pt 1 Div. 1
Subdiv. (8D)
(Heading and
ss 50–52) by
No. 8/1991
s. 3.

S. 50
substituted by
No. 8/1991
s. 3.

50 Definitions

(1) In this Subdivision—

S. 50(1) def. of
*cognitive
impairment*
inserted by
No. 2/2006
s. 15(a).

cognitive impairment includes impairment
because of mental illness, intellectual
disability, dementia or brain injury;

S. 50(1) def. of
facility
inserted by
No. 2/2006
s. 15(a).

facility means a service operated by any person or
body (government or non-government) that
provides programs specially designed to
meet the developmental or educational needs
of persons with a cognitive impairment and
includes a residential facility;

S. 50(1) def. of
impaired
repealed by
No. 2/2006
s. 15(b).

* * * * *

indecent act does not include an act done in the
course of an appropriate and generally
accepted medical, therapeutic or hygienic
procedure;

intellectual disability has the same meaning as in the **Disability Act 2006**;

S. 50(1) def. of *intellectual disability* amended by No. 23/2006 s. 236(1).

* * * * *

S. 50(1) def. of *resident* repealed by No. 2/2006 s. 15(b).

residential facility means—

S. 50(1) def. of *residential facility* amended by Nos 98/1995 s. 65(Sch. 1 item 3), 49/2010 s. 227(a), 26/2014 s. 455(Sch. item 7.1).

- (a) a designated mental health service within the meaning of the **Mental Health Act 2014**; or
- (b) premises operated by any person or body (government or non-government) wholly or substantially for the purpose of providing residential services to intellectually disabled people;
- (c) a supported residential service within the meaning of the **Supported Residential Services (Private Proprietors) Act 2010**;

worker means a person who delivers, or assists in delivering, at a facility (whether as an employee or as a volunteer or in any other capacity)—

S. 50(1) def. of *worker* substituted by Nos 2/2006 s. 15(c), 49/2010 s. 227(b).

- (a) a program specially designed to meet the developmental or educational needs of persons with a cognitive impairment residing at the facility or attending the facility to take part in the program; or

(b) other services to residents at a residential facility—

but does not include a person with a cognitive impairment who also resides at the facility or attends the facility to take part in the program.

S. 50(2)
amended by
No. 23/2006
s. 236(2).

- (2) For the purposes of this Subdivision a person in respect of whom a statement has been issued by the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006** must be taken to be intellectually disabled.

S. 51
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
items 8, 9),
48/1997
s. 60(1)(Sch. 1
items 28, 29),
substituted by
No. 2/2006
s. 16.

51 Sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services

- (1) A person who provides medical or therapeutic services to a person with a cognitive impairment who is not his or her spouse or domestic partner must not take part in an act of sexual penetration with that person.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) A person who provides medical or therapeutic services to a person with a cognitive impairment who is not his or her spouse or domestic partner must not commit, or be in any way a party to the commission of, an indecent act with that person.

Penalty: Level 6 imprisonment (5 years maximum).

- (3) In a proceeding for an offence against subsection (1) or (2) in circumstances in which the services provided by the accused were related to the cognitive impairment of the other person, it is a defence to the charge for the accused to prove on the balance of probabilities that at the time at

which the offence is alleged to have been committed, the accused believed on reasonable grounds that the other person did not have a cognitive impairment.

- (4) In a proceeding for an offence against subsection (1) or (2) in circumstances in which the services provided by the accused were not related to the cognitive impairment of the other person, it is a defence to the charge for the accused to prove on the balance of probabilities that at the time at which the offence is alleged to have been committed, the accused was not aware that the other person had a cognitive impairment.
- (5) Consent is not a defence to a charge against subsection (1) or (2) unless the accused satisfies the court on the balance of probabilities that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that he or she was the spouse or domestic partner of the other person.
- (6) If consent is relevant to a charge against subsection (1) or (2), the prosecution bears the burden of proving lack of consent.

s. 52

52 Sexual offences against persons with a cognitive impairment by workers

S. 52
(Heading)
inserted by
No. 2/2006
s. 17(1),
amended by
No. 49/2010
s. 228.

S. 52
substituted by
No. 8/1991
s. 3.

S. 52(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 28),
substituted by
No. 2/2006
s. 17(2).

- (1) A worker at a facility must not take part in an act of sexual penetration with a person with a cognitive impairment who—
- (a) is residing at the facility or attending the facility to take part in a program specially designed to meet the developmental or educational needs of persons with a cognitive impairment; and
 - (b) is not his or her spouse or domestic partner.

Penalty: Level 5 imprisonment (10 years maximum).

S. 52(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 8),
48/1997
s. 60(1)(Sch. 1
item 29),
substituted by
No. 2/2006
s. 17(3).

- (2) A worker at a facility must not commit, or be in any way a party to the commission of, an indecent act with a person with a cognitive impairment who—
- (a) is residing at the facility or attending the facility to take part in a program specially designed to meet the developmental or educational needs of persons with a cognitive impairment; and
 - (b) is not his or her spouse or domestic partner.

Penalty: Level 6 imprisonment (5 years maximum).

- (3) Consent is not a defence to a charge under this section unless the accused satisfies the court on the balance of probabilities that at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or domestic partner of the person residing at or attending the facility.
- (4) If consent is relevant to a charge under this section, the prosecution bears the burden of proving lack of consent.

S. 52(3)
amended by
No. 2/2006
s. 17(4)(a)(b).

S. 52(4)
inserted by
No. 2/2006
s. 17(5).

(8E) *Other sexual offences*

Pt 1 Div. 1
Subdiv. (8E)
(Heading and
s. 58)
inserted by
No. 9509 s. 5,
substituted as
Pt 1 Div. 1
Subdiv. (8E)
(Heading and
ss 53–60) by
No. 8/1991
s. 3.

53 Administration of drugs etc.

- (1) A person must not—
- (a) administer a drug, matter or thing to a person; or
- (b) cause a drug, matter or thing to be taken by a person—

with the intention of rendering that person incapable of resistance and thereby enabling himself or herself or another person to take part in an act of sexual penetration with that person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 53
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 10),
48/1997
s. 60(1)(Sch. 1
item 30),
1/2009 s. 3
(ILA s. 39B(1)).

s. 54

S. 53(2)
inserted by
No. 1/2009
s. 3.

- (2) A person must not—
- (a) administer a drug, matter or thing to a person; or
 - (b) cause a drug, matter or thing to be taken by a person—

with the intention of rendering that person incapable of resistance and thereby enabling himself or herself or another person to commit, or in any way be a party to the commission of, an indecent act with that person.

Penalty: Level 6 imprisonment (5 years maximum).

S. 53(3)
inserted by
No. 1/2009
s. 3.

- (3) In subsection (2), *indecent act* means an indecent assault in any of the circumstances referred to in section 39(2) or an indecent act in any of the circumstances referred to in section 47, 49, 51(2) or 52(2).

S. 54
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 13),
48/1997
s. 60(1)(Sch. 1
item 31).

54 Occupier etc. permitting unlawful sexual penetration

The owner or occupier of, or a person managing or assisting in the management of, any premises must not induce or knowingly allow a child under the age of 17 to enter or remain on the premises for the purpose of taking part in an unlawful act of sexual penetration.

Penalty: Level 4 imprisonment (15 years maximum) if the child is under the age of 13;

Level 5 imprisonment (10 years maximum) if the child is aged between 13 and 17.

55 Abduction or detention

A person must not take away a person by force or detain a person against his or her will—

- (a) with the intention of getting married to, or taking part in an act of sexual penetration with, that person; or
- (b) with the intention that that person should marry, or take part in an act of sexual penetration with, another person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 55 substituted by No. 8/1991 s. 3, amended by Nos 49/1991 s. 119(3) (Sch. 3 item 10), 48/1997 s. 60(1)(Sch. 1 item 32).

56 Abduction of child under the age of 16

- (1) A person must not take away a child under the age of 16 against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) A person must not cause a child under the age of 16 to be taken away against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Level 6 imprisonment (5 years maximum).

S. 56 substituted by No. 8/1991 s. 3.

S. 56(1) amended by Nos 49/1991 s. 119(3) (Sch. 3 item 11), 48/1997 s. 60(1)(Sch. 1 item 33).

S. 56(2) amended by Nos 49/1991 s. 119(3) (Sch. 3 item 11), 69/1997 s. 22(2).

s. 57

S. 57
substituted by
No. 8/1991
s. 3.

57 Procuring sexual penetration by threats or fraud

S. 57(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 11),
48/1997
s. 60(1)(Sch. 1
item 34(a)).

- (1) A person must not by threats or intimidation procure a person to take part in an act of sexual penetration.

Penalty: Level 5 imprisonment (10 years maximum).

S. 57(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 34(b)).

- (2) A person must not by any fraudulent means procure a person to take part in an act of sexual penetration.

Penalty: Level 6 imprisonment (5 years maximum).

S. 58
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 35),
substituted by
No. 2/2006
s. 18.

58 Procuring sexual penetration of a child

- (1) A person aged 18 years or more must not solicit or procure a child under the age of 16 years to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), outside marriage with him or her or another person.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) A person aged 18 years or more must not solicit or procure another person to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), outside marriage with a child under the age of 16 years.

Penalty: Level 5 imprisonment (10 years maximum).

-
- (3) A person aged 18 years or more must not solicit or procure a 16 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), with him or her or another person.

Penalty: Level 5 imprisonment (10 years maximum).

- (4) If—
- (a) a person does an act or thing referred to in subsection (1), (2) or (3) outside, or partly outside, Victoria; and
 - (b) there is a real and substantial link within the meaning of subsection (5) between the doing of the act or thing and Victoria—

those subsections apply to the act or thing as if it had been done wholly within Victoria.

- (5) For the purposes of subsection (4), there is a real and substantial link with Victoria—
- (a) if a significant part of the conduct relating to, or constituting the doing of, the act or thing occurred in Victoria; or
 - (b) where the act or thing was done wholly outside Victoria, if the act or thing was done with the intention that the act of sexual penetration or the indecent act occur in Victoria.

- (6) For the purposes of subsection (3), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is—
- (a) the child's teacher;
 - (b) the child's foster parent;

s. 59

- (c) the child's legal guardian;
- (d) a minister of religion with pastoral responsibility for the child;
- (e) the child's employer;
- (f) the child's youth worker;
- (g) the child's sports coach;
- (h) the child's counsellor;
- (i) the child's health professional;
- (j) a police officer acting in the course of his or her duty in respect of the child;
- (k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

S. 58(6)(j)
amended by
No. 37/2014
s. 10(Sch.
item 36.4).

S. 58(6)(k)
amended by
No. 8/2008
s. 22(1).

S. 59
substituted by
No. 8/1991
s. 3.

59 Bestiality

- (1) A person must not commit an act of bestiality.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) An act of bestiality is any of the following—

- (a) buggery committed by a man on an animal of either sex;
- (b) buggery committed by an animal on a man or woman;

S. 59(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 12),
48/1997
s. 60(1)(Sch. 1
item 35).

- (c) penetration of the vagina of an animal by the penis of a man;
 - (d) penetration of the vagina of a woman by the penis of an animal.
- (3) The law relating to buggery is as set out in this Act and no prosecution shall be instituted for an offence of buggery unless it is for an offence under this section.

* * * * *

S. 60 substituted by No. 8/1991 s. 3, amended by Nos 49/1991 s. 119(3) (Sch. 3 item 14), 48/1997 s. 60(1)(Sch. 1 item 36), 69/1997 s. 22(3), repealed by No. 2/2006 s. 19.

60A Sexual offence while armed with an offensive weapon

S. 60A inserted by No. 41/1993 s. 21.

- (1) A person who is found guilty of an offence under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) and who carried an offensive weapon when committing the offence is guilty of a summary offence and liable to level 7 imprisonment (2 years maximum).
- (2) Despite anything to the contrary in the **Sentencing Act 1991** or in any other law, a court imposing a sentence under subsection (1)—
- (a) must direct that the sentence be served cumulatively on any other sentence; and

S. 60A(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 37).

- (b) must not make an order suspending the whole or any part of the sentence.
- (3) Despite anything to the contrary in this or any other Act or in any rule of law, the court by which the person has been found guilty of an offence under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) may hear and determine the summary offence under this section without a jury and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences shall apply so far as is appropriate to the hearing and determination of the offence under this section.
- (4) Subsection (3) is in addition to, and does not limit the operation of, section 359AA.

(8EAA) *Sexual servitude*

Pt 1 Div. 1
Subdiv.
(8EAA)
(Heading and
ss 60AB–
60AE)
inserted by
No. 20/2004
s. 3.

60AB *Sexual servitude*

S. 60AB
inserted by
No. 20/2004
s. 3.

- (1) In this section—

commercial sexual services means services for commercial benefit involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others;

threat means—

- (a) threat of force; or
(b) threat to cause a person's deportation;
or

-
- (c) threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of commercial sexual services.
- (2) A person who, by the use of—
- (a) force; or
 - (b) a threat; or
 - (c) unlawful detention; or
 - (d) fraud or misrepresentation, including by omission; or
 - (e) a manifestly excessive debt—
- causes another person to provide, or to continue providing, commercial sexual services is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (3) A person who—
- (a) causes or induces another person to provide commercial sexual services; and
 - (b) knows that, or is reckless as to whether, the other person providing those services will not be free to stop providing those services because of the use of—
 - (i) force; or
 - (ii) a threat; or
 - (iii) unlawful detention; or
 - (iv) fraud or misrepresentation, including by omission; or
 - (v) a manifestly excessive debt—
- is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
-

-
- (4) A person who—
- (a) conducts a business that involves the provision of commercial sexual services; and
 - (b) knows that, or is reckless as to whether, the persons providing those services are not free to stop providing those services because of the use of—
 - (i) force; or
 - (ii) a threat; or
 - (iii) unlawful detention; or
 - (iv) fraud or misrepresentation, including by omission; or
 - (v) a manifestly excessive debt—
- is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (5) For the purposes of subsection (4), conducting a business includes—
- (a) taking any part in the management of the business; or
 - (b) exercising control or direction over the business; or
 - (c) providing finance for the business.

S. 60AC
inserted by
No. 20/2004
s. 3.

60AC Aggravated sexual servitude

- (1) A person is guilty of aggravated sexual servitude if—
- (a) the person commits an offence against section 60AB(2), (3) or (4); and
 - (b) the offence was committed against a person under the age of 18 years; and
 - (c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.

-
- (2) A person guilty of aggravated sexual servitude is guilty of an offence and liable to level 3 imprisonment (20 years maximum).

60AD Deceptive recruiting for commercial sexual services

S. 60AD
inserted by
No. 20/2004
s. 3.

- (1) A person who, intending to induce another person to enter into an engagement to provide commercial sexual services, deceives that other person about the fact that the engagement will involve the provision of commercial sexual services is guilty of an offence and liable to level 6 imprisonment (5 years maximum).
- (2) In subsection (1), *commercial sexual services* has the same meaning as in section 60AB.

60AE Aggravated deceptive recruiting for commercial sexual services

S. 60AE
inserted by
No. 20/2004
s. 3.

- (1) A person is guilty of aggravated deceptive recruiting for commercial sexual services if—
- (a) the person commits an offence against section 60AD; and
 - (b) the offence was committed against a person under the age of 18 years; and
 - (c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.
- (2) A person guilty of aggravated deceptive recruiting for sexual services is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

s. 60B

(8EA) *Loitering by sexual offender*

Pt 1 Div. 1
Subdiv. (8EA)
(Heading and
s. 60B)
inserted by
No. 129/1993
s. 10.

S. 60B
inserted by
No. 129/1993
s. 10.

60B Loitering near schools etc.

S. 60B(1)
substituted by
No. 65/1998
s. 3(1).

(1) In this section, *sexual offence* means—

S. 60B(1)(a)
amended by
No. 67/2000
s. 7(1).

(a) an offence against section 38, 39, 40, 44(1),
44(2), 44(4), 45, 47, 47A, 48, 49, 55 or 56;
or

S. 60B(1)(b)
amended by
No. 67/2000
s. 7(2).

(b) any offence specified in clause 7A, 7B, 8, 9,
10 or 12 of Schedule 8; or

(c) an offence of conspiracy to commit,
incitement to commit or attempting to
commit an offence referred to in
paragraph (a) or (b).

S. 60B(2)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 38),
69/1997
s. 22(4),
65/1998
s. 3(2)(b).

(2) A person who—

(a) has been found guilty of—
(i) a sexual offence; or

-
- (ia) an offence against—
- (A) section 5, 6, 7 or 11 of the **Sex Work Act 1994**; or
- (B) section 6, 7, 8 or 9 of the **Prostitution Regulation Act 1986**; or
- (C) section 59(1)(a) or (b) or 60 inserted in this Act on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**; or
- (ii) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or
- (iii) an offence against section 19 of the **Summary Offences Act 1966**; or
- (iv) an offence against section 68, 69 or 70 or an offence of attempting to commit an offence against section 69; or
- (v) an offence against—
- (A) section 60A of the **Classification of Films and Publications Act 1990**; or
- S. 60B(2)(a)(ia) inserted by No. 65/1998 s. 3(2)(a).
- S. 60B(2)(a)(ia)(A) amended by No. 63/2010 s. 81(Sch. item 4).
- S. 60B(2)(a)(iii) substituted by No. 56/2005 s. 7(a).
- S. 60B(2)(a)(iv) amended by No. 90/1995 s. 86, substituted by No. 22/1996 s. 7.
- S. 60B(2)(a)(v) inserted by No. 22/1996 s. 7.

s. 60B

(B) section 168A, 168B or 168C of
the **Police Offences Act 1958**—

as in force at any time before its repeal;
and

(b) is found loitering without reasonable excuse
in or near—

S. 60(2)(b)(i)
substituted by
No. 80/2011
s. 79(Sch.
item 3.1).

(i) a school, a children's services centre or
an education and care service premises;
or

S. 60B(2)(b)(ii)
amended by
No. 56/2005
s. 7(b).

(ii) a public place within the meaning of
the **Summary Offences Act 1966**
regularly frequented by children and in
which children are present at the time
of the loitering—

is guilty of an offence.

S. 60B(2A)
inserted by
No. 65/1998
s. 3(3).

(2A) An offence against subsection (2) is—

(a) an indictable offence for which the offender
is liable to level 6 imprisonment (5 years
maximum) or a level 6 fine (600 penalty
units maximum) if at the time of the
commission of the offence the offender had
previously been sentenced as a serious
sexual offender (within the meaning of
Part 2A of the **Sentencing Act 1991**) for a
sexual offence (within the meaning of that
Part) or a violent offence (within the
meaning of that Part); or

(b) a summary offence for which the offender is
liable to level 7 imprisonment (2 years
maximum) or a level 7 fine (240 penalty
units maximum) in any other case.

(3) If a person has at any time been convicted of an
offence against a law of another State or a
Territory of the Commonwealth which creates an

offence substantially similar to a sexual offence the conviction for the offence against that law must be taken for the purposes of this section to be a conviction of a sexual offence.

(4) In this section—

children's services centre means a place at which a children's service within the meaning of the **Children's Services Act 1996** operates;

education and care service premises means a place at which an education and care service (other than a family day care service) within the meaning of the Education and Care Services National Law (Victoria) educates or cares for children.

S. 60B(4)
inserted by
No. 80/2011
s. 79(Sch.
item 3.2).

(8F) Jury warnings

Pt 1 Div. 1
Subdiv. (8F)
(Heading and
ss 59–61)
inserted by
No. 9509 s. 5,
amended by
Nos 10094
s. 14, 124/1986
ss 74(b)–(d),
80,
substituted as
Pt 1 Div. 1
Subdiv. (8F)
(Heading and
s. 61) by
No. 8/1991
s. 3.

61 Jury warnings

S. 61
substituted by
No. 8/1991
s. 3.

(1) On the trial of a person for an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) or under any corresponding previous enactment or for an attempt to commit any such offence or an assault with intent to commit any such offence—

s. 61

S. 61(1)(b)
amended by
No. 81/1997
s. 6(1),
substituted by
No. 76/2006
s. 3(1).

- (a) the judge must not warn, or suggest in any way to, the jury that the law regards complainants in sexual cases as an unreliable class of witness; and
- (b) if evidence is given or a question is asked of a witness or a statement is made in the course of an address on evidence which tends to suggest that there was delay in making a complaint about the alleged offence by the person against whom the offence is alleged to have been committed, the judge—
 - (i) must inform the jury that there may be good reasons why a victim of a sexual assault may delay or hesitate in complaining about it; and
 - (ii) must not warn, or suggest in any way to, the jury that the credibility of the complainant is affected by the delay unless, on the application of the accused, the judge is satisfied that there is sufficient evidence tending to suggest that the credibility of the complainant is so affected to justify the giving of such a warning; and
 - (iii) must not warn, or suggest in any way to, the jury that it would be dangerous or unsafe to find the accused guilty because of the delay.

S. 61(1A)
inserted by
No. 76/2006
s. 3(2).

- (1A) If the judge, on the application of the accused in a proceeding to which subsection (1) applies, is satisfied that the accused has suffered a significant forensic disadvantage because of the consequences of the delay in making a complaint about the alleged offence by the person against whom the offence is alleged to have been committed, the judge must, in any terms that the

judge considers appropriate having regard to the circumstances of the case—

- (a) inform the jury of the nature of the forensic disadvantage suffered by the accused; and
 - (b) instruct the jury to take that disadvantage into consideration.
- (1B) Despite subsection (1A), a judge must not warn, or suggest in any way to, the jury that it would be dangerous or unsafe to find the accused guilty because of the delay. **S. 61(1B) inserted by No. 76/2006 s. 3(2).**
- (1C) For the purposes of subsection (1A), the passage of time alone is not to be taken to cause a significant forensic disadvantage. **S. 61(1C) inserted by No. 76/2006 s. 3(2).**
- (1D) Nothing in subsection (1A) requires a judge to give a warning referred to in that subsection if there is no reason to do so in the particular proceeding. **S. 61(1D) inserted by No. 76/2006 s. 3(2).**
- (1E) A judge must not give a warning referred to in subsection (1A) or a warning to the effect of a warning referred to in subsection (1A) except in accordance with this section and any rule of law to the contrary is hereby abrogated. **S. 61(1E) inserted by No. 76/2006 s. 3(2).**
- (1F) Nothing in subsections (1A) to (1E) affects the power of a judge to give any other warning to, or to otherwise inform, the jury. **S. 61(1F) inserted by No. 76/2006 s. 3(2).**
- (2) Nothing in subsection (1) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice.
- (3) Despite subsection (2), a judge must not make any comment on the reliability of evidence given by the complainant in a proceeding to which subsection (1) applies if there is no reason to do so in the particular proceeding in order to ensure a fair trial. **S. 61(3) inserted by No. 81/1997 s. 6(2).**

s. 62

Pt 1 Div. 1
Subdiv. (8G)
(Heading and
s. 62)
inserted by
No. 9509 s. 5.

(8G) Abrogation of obsolete rules of law

S. 62
inserted by
No. 9509 s. 5.

62 Abrogation of obsolete rules of law

- (1) The rule of law whereby a male person under the age of fourteen years is conclusively presumed to be impotent is hereby abrogated.
- (2) The existence of a marriage does not constitute, or raise any presumption of, consent by a person to an act of sexual penetration with another person or to an indecent assault (with or without aggravating circumstances) by another person.

S. 62(2)
substituted by
No. 10233
s. 10.

S. 62(3)
repealed by
No. 8/1991
s. 6(c).

* * * * *

(9) Child stealing

No. 6103 s. 63.

S. 63(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30(a)),
48/1997
s. 60(1)(Sch. 1
item 39(a)).

63 Child stealing

- (1) Whosoever unlawfully either by force or fraud leads or takes away or decoys or entices away or detains any child under the age of sixteen years, with intent to deprive any parent or guardian or any other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child; and whosoever with any such intent receives or harbors any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No person who has claimed any right to the possession of such child, or is the mother or has claimed to be the father of an illegitimate child, shall be liable to be prosecuted under this or the next succeeding subsection on account of the getting possession of such child or taking such child out of the possession of any person having the lawful care or charge thereof.

- (2) Whosoever unlawfully takes decoys or entices away any child under the age of sixteen years out of the possession and against the will of the child's parent or guardian or of any other person having the lawful care or charge of the child shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 63(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30(b)),
48/1997
s. 60(1)(Sch. 1
item 39(b)).

(9A) Kidnapping

Pt 1 Div. 1
Subdiv. (9A)
(Heading and
s. 63A)
inserted by
No. 6731
s. 2(2).

63A Kidnapping

Whosoever leads takes or entices away or detains any person with intent to demand from that person or any other person any payment by way of ransom for the return or release of that person or with intent to gain for himself or any other person any advantage (however arising) from the detention of that person shall, whether or not any demand or threat is in fact made, be guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 63A
inserted by
No. 6731
s. 2(2),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30A),
48/1997
s. 60(1)(Sch. 1
item 40).

(10) *Bigamy*

64 Bigamy

No. 6103 s. 64.

S. 64
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 32),
48/1997
s. 60(1)(Sch. 1
item 41).

Whosoever being married goes through the form or ceremony of marriage with any other person during the life of her or his husband or wife, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum). Nothing in this section contained shall extend to any person going through the form or ceremony of marriage as aforesaid whose husband or wife has been continually absent from such person for the space of seven years then last past and has not been known by such person to be living within that time; or shall extend to any person who at the time of her or his going through such form or ceremony of marriage has been divorced from the bond of the marriage; or to any person whose marriage at such time has been declared void by the sentence of any court of competent jurisdiction.

(11) *Attempts to procure abortion*

65 Abortion performed by unqualified person

No. 6103 s. 65.

S. 65
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 42),
substituted by
No. 58/2008
s. 11.

- (1) A person who is not a qualified person must not perform an abortion on another person.
Penalty: Level 5 imprisonment (10 years maximum).
- (2) A woman who consents to, or assists in, the performance of an abortion on herself is not guilty of an offence against this section.
- (3) For the purposes of this section—
 - (a) a registered medical practitioner is a qualified person; and

(b) a registered pharmacist or registered nurse is a qualified person only for the purpose of performing an abortion by administering or supplying a drug or drugs in accordance with the **Abortion Law Reform Act 2008**.

(4) In this section—

abortion has the same meaning as in the **Abortion Law Reform Act 2008**;

perform an abortion includes supply or procure the supply of any drug or other substance knowing that it is intended to be used to cause an abortion;

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 65(4) def. of *registered medical practitioner* substituted by No. 13/2010 s. 51(Sch. item 17.2).

registered nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse or as a midwife (other than as a student);

S. 65(4) def. of *registered nurse* substituted by No. 13/2010 s. 51(Sch. item 17.2).

registered pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

S. 65(4) def. of *registered pharmacist* substituted by No. 13/2010 s. 51(Sch. item 17.2).

woman means a female person of any age.

s. 66

No. 6103 s. 66.

S. 66
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 34),
48/1997
s. 60(1)(Sch. 1
item 43),
substituted by
No. 58/2008
s. 11.

66 Abortion—Abolition of common law offences

Any rule of common law that creates an offence in relation to procuring a woman's miscarriage is abolished.

(12) Concealing the birth of a child⁴

No. 6103 s. 67.

S. 67
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 35),
48/1997
s. 60(1)(Sch. 1
item 44(a)(b)).

67 Concealing birth of a child

If any woman has been delivered of a child, every person who by any secret disposition of the dead body of the said child whether such child died before at or after its birth endeavours to conceal the birth thereof, shall be guilty of a summary offence, and shall be liable to level 9 imprisonment (6 months maximum).

(13) *Child pornography*

Pt 1 Div. 1
Subdiv. (13)
(Heading and
ss 68, 69)
amended by
No. 7577
s. 3(a)(b),
repealed by
No. 9509 s. 6,
new Pt 1
Div. 1
Subdiv. (13)
(Heading and
ss 67A–70)
inserted by
No. 90/1995
s. 88.

67A Definitions

S. 67A
inserted by
No. 90/1995
s. 88.

In this Subdivision—

child pornography means a film, photograph, publication or computer game that describes or depicts a person who is, or appears to be, a minor engaging in sexual activity or depicted in an indecent sexual manner or context;

S. 67A def. of
*child
pornography*
amended by
Nos 20/2004
s. 4, 6/2005
s. 12(1).

classified means classified under the Commonwealth Act;

Commonwealth Act means the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth;

computer game has the same meaning as in the Commonwealth Act;

film has the same meaning as in the Commonwealth Act;

S. 67A def. of *law enforcement agency* amended by Nos 52/2003 s. 52(Sch. 1 item 1), 37/2014 s. 10(Sch. item 36.5).

law enforcement agency means—

- (a) Victoria Police or the police force or police service of any other State or of the Northern Territory of Australia; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth; or
- (d) any other authority or person responsible for the enforcement of the laws of—
 - (i) Victoria or any other State; or
 - (ii) the Commonwealth; or
 - (iii) the Northern Territory of Australia;

minor means a person under the age of 18 years;

photograph includes a photocopy or other reproduction of a photograph;

publication has the same meaning as in the Commonwealth Act.

New s. 68 inserted by No. 90/1995 s. 88, amended by Nos 48/1997 s. 60(1)(Sch. 1 item 45(a)(b)), 69/2001 s. 20(1) (ILA s. 39B(1)).

68 Production of child pornography

- (1) A person who prints or otherwise makes or produces child pornography is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

S. 68(1A) inserted by No. 6/2005 s. 12(2), amended by No. 6/2005 s. 13(1).

- (1A) It is a defence to a prosecution for an offence against subsection (1) to prove, in the case of—
 - (a) a film; or
 - (b) a photograph contained in a publication; or

(c) a computer game—

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+.

(2) Nothing in subsection (1) makes it an offence for—

S. 68(2)
inserted by
No. 69/2001
s. 20(1).

- (a) any member or officer of a law enforcement agency; or
- (b) a person authorised in writing by the Chief Commissioner of Police assisting a member or officer; or
- (c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting a member or officer—

to print or otherwise make or produce child pornography in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

(3) Nothing in subsection (1) makes it an offence for any of the following to print or otherwise make or produce child pornography—

S. 68(3)
inserted by
No. 77/2013
s. 15.

- (a) any of the following persons—
 - (i) the Director of Public Prosecutions;
 - (ii) the Chief Crown Prosecutor, a Senior Crown Prosecutor, a Crown Prosecutor or an Associate Crown Prosecutor appointed under the **Public Prosecutions Act 1994**;

(iii) the Solicitor for Public Prosecutions appointed under section 42 of the **Public Prosecutions Act 1994**—

in the exercise or performance of a power, function or duty conferred or imposed on the person under the **Public Prosecutions Act 1994** or any other Act or at common law;

(b) a member of staff of the Office of Public Prosecutions, in the exercise or performance of a power, function or duty conferred or imposed by or under the **Public Prosecutions Act 1994** or any other Act or at common law;

(c) a person engaged or contracted to assist a person referred to in paragraphs (a) or (b) with the production of audio-visual material required in the exercise or performance of a power, function or duty referred to in that paragraph.

(4) Nothing in subsection (1) makes it an offence for an employee of the Department of Justice to produce child pornography if—

(a) the employee produces child pornography for the purposes of their official duties; and

(b) the employee is authorised to do so by the Secretary of the Department of Justice.

69 Procurement etc. of minor for child pornography

(1) A person who—

(a) invites a minor to be in any way concerned in the making or production of child pornography; or

S. 68(4)
inserted by
No. 77/2013
s. 15.

S. 69
(Heading)
inserted by
No. 20/2004
s. 5(2).
New s. 69
inserted by
No. 90/1995
s. 88,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 46),
6/2005 s. 12(3)
(LA s. 39B(1)).

- (b) procures a minor for the purpose of making or producing child pornography; or S. 69(1)(b) amended by No. 20/2004 s. 5(1).
- (c) causes a minor to be in any way concerned in the making or production of child pornography; or S. 69(1)(c) inserted by No. 20/2004 s. 5(1).
- (d) offers a minor to be in any way concerned in the making or production of child pornography— S. 69(1)(d) inserted by No. 20/2004 s. 5(1).

is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove, in the case of— S. 69(2) inserted by No. 6/2005 s. 12(3), amended by No. 6/2005 s. 13(2).
- (a) a film; or
- (b) a photograph contained in a publication; or
- (c) a computer game—

that at the time of the alleged offence the film, publication or computer game would, if classified, be classified other than RC or X or X 18+.

70 Possession of child pornography

New s. 70 inserted by No. 90/1995 s. 88.

- (1) A person who knowingly possesses child pornography is guilty of an indictable offence. S. 70(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 47), substituted by No. 67/2000 s. 6.
- Penalty: Level 6 imprisonment (5 years maximum).

(2) It is a defence to a prosecution for an offence against subsection (1) to prove—

S. 70(2)(a)
amended by
No. 6/2005
ss 12(4), 13(3).

(a) in the case of—

- (i) a film; or
- (ii) a photograph contained in a publication; or
- (iii) a computer game—

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+; or

(b) that the film, photograph, publication or computer game possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose; or

S. 70(2)(c)
amended by
Nos 20/2004
s. 6(1),
68/2009
s. 97(Sch.
item 40.5).

(c) that the accused believed on reasonable grounds that the minor was aged 18 years or older or that he or she was married to the minor; or

S. 70(2)(d)
amended by
No. 68/2009
s. 97(Sch.
item 40.5).

(d) that the accused made the film or took the photograph or was given the film or photograph by the minor and that, at the time of making, taking or being given the film or photograph, the accused was not more than 2 years older than the minor was or appeared to be; or

S. 70(2)(e)
amended by
No. 68/2009
s. 97(Sch.
item 40.5).

(e) that the minor or one of the minors depicted in the film or photograph is the accused.

(3) Despite subsection (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the minor was actually under the age of 18 years.

S. 70(3)
amended by
No. 20/2004
s. 6(2).

(4) Nothing in this section makes it an offence for—

S. 70(4)
substituted by
No. 69/2001
s. 20(2).

(a) any member or officer of a law enforcement agency; or

(b) a person authorised in writing by the Chief Commissioner of Police assisting such a member or officer; or

(c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting such a member or officer—

to have child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

(5) Nothing in this section makes it an offence for any of the following to have child pornography in his or her possession—

S. 70(5)
inserted by
No. 77/2013
s. 16.

(a) any of the following persons—

(i) the Director of Public Prosecutions;

(ii) the Chief Crown Prosecutor, a Senior Crown Prosecutor, a Crown Prosecutor or an Associate Crown Prosecutor appointed under the **Public Prosecutions Act 1994**;

(iii) the Solicitor for Public Prosecutions appointed under section 42 of the **Public Prosecutions Act 1994**—

when required to do so in the exercise or performance of a power, function or duty conferred or imposed on the person under the **Public Prosecutions Act 1994** or any other Act or at common law;

(b) a member of staff of the Office of Public Prosecutions, when required to do so in the exercise or performance of a power, function or duty conferred or imposed by or under the **Public Prosecutions Act 1994** or any other Act or at common law;

(c) any other legal practitioner when required to do so in the course of representing the Crown in a proceeding involving or related to subsection (1) or section 68(1); or

(d) a person engaged or contracted to assist a person referred to in paragraphs (a) or (b) with the production of audio-visual material required in the exercise or performance of a power, function or duty referred to in that paragraph.

(6) Nothing in this section makes it an offence for an employee of the Department of Justice to have in his or her possession child pornography if—

(a) the employee has the child pornography in his or her possession for the purposes of their official duties; and

(b) the employee is authorised to do so by the Secretary of the Department of Justice.

S. 70(6)
inserted by
No. 77/2013
s. 16.

70AA Forfeiture

- (1) If a person is charged with an offence against section 68, 69 or 70 and the court is satisfied that the person committed the offence, the court may order that the child pornography in respect of which the offence was committed is forfeited to the Crown.
- (2) If, despite the acquittal of a person charged with an offence against section 68, 69 or 70, the court is satisfied that an offence has been committed in respect of the child pornography, the court may order that the child pornography is forfeited to the Crown.
- (3) If a film, photograph, publication or computer game has been lawfully seized under this Subdivision by a police officer but at the expiration of 6 months after the seizure no person has been charged with an offence in relation to the seized item, a police officer may apply to the Magistrates' Court for an order that the film, photograph, publication or computer game is child pornography and is forfeited to the Crown.
- (4) The owner of a film, photograph, publication or computer game that has been lawfully seized by a police officer may apply within 28 days after the seizure to the Magistrates' Court for the return of the film, photograph, publication or computer game.
- (5) An application under subsection (4) may be made after 28 days after the seizure if the Magistrates' Court is satisfied that the applicant has a reasonable excuse for failing to make the application within the period referred to in subsection (4).

S. 70AA
inserted by
No. 22/1996
s. 8.

S. 70AA(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.6).

S. 70AA(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.6).

s. 70AA

-
- (6) On an application under subsection (4), if the Magistrates' Court is satisfied that—
- (a) the applicant is the owner of the film, photograph, publication or computer game; and
 - (b) the film, photograph, publication or computer game is not child pornography—
- the Court must order that, at the expiration of 6 months, after the seizure, the film, photograph, publication or computer game be returned to the applicant unless the applicant or another person has been charged with an offence in relation to the film, photograph, publication or computer game.
- (7) Subject to subsection (8), child pornography which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister.
- (8) The Minister must not direct the destruction of child pornography before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.
- (9) Nothing in this section limits the right of the Director of Public Prosecutions or any other person to apply for an order under the **Confiscation Act 1997**.

S. 70AA(9)
amended by
No. 108/1997
s. 151.

s. 70AB

(14) *Sexual performances involving a minor*

Pt 1 Div. 1
Subdiv. (14)
(Heading and
ss 70AB,
70AC)
inserted by
No. 20/2004
s. 7.

70AB Definitions

S. 70AB
inserted by
No. 20/2004
s. 7.

In this Subdivision—

minor means person under the age of 18 years;

sexual performance means live performance that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

70AC Sexual performance involving a minor

S. 70AC
inserted by
No. 20/2004
s. 7.

A person must not—

- (a) invite a minor to be in any way concerned in a sexual performance; or
- (b) procure a minor for the purpose of being in any way concerned in a sexual performance; or
- (c) cause a minor to be in any way concerned in a sexual performance; or
- (d) offer a minor to be in any way concerned in a sexual performance—

in circumstances where there is payment or reward to the minor or to any other person in respect of the performance.

Penalty: Level 5 imprisonment (10 years maximum).

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Pt 1 Div. 1
Subdiv. (14)
(Heading and
s. 70)
repealed by
No. 9509 s. 6.

s. 70A

Division 1A—Piracy

Pt 1 Div. 1A
(Heading and
ss 70A–70D)
inserted by
No. 9407
s. 2(b).

(1837) 7
William IV and
1 Vict.
c. LXXXVIII
s. 2.
S. 70A
inserted by
No. 9407
s. 2(b),
amended by
Nos 37/1986
s. 10, 49/1991
s. 119(1)
(Sch. 2
item 36(a)).

70A Piracy with violence

Any person who with intent to commit or at the time of or immediately before or immediately after committing the offence of piracy in respect of any vessel—

- (a) assaults with intent to murder any person on board or belonging to the vessel; or
- (b) wounds any such person; or
- (c) unlawfully does any act by which the life of any such person may be endangered—

shall be liable to—

- (d) level 3 imprisonment (20 years maximum);
or

S. 70A(a)
(where
secondly
occurring)
inserted by
No. 37/1986
s. 10,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 36(b)),
substituted as
s. 70A(d) by
No. 48/1997
s. 60(1)(Sch. 1
item 48).

-
- (e) imprisonment for such other term as is fixed by the court—

S. 70A(b) (where secondly occurring) inserted by No. 37/1986 s. 10, amended by No. 49/1991 s. 119(1) (Sch. 2 item 36(c)), re-numbered as s. 70A(e) by No. 48/1997 s. 62(2).

as the court determines.

70B Piratical acts

(1698) 11 William III, c. VII ss 7, 8.
S. 70B inserted by No. 9407 s. 2(b).

- (1) A person commits a piratical act if—

- (a) being an Australian citizen, he commits any piracy or robbery or any act of hostility or robbery against other Australian citizens on the sea under colour of any commission from any foreign ruler or under pretence of authority from any person whatever; or
- (b) being on board any Australian ship he—
- (i) turns pirate, enemy or rebel, and piratically runs away with the ship, or any boat, munitions or goods;
 - (ii) voluntarily yields up the ship, or any boat, munitions or goods to any pirate;
 - (iii) brings any seducing message from any pirate, enemy or rebel;
 - (iv) assaults the master of the ship in order to prevent him from fighting in defence of his ship and goods;
 - (v) confines the master of the ship; or
 - (vi) makes or endeavours to make a revolt in the ship.

s. 70C

S. 70B(2)
amended by
Nos 37/1986
s. 11, 49/1991
s. 119(1)
(Sch. 2
item 37(a)).

(2) Any person who commits a piratical act shall be guilty of an offence and shall be liable on conviction upon indictment to—

S. 70B(2)(a)
inserted by
No. 37/1986
s. 11,
substituted by
Nos 49/1991
s. 119(1)
(Sch. 2
item 37(b)),
48/1997
s. 60(1)(Sch. 1
item 49).

(a) level 3 imprisonment (20 years maximum);
or

S. 70B(2)(b)
inserted by
No. 37/1986
s. 11,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 37(c)).

(b) imprisonment for such other term as is fixed
by the court—

as the court determines.

(1721) 8
George I,
c. XXIV s. 1.
S. 70C
inserted by
No. 9407
s. 2(b),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 38),
48/1997
s. 60(1)(Sch. 1
item 50).

70C Trading etc. with pirates

Any person who knowingly—

- (a) trades with any pirate;
- (b) furnishes any pirate with any munitions or stores of any kind;
- (c) fits out any vessel with a design to trade with, supply or correspond with any pirate;
or
- (d) conspires or corresponds with any pirate—

shall be guilty of an offence and shall be liable on conviction upon indictment to level 5 imprisonment (10 years maximum).

70D Being found on board piratical vessel and unable to prove non-complicity

S. 70D
inserted by
No. 9407
s. 2(b).

- (1) Any person who is found in Victoria on board any vessel equipped for the purposes of piracy shall be guilty of an offence and shall be liable on conviction upon indictment to level 6 imprisonment (5 years maximum).

S. 70D(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 39),
48/1997
s. 60(1)(Sch. 1
item 51).

- (2) It shall be a defence to a charge under subsection (1) if the person charged proves—
- (a) that he was not on board the vessel willingly;
or
- (b) that he did not know that the vessel was equipped for the purposes of piracy.

Division 2—Theft and similar or associated offences

Pt 1 Div. 2
(Heading)
substituted by
No. 8425
s. 2(1)(a).

71 Definitions

- (1) In this Division—

gain and *loss* are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—

- (a) *gain* includes a gain by keeping what one has, as well as a gain by getting what one has not; and
- (b) *loss* includes a loss by not getting what one might get, as well as a loss by parting with what one has;

S. 71
amended by
No. 8280 s. 7,
substituted by
No. 8425
s. 2(1)(b).

s. 72

goods except in so far as the context otherwise requires, includes money and every other description of property except land and includes things severed from the land by stealing;

property includes money and all other property real or personal including things in action and other intangible property.

- (2) In this Division property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

S. 72
substituted by
No. 8425
s. 2(1)(b).

72 Basic definition of theft

- (1) A person steals if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.
- (2) A person who steals is guilty of theft; and "thief" shall be construed accordingly.

S. 73
substituted by
No. 8425
s. 2(1)(b).

73 Further explanation of theft

- (1) This section has effect as regards the interpretation and operation of section 72 and, except as otherwise provided in this Division, shall apply only for the purposes of that section and not otherwise.
- (2) A person's appropriation of property belonging to another is not to be regarded as dishonest—
- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

-
- (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or
- (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (3) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.
- (4) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.
- (5) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.
- (6) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—
- (a) when he is a trustee or personal representative, or is authorized by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing

with it in breach of the confidence reposed in him; or

- (b) when he is not in possession of the land and appropriates any thing forming part of the land by severing it or causing it to be severed, or after it has been severed; or
- (c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For purposes of this subsection *land* does not include incorporeal hereditaments; *tenancy* means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

- (7) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.
- (8) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.
- (9) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or

its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

- (10) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.
- (11) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.
- (12) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (13) Without prejudice to the generality of subsection (12) where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

s. 74

(14) Notwithstanding anything contained in subsection (12) in any proceedings—

S. 73(14)(a) amended by No. 127/1986 s. 102(Sch. 4 item 5.2).

(a) for stealing a motor vehicle or an aircraft proof that the person charged took or in any manner used the motor vehicle or aircraft without the consent of the owner or person in lawful possession thereof shall be conclusive evidence that the person charged intended to permanently deprive the owner of it; and

S. 73(14)(b) amended by No. 127/1986 s. 102(Sch. 4 item 5.2).

(b) for attempting to steal a motor vehicle or an aircraft proof that the person charged attempted to take or in any manner use the motor vehicle or aircraft without the consent of the owner or person in lawful possession thereof shall be conclusive evidence that the person charged intended to permanently deprive the owner of it.

Heading preceding s. 74 inserted by No. 8425 s. 2(1)(b).

Theft, robbery, burglary, &c.

S. 74 amended by No. 8280 s. 8, substituted by No. 8425 s. 2(1)(b), amended by Nos 9576 s. 11(1), 36/1988 s. 4(a).

74 Theft

S. 74(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 40), 48/1997 s. 60(1)(Sch. 1 item 52).

(1) A person guilty of theft is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

(2) Section 80A applies as if the reference in that section to sections 81–87 (both inclusive) were a reference to this section.

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S. 74(2)
inserted by
No. 36/1988
s. 4(b).

S. 74A
inserted by
No. 9/2008
s. 10,
amended by
No. 37/2014
s. 10(Sch.
item 36.6),
repealed by
No. 27/2011
s. 5.

75 Robbery

S. 75
substituted by
No. 8425
s. 2(1)(b).

(1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear that he or another person will be then and there subjected to force.

S. 75(1)
amended by
No. 9323
s. 2(a).

(2) A person guilty of robbery, or of an assault with intent to rob, is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 75(2)
amended by
Nos 9048 s. 3,
9576 s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 53).

75A Armed robbery

S. 75A
inserted by
No. 9048 s. 2.

(1) A person is guilty of armed robbery if he commits any robbery and at the time has with him a firearm, imitation firearm, offensive weapon, explosive or imitation explosive within the meaning assigned to those terms for the purposes of section 77(1).

s. 76

S. 75A(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41A),
48/1997
s. 60(1)(Sch. 1
item 54).

- (2) A person guilty of armed robbery is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 76
substituted by
No. 8425
s. 2(1)(b).

76 Burglary

- (1) A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent—
- (a) to steal anything in the building or part in question; or
 - (b) to commit an offence—
 - (i) involving an assault to a person in the building or part in question; or
 - (ii) involving any damage to the building or to property in the building or part in question—

which is punishable with imprisonment for a term of five years or more.

- (2) References in subsection (1) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

- (3) A person guilty of burglary is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 76(3)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 42),
48/1997
s. 60(1)(Sch. 1
item 55).

77 Aggravated burglary

S. 77
substituted by
No. 8425
s. 2(1)(b).

(1) A person is guilty of aggravated burglary if he or she commits a burglary and—

S. 77(1)
amended by
Nos 9008
s. 2(1)
(Sch.
item 2(a)),
9048 s. 4(a)(b),
9323 s. 2(b),
66/1996
s. 201(2),
substituted by
No. 48/1997
s. 54.

(a) at the time has with him or her any firearm or imitation firearm, any offensive weapon or any explosive or imitation explosive; or

(b) at the time of entering the building or the part of the building a person was then present in the building or part of the building and he or she knew that a person was then so present or was reckless as to whether or not a person was then so present.

(1A) For the purposes of subsection (1)—

S. 77(1A)
inserted by
No. 48/1997
s. 54.

explosive means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him or her for that purpose;

firearm has the same meaning as in the **Firearms Act 1996**;

imitation explosive means any article which might reasonably be taken to be or to contain an explosive;

imitation firearm means anything which has the appearance of being a firearm, whether capable of being discharged or not;

offensive weapon means any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.

s. 78

S. 77(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 31),
48/1997
s. 60(1)(Sch. 1
item 56).

- (2) A person guilty of aggravated burglary is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 78
substituted by
No. 8425
s. 2(1)(b).

78 Removal of articles from places open to the public

- (1) Subject to subsections (2) and (3), where the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds shall be guilty of an offence.

For this purpose *collection* includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

- (2) It is immaterial for purposes of subsection (1) that the public's access to a building is limited to a particular period or particular occasion; but where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1).

- (3) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.
- (4) A person guilty of an offence under this section is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 78(4)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 43),
48/1997
s. 60(1)(Sch. 1
item 57).

* * * * *

S. 79
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 9576
s. 11(1),
repealed by
No. 10084 s. 4.

80 Unlawfully taking control of an aircraft

S. 80
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 9576
s. 11(1).

- (1) A person who without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft while another person not being an accomplice to the first-mentioned person is on board the aircraft shall be guilty of an indictable offence and shall be liable to level 4 imprisonment (15 years maximum).

S. 80(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 58(a)).

s. 80A

S. 80(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 31),
48/1997
s. 60(1)(Sch. 1
item 58(b)).

- (2) A person who without lawful excuse, by force or violence or threat of force or violence or by any trick of false pretence, takes or exercises control, whether direct or through another person, of an aircraft while another person not being an accomplice of the first-mentioned person is on board the aircraft shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum).

Heading
preceding
s. 80A
inserted by
No. 8425
s. 2(1)(b).

Fraud and blackmail

S. 80A
inserted by
No. 36/1988
s. 5.

80A Extra-territorial offences

- (1) If—
- (a) a person does, or omits to do, an act or thing referred to in sections 81–87 (both inclusive) outside, or partly outside, Victoria; and
 - (b) there is a real and substantial link within the meaning of subsection (2) between doing, or omitting to do, the act or thing and Victoria—
- those sections apply to the act or thing or the omission as if it had been done, or omitted to be done, wholly within Victoria.
- (2) For the purposes of subsection (1), there is a real and substantial link with Victoria—
- (a) if a significant part of the conduct relating to, or constituting the doing of the act or thing, or the omission, occurred in Victoria; or

- (b) where the act or thing was done, or the omission occurred, wholly outside Victoria, if the act or thing was done, or omitted to be done, with the intention that substantial harmful effects arise in Victoria and such effects did arise.

81 Obtaining property by deception

S. 81
amended by
Nos 6561 s. 2,
7263 s. 2(a),
8247 s. 3,
substituted by
Nos 8280
s. 10, 8425
s. 2(1)(b).

- (1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 81(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 59).

- (2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and *obtain* includes obtaining for another or enabling another to obtain or to retain.

- (3) Subsections (12) and (13) of section 73 shall apply for purposes of this section, with the necessary adaptation of the reference to appropriating, as it applies for purposes of section 72.

- (4) For the purposes of this section, *deception*—

S. 81(4)
substituted by
No. 36/1988
s. 6.

- (a) means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person; and

(b) includes an act or thing done or omitted to be done with the intention of causing—

(i) a computer system; or

(ii) a machine that is designed to operate by means of payment or identification—

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

82 Obtaining financial advantage by deception

S. 82
amended by
No. 7876
s. 2(3),
substituted by
Nos 8280
s. 10, 8425
s. 2(1)(b).

(1) A person who by any deception dishonestly obtains for himself or another any financial advantage is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 82(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 59).

(2) For purposes of this section *deception* has the same meaning as in section 81.

83 False accounting

S. 83
amended by
Nos 7184 s. 2,
7705 s. 10,
7876 s. 2(3),
7994 s. 5, 8280
s. 11(1)–(3),
substituted by
No. 8425
s. 2(1)(b).

- (1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another—
- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
 - (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular—

S. 83(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 60).

he is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

- (2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

s. 83A

83A Falsification of documents

S. 83A
inserted by
No. 36/1988
s. 7.

S. 83A(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (1) A person must not make a false document with the intention that he or she, or another person, shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (2) A person must not use a document which is, and which he or she knows to be, false, with the intention of inducing another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(3)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (3) A person must not make a copy of a document which is, and which he or she knows to be, a false document, with the intention that he or she, or another person, shall use it to induce another person to accept it as a copy of a genuine document and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

- (4) A person must not use a copy of a document which is, and which he or she knows to be, a false document, with the intention of inducing another person to accept it as a copy of a genuine document and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

S. 83A(4)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

Penalty: Level 5 imprisonment (10 years maximum).

- (5) A person must not have in his or her custody, or under his or her control, a document which is, and which he or she knows to be, false, with the intention that the person or another shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

S. 83A(5)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

Penalty: Level 5 imprisonment (10 years maximum).

- (5A) A person must not, with the intention that he or she may commit an offence against subsection (1), make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is, and which he or she knows to be, specially designed or adapted for the making of a document which, if made by him or her, would be false.

S. 83A(5A)
inserted by
No. 25/1989
s. 5,
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

Penalty: Level 5 imprisonment (10 years maximum).

s. 83A

S. 83A(5B)
inserted by
No. 25/1989
s. 5,
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (5B) A person must not, with the intention that another person may commit an offence against subsection (1), make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is, and which he or she knows to be, specially designed or adapted for the making of a document which, if made by that other person, would be false.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(5C)
inserted by
No. 25/1989
s. 5,
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 45),
48/1997
s. 60(1)(Sch. 1
item 62).

- (5C) A person must not, without lawful excuse, make or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is and which the person knows to be specially designed or adapted for the making of a document which, if made by him or her, would be false.

Penalty: Level 6 imprisonment (5 years maximum).

- (6) For the purpose of this section, a document is false if it purports—
- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form; or
 - (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or
 - (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or
 - (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or

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- (e) to have been altered in any respect by a person who did not in fact alter it in that respect; or
 - (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or
 - (g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or
 - (h) to have been made or altered by an existing person who did not in fact exist.
- (7) For the purposes of this section, a person is to be treated as making a false document if the person alters a document so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).
- (8) For the purposes of this section, an act or omission is to a person's prejudice if, and only if, it is one that, if it occurs—
- (a) will result—
 - (i) in the person's temporary or permanent loss of property; or
 - (ii) in the person's being deprived of an opportunity to earn remuneration or greater remuneration; or
 - (iii) in the person's being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration; or

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- (b) will result in any person being given an opportunity—
- (i) to earn remuneration or greater remuneration from the first-mentioned person; or
 - (ii) to obtain a financial advantage from the first-mentioned person otherwise than by way of remuneration; or
- (c) will be the result of the person's having accepted a false document as genuine, or a copy of a false document as a copy of a genuine one, in connection with the person's performance of a duty.
- (9) In this section—
- (a) a reference to inducing a person to accept a false document as genuine, or a copy of a false document as a copy of a genuine document, shall be read as including a reference to causing a machine to respond to the document or copy as if it were a genuine document or a copy of a genuine document, as the case may be; and
 - (b) if—
 - (i) a machine so responds to a document or copy; and
 - (ii) the act or omission intended to be caused by the machine's so responding is an act or omission that, if it were an act or omission of a person, would be to a person's prejudice within the meaning of subsection (1)—

the act or omission intended to be caused by the machine's so responding shall be deemed to be an act or omission to a person's prejudice.

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- (10) In proceedings for an offence against this section, if it is necessary to allege an intent to induce a person to accept a false document as genuine, or a copy of a false document as a copy of a genuine one, it is not necessary to allege that the accused intended so to induce a particular person.

83B Abolition of common law offences of forgery and uttering

S. 83B
inserted by
No. 25/1989
s. 6.

The offences at common law of forgery and uttering are abolished except as regards offences alleged to have been committed before the commencement of section 6 of the **Crimes Legislation (Miscellaneous Amendments) Act 1989**.

84 Liability of company officers for certain offences by company

S. 84
substituted by
No. 8425
s. 2(1)(b).

- (1) Where an offence committed by a body corporate under section 81, 82 or 83 is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.

S. 85
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b).

S. 85(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 63).

85 False statements by company directors etc.

- (1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) For purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.
- (3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connexion with his functions of management as if he were an officer of the body corporate or association.

86 Suppression etc. of documents

- (1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum) and this subsection shall apply in relation to the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.
- (3) For purposes of this section *deception* has the same meaning as in section 81, and *valuable security* means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorizing the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

S. 86
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b).

S. 86(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 64).

S. 86(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 46),
48/1997
s. 60(1)(Sch. 1
item 64).

s. 87

S. 87
substituted by
No. 8425
s. 2(1)(b).

87 Blackmail

- (1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—
 - (a) that he has reasonable grounds for making the demand; and
 - (b) that the use of the menaces is proper means of reinforcing the demand.
- (2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.
- (3) A person guilty of blackmail is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 87(3)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 65).

Heading
preceding
s. 88
inserted by
No. 8425
s. 2(1)(b).

Offences relating to goods stolen, &c.

S. 88
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 70/1987
s. 5(a)(b).

88 Handling stolen goods

S. 88(1)
amended by
No. 59/2004
s. 3.

- (1) A person handles stolen goods if knowing or believing them to be stolen goods he dishonestly receives the goods or brings them into Victoria, or dishonestly undertakes or assists in bringing them

into Victoria or in their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

- (2) A person guilty of handling stolen goods is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 88(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 66).

- (3) Where a married woman handles stolen goods, the fact that the person from whom she receives the goods is her husband shall not of itself constitute a defence to a charge under this section.

S. 88(3)
inserted by
No. 9073
s. 2(a).

88A Alternative charges of theft and handling stolen goods

S. 88A
(Heading)
amended by
No. 68/2009
s. 97(Sch.
item 40.6)

If—

S. 88A
inserted by
No. 59/2004
s. 4.

- (a) a charge for an offence of theft under section 74 and a charge for an offence of handling stolen goods under section 88 are joined in the same indictment as alternative charges and tried together; and

S. 88A(a)
amended by
No. 68/2009
s. 97(Sch.
item 40.7).

- (b) the jury are satisfied beyond reasonable doubt that the accused is either guilty of theft or guilty of handling stolen goods but are unable to agree on which offence the accused should be found guilty of—

the jury must acquit the accused of handling stolen goods and find the accused guilty of theft and the accused is liable to punishment accordingly.

s. 89

S. 89
amended by
No. 8181
s. 2(1)(Sch.
item 33),
substituted by
No. 8425
s. 2(1)(b),
amended by
Nos 9554
s. 2(2)(Sch. 2
item 52),
49/1991
s. 119(1)
(Sch. 2
item 47),
69/1997
s. 22(5).

89 Advertising rewards for return of goods stolen or lost

Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and any person who prints or publishes the advertisement shall on summary conviction be liable to a level 11 fine (5 penalty units maximum).

S. 90
amended by
No. 8181
s. 2(1)
(Sch. item 33),
substituted by
No. 8425
s. 2(1)(b).

90 Scope of offences relating to stolen goods

- (1) The provisions of this Act relating to goods which have been stolen shall apply whether the stealing occurred in Victoria or elsewhere, and whether it occurred before or after the commencement of this Act, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.
- (2) For purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not)—
 - (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realization of the whole or part of the goods stolen or of goods so representing the stolen goods; and

- (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realization of the whole or part of the stolen goods handled by him or of goods so representing them.
- (3) But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.
- (4) For purposes of the provisions of this Act relating to goods which have been stolen (including subsections (1)(2) and (3)) goods obtained in Victoria or elsewhere either by blackmail or in the circumstances described in subsection (1) of section 81 shall be regarded as stolen; and *steal*, *theft* and *thief* shall be construed accordingly.

Possession of housebreaking implements, &c.

Heading preceding s. 91 inserted by No. 8425 s. 2(1)(b).

91 Going equipped for stealing etc.

S. 91 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b).

- (1) A person shall be guilty of a summary offence if, when not at his place of abode, he has with him any article for use in the course of or in connexion with any burglary, theft or cheat.

S. 91(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 67(a)).

s. 92

S. 91(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 34),
48/1997
s. 60(1)(Sch. 1
item 67(b)).

(2) A person guilty of an offence under this section shall be liable to level 7 imprisonment (2 years maximum).

(3) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

S. 91(4)
substituted by
No. 10249
s. 13.

(4) On the conviction of a person for an offence under this section, the court may order the article to be forfeited to the Crown and disposed of in the manner set out in the order.

S. 92
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 64/1990
s. 20(Sch.
item 3(a)(b)).

92 Search for stolen goods

S. 92(1)
substituted by
No. 25/2009
s. 3(1).

- (1) If a magistrate is satisfied by evidence on oath or by affidavit that there is reasonable cause to believe that any person has—
- (a) in the custody or possession of the person; or
 - (b) on any premises (including any vehicle on or in those premises) of the person; or
 - (c) on or in a particular vehicle located in a public place—

any stolen goods, the magistrate may grant a warrant to search for and seize those goods.

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- (1A) A warrant issued under subsection (1) must be addressed to a constable unless the warrant is issued under the authority of an enactment that expressly provides otherwise. **S. 92(1A) inserted by No. 25/2009 s. 3(1).**
- (2) A police officer not below the rank of inspector may give a constable written authority to search any premises for stolen goods—
- (a) if the person in occupation of the premises has been convicted within the preceding five years of handling stolen goods or of any offence involving dishonesty and punishable with imprisonment; or
 - (b) if a person who has been convicted within the preceding five years of handling stolen goods has within the preceding twelve months been in occupation of the premises.
- (3) If under this section a person is authorised to search premises or a particular vehicle located in a public place for stolen goods, he or she may enter and search the premises or the vehicle accordingly, and may seize any goods the person believes to be stolen goods. **S. 92(3) substituted by No. 25/2009 s. 3(2).**
- (4) This section is to be construed in accordance with section 90 and in subsection (2) the references to handling stolen goods shall include any corresponding offence committed before the commencement of the **Crimes (Theft) Act 1973**.
- (5) In this section—
- public place* has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;
 - vehicle* includes motor vehicle, aircraft and vessel.
- S. 92(5) inserted by No. 25/2009 s. 3(3).**

s. 93

93 Procedure and evidence

S. 93
substituted by
No. 8425
s. 2(1)(b).

S. 93(1)
amended by
No. 68/2009
s. 97(Sch.
item 40.8).

- (1) Any number of persons may be charged in one indictment with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.
- (2) On the trial of two or more persons for jointly handling any stolen goods the jury may find any of the accused guilty if the jury are satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them.
- (3) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were or was in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions—
 - (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
 - (b) a statutory declaration shall only be admissible if at least seven days before the hearing or trial a copy of it has been given to the person charged, and he has not, at least three days before the hearing or trial or within such further time as the court may in special circumstances allow, given to the informant or the Director of Public

S. 93(3)(b)
amended by
No. 9848
s. 18(1).

Prosecutions as the case requires, written notice requiring the attendance at the hearing or trial of the person making the declaration.

- (4) This section is to be construed in accordance with section 90.

* * * * *

S. 94 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b), repealed by No. 10260 s. 114(Sch. 4 item 4).

General and consequential provisions

Heading preceding s. 95 inserted by No. 8425 s. 2(1)(b).

95 Husband and wife

- (1) This Act shall apply in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

S. 95 amended by No. 8181 s. 2(1) (Sch. item 33), substituted by No. 8425 s. 2(1)(b).

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S. 95(2) amended by No. 19/1987 s. 27(a), repealed by No. 69/2009 s. 37.⁵

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S. 95(3) amended by No. 9848 s. 18(1), repealed by No. 19/1987 s. 27(b).

s. 175

Ss 96–174
repealed.⁶

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Heading
preceding
s. 175
amended by
No. 8425
s. 2(1)(d).

Secret commissions prohibition

No. 6103
s. 175.

175 Definitions⁷

(1) For the purposes of this subdivision—

advice given and words to the like effect include every report certificate statement and suggestion intended to influence the person to whom the same may be made or given and every influence exercised by one person over another;

S. 175(1)
def. of
agent
amended by
Nos 74/2000
s. 3(Sch. 1
item 30.1),
18/2005
s. 18(Sch. 1
item 27.2).

agent includes any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person whether as agent partner co-owner clerk servant employee banker broker auctioneer architect clerk of works engineer legal practitioner surveyor buyer salesman foreman trustee executor administrator liquidator trustee within the meaning of any Act relating to bankruptcy receiver director manager or other officer or member of committee or governing body of any corporation club partnership or association or in any other capacity either alone or jointly with any other person and whether in his own name or in the name of his principal or otherwise and a person serving under the Crown;

contract includes contract of sale or of employment or any other contract whatever;

in relation to his principal's affairs or business implies the additional words "whether within the scope of his authority or course of his employment as agent or not";

person having business relations with the principal includes every corporation or other person whether as principal or agent carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal and also includes any agent of such corporation or other person;

principal includes a corporation or other person for or on behalf of whom the agent acts has acted or is desirous or intending to act;

solicit any valuable consideration and valuable consideration solicited and words to the like effect shall be construed with the following directions, namely:—That every agent who diverts obstructs or interferes with the proper course of business or manufacture or impedes or obstructs or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent;

s. 175

S. 175(1)
def. of
trustee
amended by
Nos 25/1989
s. 20(c),
52/1998
s. 311(Sch. 1
item 17).

trustee includes trustee executor administrator liquidator trustee within the meaning of any Act relating to bankruptcy receiver director administrator or guardian under the **Guardianship and Administration Act 1986** or person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person;

valuable consideration includes any money loan office place employment agreement to give employment benefit or advantage whatsoever and any commission or rebate deduction or percentage bonus or discount or any forbearance to demand any money or money's worth or valuable thing and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration;

valuable consideration when used in connexion with the offer thereof includes any offer of any agreement or promise to give and every holding out of any expectation of valuable consideration;

valuable consideration when used in connexion with the receipt thereof includes any acceptance of any agreement promise or offer to give and of any holding out of any expectation of valuable consideration.

- (2) Any act or thing prohibited by this subdivision is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

176 Receipt or solicitation of secret commission by an agent an indictable offence⁸

No. 6103
s. 176.

- (1) Whosoever being an agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
 - (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (2) Whosoever corruptly gives or offers to any agent any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
 - (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business—

S. 176(2)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 53), 9576
s. 11(1),
36/1988
s. 8(a)(i)–(iii),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

s. 177

No. 6103
s. 177.

177 Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent⁹

S. 177(1)
amended by
No. 48/1997
s. 62(3).

(1) Any valuable consideration given or offered to any parent husband wife or child of any agent or to his partner clerk or employee or at the agent's request to any person by any person having business relations with the principal of such agent shall be deemed to have been given or offered to the agent.

S. 177(2)
amended by
No. 74/2000
s. 3(Sch. 1
item 30.2).

(2) Any valuable consideration received or solicited by any parent husband wife or child of any agent or by his partner clerk or employee from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it is proved that the valuable consideration was so received or solicited without the consent knowledge or privity of the agent.

No. 6103
s. 178.
S. 178
amended by
Nos 9554
s. 2(2)(Sch. 2
item 53), 9576
s. 11(1),
36/1988
s. 8(b)(i)–(iii),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

178 Giving or receiving false or misleading receipt or account an indictable offence¹⁰

If with intent to deceive or defraud the principal any person gives to any agent or any agent receives or uses or gives to the principal any receipt invoice account or document in respect of which or in relation to a dealing transaction or matter in which the principal is interested and which—

(a) contains any statement which he knows is false or erroneous or defective in any important particular or is in any way likely to mislead the principal; or

(b) omits to state explicitly and fully the fact of any commission percentage bonus discount rebate repayment gratuity or deduction having been made given or allowed or agreed to be made given or allowed—

he shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

179 Gift or receipt of secret commission in return for advice given¹¹

No. 6103
s. 179.

(1) Whenever any advice is given by one person to another and such advice is in any way intended to induce or influence the person advised—

S. 179(1)
amended by
No. 9576
s. 11(1).

(a) to enter into a contract with any third person;
or

(b) to appoint or join with another in appointing or to vote for or to aid in obtaining the election or appointment or to authorize or join with another in authorizing the appointment of any third person as trustee—

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised the gift or receipt of the valuable consideration shall be an indictable offence, but this subsection shall not apply when the person giving the advice was to the knowledge of the person advised the agent of such third person, or when the valuable consideration was not given in respect of such advice.

s. 179

S. 179(2)
amended by
No. 9576
s. 11(1).

- (2) Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised—
- (a) to enter into a contract with the person offering or solicited; or
 - (b) to appoint or join with another in appointing or to vote for or to aid in obtaining the election or appointment or to authorize or join with another in authorizing the appointment of the person offering or solicited as trustee—

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised shall be an indictable offence, but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

S. 179(3)
amended by
No. 9576
s. 11(1).

- (3) Any person on conviction of an indictable offence under any of the provisions of this section shall—

S. 179(3)(a)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 54),
36/1988
s. 8(c)(i)(ii),
25/1989
s. 20(d),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 179(3)(b)
repealed by
No. 36/1988
s. 8(c)(iii).

* * * * *

180 Secret commission to trustee in return for substituted appointment¹²

Every person who offers or gives any valuable consideration to a trustee and every trustee who receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of the Supreme Court as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing or for authorizing or having authorized or for joining or having joined with another in authorizing any person to be appointed in his stead or instead of him and any other person as trustee shall be guilty of an indictable offence, and shall—

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

No. 6103
s. 180.

S. 180
amended by
Nos 9576
s. 11(1),
57/1989
s. 3(Sch.
item 42.5).

S. 180(a)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 54),
36/1988
s. 8(d)(i)(ii),
25/1989
s. 20(e),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

* * * * *

S. 180(b)
repealed by
No. 36/1988
s. 8(d)(iii).

s. 181

No. 6103
s. 181.

S. 181
amended by
Nos 9554
s. 2(2)(Sch. 2
item 53), 9576
s. 11(1),
36/1988
s. 8(e)(i)–(iii),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

**181 Aiding and abetting offences within or outside
Victoria¹³**

Every person who being within Victoria knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to—

- (a) doing any act or thing in contravention of this subdivision;
- (b) doing any act or thing outside Victoria, or partly within and partly outside Victoria, which if done within Victoria would be in contravention of this subdivision—

shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

No. 6103
s. 182.

S. 182
amended by
No. 9576
s. 11(1).

182 Liability of directors etc. acting without authority¹⁴

Every director manager or officer of a company and every person acting for another who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which if authorized would be in contravention of any of the provisions of this subdivision shall be guilty of an indictable offence, and shall—

(a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 182(a) amended by Nos 9554 s. 2(2)(Sch. 2 item 54), 36/1988 s. 8(f)(i)(ii), 25/1989 s. 20(f), 49/1991 s. 119(1) (Sch. 2 item 48), 48/1997 s. 60(1)(Sch. 1 item 68).

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S. 182(b) repealed by No. 36/1988 s. 8(f)(iii).

* * * * *

S. 183 repealed by No. 10260 s. 114(Sch. 4 item 4).

184 Protection of witness giving answers criminating himself ¹⁵

No. 6103 s. 184.

A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this subdivision on the ground that the answer thereto may criminate or tend to criminate him:

Provided that—

(a) a witness who in the judgment of the court answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered; and

S. 184(a) amended by No. 57/1989 s. 3(Sch. item 42.6).

s. 185

S. 184(b)
amended by
No. 57/1989
s. 3(Sch.
item 42.6).

- (b) an answer by a person to a question put by or before the court in any proceeding under this subdivision shall not except in the said proceeding or in the case of any criminal proceedings for perjury in respect of such evidence be in any proceeding civil or criminal admissible in evidence against him.

No. 6103
s. 185.

185 Stay of proceedings against such witness¹⁶

S. 185
amended by
No. 57/1989
s. 3(Sch.
item 42.7).

When a person has received a certificate as aforesaid and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness the court having cognizance of the case shall on proof of the certificate and of the identity of the offence in question in the two cases stay the proceedings.

No. 6103
s. 186.

186 Custom of itself no defence¹⁷

- (1) In any prosecution under this subdivision it shall not amount to a defence to show that any such valuable consideration as is mentioned in this subdivision is customary in any trade or calling.
- (2) For the purposes of this subdivision where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal without the assent of the principal the burden of proving that such valuable consideration was not received solicited given or offered in contravention of any of the provisions of this subdivision shall be on the accused.

S. 186(3)
repealed by
No. 7546 s. 5.

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Crimes Act 1958
 No. 6231 of 1958
 Part I—Offences

s. 191

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S. 186(4)
 repealed by
 No. 9848
 s. 18(1).

* * * * *

S. 186(5)
 amended by
 No. 57/1989
 s. 3(Sch.
 item 42.8),
 repealed by
 No. 7/2009
 s. 422(1) (as
 amended by
 No. 68/2009
 s. 54(h)).

Fraudulently inducing persons to invest

Heading
 preceding
 s. 187
 substituted by
 No. 8425
 s. 2(1)(e) (as
 amended by
 No. 9019
 s. 2(1)(Sch.
 item 257)).

* * * * *

Ss 187–190
 repealed by
 No. 8425
 s. 2(1)(f).

191 Fraudulently inducing persons to invest money

No. 6103
 s. 191.

- (1) Any person who, by any statement promise or forecast which he knows to be misleading false or deceptive or by any dishonest concealment of material facts or by the reckless making of any statement promise or forecast which is misleading false or deceptive, induces or attempts to induce another person—

S. 191(1)
 amended by
 Nos 9576
 s. 11(1),
 49/1991
 s. 119(1)
 (Sch. 2
 item 49),
 48/1997
 s. 60(1)(Sch. 1
 item 69).

-
- (a) to enter into or offer to enter into—
- (i) any agreement for or with a view to acquiring disposing of subscribing in or underwriting securities or lending or depositing money to or with any corporation; or
 - (ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (b) to acquire or offer to acquire any right or interest under any arrangement the purpose or effect or pretended purpose or effect of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition holding management or disposal of any property other than securities; or
- (c) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities—

shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

- (2) Any person guilty of conspiracy to commit any offence against the last preceding subsection shall be punishable as if he had committed such an offence.
- (3) In this section unless inconsistent with the context or subject-matter—

corporation means any body corporate whether incorporated in Victoria or elsewhere;

debentures means any debentures debenture stock or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

securities means—

- (a) shares or debentures or rights or interests (whether described as units or otherwise) in any shares or debentures; or
- (b) securities of the Government of any part of Her Majesty's dominions or the Government of any foreign state; or
- (c) rights (whether actual or contingent) in respect of money lent to or deposited with any corporation—

and includes rights or interests (whether described as units or otherwise) which may be acquired under any trust scheme under which all property for the time being subject to any trust created in pursuance of the scheme consists of such securities as are mentioned in paragraph (a)(b) or (c) of this interpretation;

shares means shares in the share capital of a corporation or stock of a corporation.

* * * * * S. 192
repealed by
No. 69/2009
s. 38.

* * * * * S. 193
repealed by
No. 9848
s. 18(1).

s. 192A

Pt 1 Div. 2
Subdiv. (21)
(Heading and
ss 194, 195)
repealed by
No. 8425
s. 2(1)(f).

* * * * *

Pt 1 Div. 2AA
(Heading and
ss 192A–192E)
inserted by
No. 22/2009
s. 3.

Division 2AA—Identity crime

S. 192A
inserted by
No. 22/2009
s. 3.

192A Definitions

In this Division—

identification documentation means a document
or other thing that—

- (a) contains or incorporates identification information; and
- (b) is capable of being used by a person for the purpose of pretending to be, or passing themself off as, another person (whether living or dead, or real or fictitious);

identification information means information relating to a person (whether living or dead, or real or fictitious) that is capable of being used (whether alone or in conjunction with other information) to identify, or purportedly identify, the person, being information such as—

- (a) a name, address, date of birth or place of birth;
- (b) information as to the person's marital status;

-
- (c) information that identifies another person as a relative of the person;
 - (d) a driver licence or driver licence number;
 - (e) a passport or passport number;
 - (f) biometric data;
 - (g) a voice print;
 - (h) a credit or debit card, its number or data stored or encrypted on it;
 - (i) a financial account number, user name or password;
 - (j) a digital signature;
 - (k) a series of numbers or letters (or both) intended for use as a means of personal identification;
 - (l) an Australian Business Number within the meaning of the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth.

192B Making, using or supplying identification information

S. 192B
inserted by
No. 22/2009
s. 3.

- (1) A person, who makes, uses or supplies identification information (that is not identification information that relates to that person), and—
 - (a) who is aware that, or aware that there is a substantial risk that, the information is identification information; and

s. 192C

(b) who intends to use or supply the information to commit an indictable offence, or to facilitate the commission of an indictable offence—

is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

Note

See section 426 for an alternative verdict for this offence.

- (2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.
- (3) It is not a defence to a charge for an offence against this section that the person to whom the identification information relates consented to the making, use or supply of the identification information.

S. 192C
inserted by
No. 22/2009
s. 3.

192C Possession of identification information

- (1) A person, who possesses identification information (that is not identification information that relates to the person), and—
 - (a) who is aware that, or aware that there is a substantial risk that, the information is identification information; and
 - (b) who intends to use the information to commit an indictable offence, or to facilitate the commission of an indictable offence—

is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

- (2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.

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- (3) It is not a defence to a charge for an offence against this section that the person to whom the identification information relates consented to the possession of the identification information.

192D Possession of equipment used to make etc. identification documentation

S. 192D
inserted by
No. 22/2009
s. 3.

- (1) A person, who possesses equipment that is capable of being used to make, use, supply or retain identification documentation, and—
- (a) who intends to use, or who intends that another person will use, the equipment to make, use, supply or retain identification documentation; and
 - (b) who intends to use any such identification documentation to commit an indictable offence or to facilitate the commission of an indictable offence—

is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

- (2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.

192E Not an offence to attempt to commit an identity crime offence

S. 192E
inserted by
No. 22/2009
s. 3.

It is not an offence to attempt to commit an offence against section 192B, 192C or 192D.

Pt 1 Div. 2A
(Heading and
ss 193–195A)
inserted by
No. 104/2003
s. 3.

New s. 193
inserted by
No. 104/2003
s. 3.

Division 2A—Money laundering etc.

193 Definitions

(1) In this Division—

deal with includes receive, possess, conceal or dispose of;

instrument of crime means property that is used in the commission of, or used to facilitate the commission of—

- (a) an offence referred to in Schedule 1 to the **Confiscation Act 1997**; or
- (b) an offence against a law of the Commonwealth that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or
- (c) an offence against a law of another State, a Territory or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Victoria;

proceeds of crime means property that is derived or realised, directly or indirectly, by any person from the commission of—

- (a) an offence referred to in Schedule 1 to the **Confiscation Act 1997**; or
- (b) an offence against a law of the Commonwealth that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or

- (c) an offence against a law of another State, a Territory or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Victoria;

property includes money and all other property real or personal including things in action and other intangible property.

- (2) For the purposes of the definitions of *instrument of crime* and *proceeds of crime*, it is necessary to prove facts that constitute one or more offences referred to in paragraph (a), (b) or (c) of those definitions but the particulars of an offence need not be proven.

194 Dealing with proceeds of crime

New s. 194
inserted by
No. 104/2003
s. 3.

- (1) A person must not deal with proceeds of crime—
- (a) knowing that it is proceeds of crime; and
 - (b) intending to conceal that it is proceeds of crime.

Penalty: Level 3 imprisonment (20 years maximum).

- (2) A person must not deal with proceeds of crime knowing that it is proceeds of crime.

Penalty: Level 4 imprisonment (15 years maximum).

- (3) A person must not deal with proceeds of crime being reckless as to whether or not it is proceeds of crime.

Penalty: Level 5 imprisonment (10 years maximum).

s. 195

- (4) A person must not deal with proceeds of crime being negligent as to whether or not it is proceeds of crime.

Penalty: Level 6 imprisonment (5 years maximum).

- (5) It is a defence to a prosecution for an offence under this section if the accused satisfies the court that the accused dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

New s. 195
inserted by
No. 104/2003
s. 3.

195 Dealing with property suspected of being proceeds of crime

A person who deals with property if there are reasonable grounds to suspect that the property is proceeds of crime is guilty of a summary offence and liable to level 7 imprisonment (2 years maximum).

S. 195A
inserted by
No. 104/2003
s. 3.

195A Dealing with property which subsequently becomes an instrument of crime

- (1) A person is guilty of an offence and liable to level 4 imprisonment (15 years maximum) if—
- (a) the person deals with property intending that the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.
- (2) A person is guilty of an offence and liable to level 5 imprisonment (10 years maximum) if—
- (a) the person deals with property being reckless as to whether or not the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.

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- (3) A person is guilty of an offence and liable to level 6 imprisonment (5 years maximum) if—
- (a) the person deals with property being negligent as to whether or not the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.
- (4) A prosecution for an offence under this section must not be commenced without the consent of the Director of Public Prosecutions.
- (5) It is a defence to a prosecution for an offence under this section if the accused satisfies the court that the accused dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

Division 2B—Cheating at gambling

Pt 1 Div. 2B
(Heading and
ss 195B–
195F)
inserted by
No. 20/2013
s. 3.

195B Interpretation

- (1) In this Division—

bet includes—

- (a) place, accept or withdraw a bet; and
- (b) cause a bet to be placed, accepted or withdrawn;

causing a financial disadvantage includes—

- (a) causing a financial disadvantage to another person; and

S. 195B
inserted by
No. 20/2013
s. 3.

- (b) inducing a third person to do something that results in another person suffering a financial disadvantage—

whether the financial disadvantage is permanent or temporary;

conduct means an act or omission to do an act;

conduct that corrupts or would corrupt a betting outcome of an event or an event

contingency means conduct that—

- (a) affects or, if engaged in, would or would be likely to affect the outcome of any type of betting on the event or event contingency; and
- (b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event or event contingency;

encourage includes incite, induce, persuade, urge, threaten or pressure;

engage in conduct means—

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

event means an event (whether it takes place in Victoria or elsewhere) on which it is lawful to bet under a law of Victoria, another State, a Territory or the Commonwealth;

event contingency means a contingency connected to an event, being a contingency on which it is lawful to bet under a law of Victoria, another State, a Territory or the Commonwealth;

obtaining a financial advantage includes—

- (a) obtaining a financial advantage for oneself or another person; and
- (b) inducing a third person to do something that results in obtaining a financial advantage for oneself or for another person; and
- (c) retaining a financial advantage that one has—

whether the financial advantage is permanent or temporary.

- (2) In a proceeding for an offence against this Division, an accused will be taken to have intended to obtain a financial advantage, or cause a financial disadvantage, if, and only if, it is proved that the accused—
 - (a) intended to obtain a financial advantage, or to cause a financial disadvantage, in connection with betting on an event or event contingency; or
 - (b) was aware that another person intended to obtain a financial advantage, or to cause a financial disadvantage, in connection with betting on an event or event contingency as a result of the conduct that is the subject of the charge.
- (3) In a proceeding for an offence against this Division, it is not necessary to prove that a financial advantage was actually obtained or a financial disadvantage was actually caused.

195C Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency

A person must not engage in conduct that corrupts or would corrupt a betting outcome of an event or event contingency—

S. 195C
inserted by
No. 20/2013
s. 3.

s. 195D

- (a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or the event contingency; and
- (b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

S. 195D
inserted by
No. 20/2013
s. 3.

195D Facilitating conduct that corrupts or would corrupt a betting outcome of event or event contingency

- (1) A person must not offer to engage in, or encourage another person to engage in, conduct that corrupts or would corrupt a betting outcome of an event or event contingency—
 - (a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or event contingency; and
 - (b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

- (2) A person must not enter into an agreement or arrangement in respect of conduct that corrupts or would corrupt a betting outcome of an event or event contingency—
 - (a) knowing that, or being reckless as to whether, the conduct the subject of the agreement or arrangement corrupts or would corrupt a betting outcome of the event or event contingency; and

-
- (b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

195E Concealing conduct, agreement or arrangement

S. 195E
inserted by
No. 20/2013
s. 3.

- (1) A person must not encourage another person to conceal from a relevant authority conduct, or an agreement or arrangement in respect of conduct, that corrupts or would corrupt a betting outcome of an event or event contingency—

- (a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or event contingency; and
- (b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event or event contingency.

Penalty: level 5 imprisonment (10 years maximum).

- (2) In this section *relevant authority* means—

- (a) a police officer; or
- (b) a body that has the official function of controlling, regulating or supervising an event or betting on an event; or
- (c) any other authority of a kind prescribed by regulation.

S. 195E(2)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 36.8).

s. 195F

S. 195F
inserted by
No. 20/2013
s. 3.

195F Use of corrupt conduct information for betting purposes

- (1) A person who—
- (a) possesses information in connection with an event or event contingency about conduct that corrupts or would corrupt a betting outcome of the event or event contingency; and
 - (b) knows that, or is reckless as to whether, the information is about conduct that corrupts or would corrupt a betting outcome of the event or event contingency—

must not, if the information is relevant to the bet—

- (c) bet on the event or event contingency; or
- (d) encourage another person to bet on the event or event contingency in a particular way; or
- (e) communicate the information, or cause the information to be communicated, to another person who the first person knows or ought reasonably to know would, or would be likely to, bet on the event or event contingency.

Penalty: level 5 imprisonment (10 years maximum).

- (2) In a proceeding for an offence against subsection (1)(d) or (e), it is not necessary to prove that the other person actually bet on the event or event contingency concerned.

Division 3—Criminal damage to property

Pt 1 Div. 3
(Heading)
repealed by
No. 9228
s. 2(1)(c),
new Pt 1
Div. 3
(Heading)
inserted by
No. 9228
s. 2(1)(d).

(1) *General offences and procedural provisions*

Pt 1 Div. 3
Subdiv. (1)
(Heading)
repealed by
No. 9228
s. 2(1)(c),
new Pt 1 Div 3
Subdiv. (1)
(Heading)
inserted by
No. 9228
s. 2(1)(d).

196 Definition

S. 196
repealed by
No. 9228
s. 2(1)(c),
new s. 196
inserted by
No. 9228
s. 2(1)(d).

(1) In this subdivision—

property means property of a tangible nature, whether real or personal, including money and including wild creatures which have been tamed or are ordinarily kept in captivity and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession.

(2) For the purposes of this subdivision property shall be treated as belonging to any person—

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

- (3) For the purposes of this subdivision property which is subject to a trust shall be treated as belonging to the trustee or trustees and the person or persons who have a right to enforce the trust.
- (4) For the purposes of this subdivision property of a corporation sole shall be treated as belonging to the corporation notwithstanding a vacancy in the corporation.

197 Destroying or damaging property

S. 197
repealed by
No. 9228
s. 2(1)(c),
new s. 197
inserted by
No. 9228
s. 2(1)(d).

S. 197(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 50(a)),
48/1997
s. 60(1)(Sch. 1
item 70(a)).

S. 197(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 50(b)),
48/1997
s. 60(1)(Sch. 1
item 70(b)).

S. 197(3)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 70(c)).

- (1) A person who intentionally and without lawful excuse destroys or damages any property belonging to another or to himself and another shall be guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) A person who intentionally and without lawful excuse destroys or damages any property, intending by the destruction or damage to endanger the life of another, shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).
- (3) A person who dishonestly, with a view to gain for himself or another, destroys or damages any property shall be guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

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- (4) For the purposes of subsections (1) and (2) a person who destroys or damages property shall be taken as doing so intentionally if, but only if—
- (a) his purpose or one of his purposes is to destroy or damage property; or
 - (b) he knows or believes that his conduct is more likely than not to result in destruction of or damage to property.
- (5) For the purposes of subsection (2), a person who destroys or damages property shall be treated as intending thereby to endanger the life of another if, but only if—
- (a) his purpose or one of his purposes is to endanger the life of another by the destruction or damage; or
 - (b) he knows or believes that the life of another is more likely than not to be endangered by the destruction or damage.
- (6) An offence against this section committed by destroying or damaging property by fire shall be charged as arson.
- (7) A person guilty of arson is liable to level 4 imprisonment (15 years maximum) despite anything to the contrary in this section.

S. 197(7)
inserted by
No. 95/1994
s. 4,
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 70(b)).

197A Arson causing death

A person who commits arson as defined in section 197 and thereby causes the death of another person is guilty of an indictable offence.

Penalty: Level 2 imprisonment (25 years maximum).

S. 197A
inserted by
No. 48/1997
s. 55.

s. 198

S. 198
repealed by
No. 9228
s. 2(1)(c),
new s. 198
inserted by
No. 9228
s. 2(1)(d),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 51),
48/1997
s. 60(1)(Sch. 1
item 71).

198 Threats to destroy or damage property

A person who without lawful excuse makes to another a threat—

- (a) to destroy or damage any property belonging to that other or a third person or to himself and that other or a third person; or
- (b) to destroy or damage his own property in a way which he knows or believes is more likely than not to endanger the life of that other or a third person—

shall, if he made the threat with the purpose of causing the other to fear that it would be carried out, be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 199
repealed by
No. 9228
s. 2(1)(c),
new s. 199
inserted by
No. 9228
s. 2(1)(d),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 72).

199 Possessing anything with intent to destroy or damage property

A person who has anything in his custody or under his control—

- (a) with the purpose of using it, or causing or permitting another to use it, without lawful excuse—
 - (i) to destroy or damage any property belonging to some other person or to himself, the user or both of them and some other person; or
 - (ii) to destroy or damage any property in a way which he knows or believes is more likely than not to endanger the life of some other person; or

(b) with the purpose of using it, or causing or permitting another to use it, dishonestly and with a view to gain for himself or another, to destroy or damage property—

shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

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S. 200
repealed by
No. 9228
s. 2(1)(c),
new s. 200
inserted by
No. 9228
s. 2(1)(d),
repealed by
No. 9576
s. 11(1).

201 Lawful excuse

- (1) This section applies to any offence under section 197(1), 198(a) or 199(a)(i).
- (2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this subdivision as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—
 - (a) if at the time of the conduct alleged to constitute the offence he believed—
 - (i) that the property in question belonged solely to himself;
 - (ii) that he held a right or interest in the property in question which authorized him to engage in the conduct; or

S. 201
repealed by
No. 9228
s. 2(1)(c),
new s. 201
inserted by
No. 9228
s. 2(1)(d).

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- (iii) that the person or persons whom he believed to be entitled to consent to the destruction or damage in question had so consented or would have so consented if he or they had known the circumstances of the destruction or damage; or
- (b) if he engaged in the conduct alleged to constitute the offence in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of such conduct he believed—
- (i) that the property, right or interest which he sought to protect was in immediate need of protection; and
 - (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.
- (3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.
- (4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.
- (5) This section shall not be construed as taking away or otherwise affecting any other defence recognized by law as a defence to criminal charges.

201A Intentionally or recklessly causing a bushfire

S. 201A
inserted by
No. 10/2003
s. 4.

- (1) A person who—
- (a) intentionally or recklessly causes a fire; and
 - (b) is reckless as to the spread of the fire to vegetation on property belonging to another—
- is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (2) For the purposes of subsection (1)(b), circumstances in which a person is not to be taken to be reckless as to the spread of a fire include the following—
- (a) the person caused the fire in the course of carrying out a fire prevention, fire suppression or other land management activity; and
 - (b) at the time the activity was carried out—
 - (i) there was in force a provision made by or under an Act or by a Code of Practice approved under an Act, that regulated or otherwise applied to the carrying out of the activity and the person in carrying out that activity acted in accordance with the provision; and
 - (ii) the person believed that his or her conduct in carrying out the activity was justified having regard to all of the circumstances.
- (3) For the purposes of subsection (2)(b)(ii) it is sufficient that a person honestly believed that the conduct was justified.

s. 202

(4) In this section—

(a) a reference to causing a fire includes—

- (i) lighting a fire;
- (ii) maintaining a fire;
- (iii) failing to contain a fire, except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire;

(b) *spread of the fire* means spread of the fire beyond the capacity of the person who caused the fire to extinguish it.

S. 202
repealed by
No. 9228
s. 2(1)(c),
new s. 202
inserted by
No. 9228
s. 2(1)(d),
amended by
No. 57/1989
s. 3(Sch. item
42.9(a)–(c)).

202 Jurisdiction of magistrates' courts

No rule of law ousting the jurisdiction of the Magistrates' Court to try offences where a dispute of title to property is involved shall preclude the Magistrates' Court from trying offences mentioned in this subdivision or from trying any other offences of destroying or damaging property.

S. 203
repealed by
No. 9228
s. 2(1)(c).

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S. 203A
inserted by
No. 8280 s. 12,
amended by
No. 9019
s. 2(1)(Sch.
item 35),
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
 Subdiv. (2)
 (Heading and
 ss 204, 205)
 repealed by
 No. 9228
 s. 2(1)(c).

Pt 1 Div. 3
 Subdiv. (3)
 (Heading)
 repealed by
 No. 9228
 s. 2(1)(c).

**(2) Injuries to buildings &c. by rioters and forcible entries and
 detainers**

New Pt 1
 Div. 3
 Subdiv. (2)
 (Heading)
 inserted by
 No. 9228
 s. 2(1)(e).

206 Rioters demolishing buildings¹⁸

No. 6103
 s. 206.

(1) Whosoever is one of any persons riotously and tumultuously assembled together to the disturbance of the public peace who unlawfully and with force demolish or pull down or destroy or begin to demolish pull down or destroy any church chapel meeting-house or other place of divine worship, or any house stable coach-house outhouse warehouse office shop mill malthouse hop-oast barn granary shed hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned belonging to the Queen or the Government of Victoria or to any municipal council or belonging to any university, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery (whether fixed or

S. 206(1)
 amended by
 Nos 9576
 s. 11(1),
 12/1989
 s. 4(1)(Sch. 2
 item 20.1) (as
 amended by
 No. 13/1990
 s. 38(1)(h)),
 49/1991
 s. 119(1)
 (Sch. 2
 item 53),
 48/1997
 s. 60(1)(Sch. 1
 item 73(a)).

s. 207

movable) prepared for or employed in any manufacture or any steam-engine or other engine for sinking working ventilating or draining any mine, or any staith building or erection used in conducting the business of any mine or any bridge waggon-way tramway trunk or shoot for conveying minerals from any mine, shall be guilty of an indictable offence, and shall be liable to level 4 imprisonment (15 years maximum).

S. 206(2) amended by Nos 9576 s. 11(1), 49/1991 s. 119(1) (Sch 2 item 51), 48/1997 s. 60(1)(Sch. 1 item 73(b)).

- (2) Whosoever is one of any persons riotously and tumultuously assembled together to the disturbance of the public peace who unlawfully and with force injure or damage any such place building or erection or thing as is in the last subsection mentioned, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No. 6103 s. 207.

207 Forcible entry

S. 207(1) repealed by No. 44/1997 s. 3.

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- (2) No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

(3) Every person who is guilty of a contravention of this section shall be guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 10 fine or both.

S. 207(3) amended by Nos 9554 s. 2(2)(Sch. 2 item 55), 9576 s. 11(1), 49/1991 s. 119(1) (Sch. 2 item 54), 48/1997 s. 60(1)(Sch. 1 item 74(a)(b)).

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Pt 1 Div. 3 Subdivs (4)(5) (Headings and ss 208–210) repealed by No. 9228 s. 2(1)(c).

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Pt 1 Div. 3 Subdivs (6)(7) (Headings and ss 211–222) amended by No. 7876 s. 2(3), repealed by No. 9228 s. 2(1)(c).

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Pt 1 Div. 3 Subdiv. (8) (Heading and ss 223, 224) repealed by No. 9228 s. 2(1)(c).

s. 225

New Pt 1
Div. 3
Subdiv. (3)
(Heading)
inserted by
No. 9228
s. 2(1)(f).

(3) *Interference with mines, sea banks &c., railways and navigation aids*

No. 6103
s. 225.
S. 225
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 55),
48/1997
s. 60(1)(Sch. 1
item 75).

225 Conveying water into a mine

Whosoever unlawfully and maliciously causes any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith with intent thereby to destroy or damage such mine or to hinder or delay the working thereof, or with the like intent unlawfully and maliciously pulls down fills up or obstructs or damages with intent to destroy obstruct or render useless any airway waterway drain pit level shaft or drive of or belonging to any mine, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum). This provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same or by any person duly employed in such working.

S. 226
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (9)
(Heading and
s. 227)
repealed by
No. 9228
s. 2(1)(c).

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228 Removing etc. piles of sea banks

Whosoever unlawfully and maliciously cuts off draws up or removes any piles chalk or other materials fixed in the ground and used for securing any sea bank or sea wall or the bank dam or wall of any river canal drain aqueduct marsh reservoir pool port harbor dock quay wharf jetty or lock, or unlawfully and maliciously opens or draws up any floodgate or sluice or does any other injury or mischief to any navigable river or canal with intent to obstruct or prevent the carrying on completing or maintaining the navigation thereof, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No. 6103
s. 228.
S. 228
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 75).

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Pt 1 Div. 3
Subdivs
(10)(11)
(Headings
and
ss 229–231)
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (12)
(Heading)
repealed by
No. 9228
s. 2(1)(c).

232 Placing things on railways to obstruct or overturn engine etc.¹⁹

Whosoever unlawfully and maliciously puts places casts or throws upon or across any railway any wood stone or other matter or thing, or unlawfully and maliciously takes up removes or displaces any rail sleeper or other thing belonging to any railway, or unlawfully and maliciously turns moves or diverts any points or other machinery belonging to any railway, or

No. 6103
s. 232.
S. 232
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 76).

s. 233

unlawfully and maliciously makes or shows hides or removes any signal or light upon or near to any railway, or unlawfully and maliciously does or causes to be done any other matter or thing with intent in any such case to obstruct upset overthrow injure or destroy any engine tender carriage or truck on such railway, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

233 Obstructing engine, carriage etc. on railway²⁰

Whosoever by any unlawful act or by any wilful omission or neglect obstructs or causes to be obstructed any engine or carriage on any railway, or aids or assists therein, shall be guilty of a summary offence, and shall be liable to level 7 imprisonment (2 years maximum).

No. 6103
 s. 233.
 S. 233
 amended by
 Nos 9576
 s. 11(1),
 49/1991
 s. 119(1)
 (Sch. 2
 item 56),
 48/1997
 s. 60(1)(Sch. 1
 item 77(a)(b)).

S. 234
 repealed by
 No. 9228
 s. 2(1)(c).

S. 235
 amended by
 Nos 7876
 s. 2(3), 8247
 s. 4,
 repealed by
 No. 9228
 s. 2(1)(c).

Pt 1 Div. 3
 Subdiv. (13)
 (Heading and
 s. 236)
 repealed by
 No. 9228
 s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (14)
(Heading and
ss 237, 238)
amended by
Nos 8181
s. 2(1)
(Sch. item 33),
8870 s. 2(1)(2),
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (15)
(Heading and
ss 239–243)
repealed by
No. 9228
s. 2(1)(c).

244 Altering signals or exhibiting false ones

No. 6103
s. 244.

Whosoever unlawfully masks alters or removes any light or signal or exhibits any false light or signal with intent to bring any ship vessel or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship vessel or boat and for which no punishment is hereinbefore provided, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

S. 244
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 76).

245 Removing buoy etc.

No. 6103
s. 245.

Whosoever unlawfully and maliciously cuts away casts adrift removes alters defaces sinks or destroys or in any other manner injures or conceals, or unlawfully and maliciously does any act with intent to cut away cast adrift remove alter deface sink destroy, or in any other manner injure or conceal, any boat buoy rope perch or mark used or intended for the guidance of seamen or the purpose of navigation, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 245
amended by
Nos 8181
s. 2(1)
(Sch. item 36),
9576 s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 78).

s. 246A

S. 246
 repealed by
 No. 9228
 s. 2(1)(c).

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Pt 1 Div. 3
 Subdiv. (15A)
 (Heading)
 inserted by
 No. 7088
 s. 2(d),
 repealed by
 No. 9228
 s. 2(1)(c).

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New Pt 1
 Div. 3
 Subdiv. (4)
 (Heading)
 inserted by
 No. 9228
 s. 2(1)(g).

(4) Injuries to aircraft

S. 246A
 inserted by
 No. 7088
 s. 2(d),
 amended by
 Nos 9576
 s. 11(1),
 49/1991
 s. 119(1)
 (Sch. 2
 item 49),
 48/1997
 s. 60(1)(Sch. 1
 item 79).

246A Endangering safe operation of an aircraft

Any person who does any act or thing with intent to prejudice the safe operation of an aircraft shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 246B
 inserted by
 No. 7088
 s. 2(d),
 amended by
 Nos 9576
 s. 11(1),
 49/1991
 s. 119(1)
 (Sch. 2
 item 53),
 48/1997
 s. 60(1)(Sch. 1
 item 80).

246B Setting fire etc. to aircraft

Any person who unlawfully and maliciously sets fire to or in any way destroys any aircraft whether complete or incomplete shall be guilty of an indictable offence and shall be liable to level 4 imprisonment (15 years maximum).

246C Endangering safety of aircraft

Any person who while on board an aircraft does any act or thing that is likely to endanger the safety of the aircraft shall be guilty of an indictable offence and shall be liable to level 5 imprisonment (10 years maximum).

S. 246C inserted by No. 7088 s. 2(d), amended by Nos 9576 s. 11(1), 49/1991 s. 119(1) (Sch. 2 item 57), 48/1997 s. 60(1)(Sch. 1 item 81).

246D Dangerous goods on aircraft

S. 246D inserted by No. 7088 s. 2(d).

(1) Subject to this section any person who—

- (a) carries or places dangerous goods on board an aircraft;
- (b) delivers dangerous goods to a person for the purpose of their being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft—

S. 246D(1) amended by Nos 9576 s. 11(1), 49/1991 s. 119(1) (Sch. 2 item 57), 48/1997 s. 60(1)(Sch. 1 item 82).

shall be guilty of an indictable offence and shall be liable to level 6 imprisonment (5 years maximum).

(2) This section does not apply—

- (a) to or in relation to any act done with the consent of the owner or operator of the aircraft given with a knowledge of the nature of the goods concerned; or
- (b) to or in relation to the carrying or placing of firearms or ammunition for firearms on board an aircraft with permission granted under the Air Navigation Regulations of the Commonwealth.

s. 246E

- (3) In this section *dangerous goods* means—
- (a) firearms, ammunition, weapons and explosive substances; and
 - (b) substances or things that, by reason of their nature or condition, may endanger the safety of an aircraft or of persons on board an aircraft.

246E Threats to safety of aircraft

Any person who threatens, states that it is his intention, or makes a statement from which it could reasonably be inferred that it is his intention to destroy damage or endanger the safety of an aircraft or to kill or injure all or any of the persons on board an aircraft shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 246E
inserted by
No. 7088
s. 2(d),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 82).

Pt 1 Div. 3
Subdiv. (15B)
(Heading)
inserted by
No. 9155
s. 4(a),
repealed by
No. 9228
s. 2(1)(c).

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S. 246F
inserted by
No. 7088
s. 2(d),
substituted by
No. 9155
s. 4(b),
repealed by
No. 9228
s. 2(1)(c).

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(5) *False statements*

Pt 1 Div. 3
Subdiv. (5)
(Heading)
inserted by
No. 9228
s. 2(1)(h) (as
amended by
No. 9427
s. 6(1)).

247 False statements

Any person who makes a statement or conveys information, being a statement or information that he knows to be false, to the effect or from which it could reasonably be inferred that there has been or is to be a plan, proposal, attempt, conspiracy or threat to—

- (a) take or exercise control by force or violence of any building (including any structure in the nature of a building or any bridge or mine) aircraft, vessel, motor vehicle or engine or carriage used upon a railway;
- (b) destroy, damage or endanger the safety thereof; or
- (c) kill or injure all or any of the persons therein or thereon—

shall be guilty of an indictable offence and shall be liable to level 6 imprisonment (5 years maximum).

S. 247
repealed by
No. 9228
s. 2(1)(c),
new s. 247
inserted by
No. 9228
s. 2(1)(h) (as
amended by
No. 9427
s. 6(1)),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 56),
48/1997
s. 60(1)(Sch. 1
item 83).

Pt 1 Div. 3
Subdiv. (6)
(Heading and
ss 247A–247I)
inserted by
No. 10/2003
s. 5.

S. 247A
inserted by
No. 10/2003
s. 5.

(6) *Computer offences*

247A Interpretation

(1) In this Subdivision—

access, in relation to data held in a computer,
means—

- (a) the display of the data by the computer
or any other output of the data from the
computer; or
- (b) the copying or moving of the data to
any other place in the computer or to a
data storage device; or
- (c) in the case of a program, the execution
of the program;

data includes—

- (a) information in any form; and
- (b) any program or part of a program;

data held in a computer includes—

- (a) data entered or copied into the
computer; and
- (b) data held in any removable data storage
device for the time being in the
computer; and
- (c) data held in a data storage device on a
computer network of which the
computer forms part;

data storage device means any thing (for example,
a disk or file server) containing or designed
to contain data for use by a computer;

electronic communication means a communication of information in any form by means of guided or unguided electromagnetic energy;

impairment, in relation to electronic communication to or from a computer, includes—

- (a) the prevention of any such communication; and
- (b) the impairment of any such communication on an electronic link or network used by the computer—

but does not include a mere interception of any such communication;

modification, in relation to data held in a computer, means—

- (a) the alteration or removal of the data; or
- (b) an addition to the data;

serious computer offence means—

- (a) an offence against section 247B, 247C or 247D; or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against section 247B, 247C or 247D if the conduct occurred in Victoria;

unauthorised computer function means any of the following—

- (a) any unauthorised access to data held in a computer; or
- (b) any unauthorised modification of data held in a computer; or

s. 247B

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- (c) any unauthorised impairment of electronic communication to or from a computer.
- (2) In this Subdivision, a reference to access to data, modification of data or impairment of electronic communication is limited to access, modification or impairment caused (whether directly or indirectly) by the execution of a function of a computer.
- (3) For the purposes of this Subdivision, access to data, modification of data or impairment of electronic communication by a person—
- (a) is unauthorised if the person is not entitled to cause that access, modification or impairment;
 - (b) is not unauthorised merely because the person has an ulterior purpose for that action.
- (4) For the purposes of an offence against this Subdivision, a person causes an unauthorised computer function if the person's conduct substantially contributes to the unauthorised computer function.

S. 247B
inserted by
No. 10/2003
s. 5.

247B Unauthorised access, modification or impairment with intent to commit serious offence

- (1) A person who causes any unauthorised computer function—
- (a) knowing it is unauthorised; and
 - (b) with the intention of committing a serious offence or facilitating the commission of a serious offence (whether by the person or by another person)—

is guilty of an offence and liable to the same maximum penalty as applies to the commission of the serious offence in Victoria.

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- (2) In this section *serious offence* means—
- (a) an offence in Victoria punishable on conviction for a first offence with imprisonment for a term of 5 years or more; or
 - (b) an offence in any other jurisdiction that would be punishable on conviction for a first offence with imprisonment for a term of 5 years or more if committed in Victoria.
- (3) A person may be found guilty of an offence against this section—
- (a) even if committing the serious offence is impossible; or
 - (b) whether the serious offence is to be committed at the time of the unauthorised conduct or at a later time.
- (4) It is not an offence to attempt to commit an offence against this section.

247C Unauthorised modification of data to cause impairment

S. 247C
inserted by
No. 10/2003
s. 5.

A person who—

- (a) causes any unauthorised modification of data held in a computer; and
- (b) knows that the modification is unauthorised; and
- (c) intends by the modification to impair access to, or to impair the reliability, security or operation of, any data held in a computer or is reckless as to any such impairment—

is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

s. 247D

S. 247D
inserted by
No. 10/2003
s. 5.

247D Unauthorised impairment of electronic communication

A person who—

- (a) causes any unauthorised impairment of electronic communication to or from a computer; and
- (b) knows that the impairment is unauthorised; and
- (c) intends to impair electronic communication to or from the computer or is reckless as to any such impairment—

is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

S. 247E
inserted by
No. 10/2003
s. 5.

247E Possession of data with intent to commit serious computer offence

- (1) A person who is in possession or control of data—
 - (a) with the intention of committing a serious computer offence; or
 - (b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person)—

is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

- (2) In this section, a reference to a person having possession or control of data includes a reference to a person—
 - (a) having possession of a computer or data storage device that holds or contains the data; and
 - (b) having possession of a document in which the data is recorded; and

(c) having control of data held in a computer that is in the possession of another person (whether the computer is in Victoria or outside Victoria).

(3) A person may be found guilty of an offence against this section even if committing the serious computer offence is impossible.

(4) It is not an offence to attempt to commit an offence against this section.

247F Producing, supplying or obtaining data with intent to commit serious computer offence

S. 247F
inserted by
No. 10/2003
s. 5.

(1) A person who produces, supplies or obtains data—

(a) with the intention of committing a serious computer offence; or

(b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person)—

is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

(2) In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person—

(a) producing, supplying or obtaining data held in a computer or contained in a data storage device; and

(b) producing, supplying or obtaining a document in which the data is recorded.

(3) A person may be found guilty of an offence against this section even if committing the serious computer offence is impossible.

s. 247G

S. 247G
inserted by
No. 10/2003
s. 5.

247G Unauthorised access to or modification of restricted data

- (1) A person who—
 - (a) causes any unauthorised access to or modification of restricted data held in a computer; and
 - (b) knows that the access or modification is unauthorised; and
 - (c) intends to cause the access or modification—
is guilty of an offence and liable to level 7 imprisonment (2 years maximum).
- (2) An offence against this section is a summary offence.
- (3) In this section *restricted data* means data held in a computer to which access is restricted by an access control system associated with a function of the computer.

S. 247H
inserted by
No. 10/2003
s. 5.

247H Unauthorised impairment of data held in computer disk, credit card or other device

- (1) A person who—
 - (a) causes any unauthorised impairment of the reliability, security or operation of data held on a computer disk, credit card or other device used to store data by electronic means; and
 - (b) knows that the impairment is unauthorised; and
 - (c) intends to cause the impairment—
is guilty of an offence and liable to level 7 imprisonment (2 years maximum).
- (2) An offence against this section is a summary offence.

- (3) For the purposes of this section, impairment of reliability, security or operation of data is unauthorised if the person is not entitled to cause the impairment.

247I Extra-territorial operation of offences

S. 247I
inserted by
No. 10/2003
s. 5.

- (1) It is immaterial that some or all of the conduct constituting an offence against this Subdivision occurred outside Victoria, so long as the computer or device used to store data by electronic means affected by the conduct was in Victoria at the time at which the conduct occurred.
- (2) It is immaterial that the computer or device used to store data by electronic means affected by some or all of the conduct constituting an offence against this Subdivision was outside Victoria at the time the conduct occurred, so long as that conduct occurred in Victoria.

(7) Sabotage

Pt 1 Div. 3
Subdiv. (7)
(Heading and
ss 247J–247L)
inserted by
No. 10/2003
s. 6.

247J Interpretation

S. 247J
inserted by
No. 10/2003
s. 6.

- (1) In this Subdivision—

property offence means—

- (a) an offence against Subdivision (1) of this Division or Division 4; or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against Subdivision (1) of this Division or Division 4 if the conduct occurred in Victoria;

public facility means any of the following
(whether publicly or privately owned)—

- (a) a government facility, including premises used by government employees in connection with official duties;
- (b) a public infrastructure facility, including a facility providing or distributing water, sewerage, energy, fuel, communication or other services to, or for the benefit of, the public;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;
- (d) a public transport facility, including a conveyance used to transport people or goods;
- (e) a public place, including any premises, land or water open to the public;

unauthorised computer function has the same meaning as in Subdivision (6).

- (2) In this Subdivision ***damage***, in relation to a public facility, means—
 - (a) cause damage to the facility or any part of the facility; or
 - (b) cause disruption to the use or operation of the facility.
- (3) For the purposes of an offence against this Subdivision, a person causes any damage or disruption if the person's conduct substantially contributes to the damage or disruption.

247K Sabotage

S. 247K
inserted by
No. 10/2003
s. 6.

A person who—

- (a) damages a public facility by committing a property offence or by causing an unauthorised computer function; and
- (b) intends to cause—
 - (i) major disruption to government functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss—

is guilty of an offence and liable to level 2 imprisonment (25 years maximum).

247L Threats to sabotage

S. 247L
inserted by
No. 10/2003
s. 6.

(1) A person who—

- (a) makes to another person a threat to damage a public facility by committing a property offence or by causing an unauthorised computer function; and
- (b) intends that person to fear that the threat will be carried out and will cause—
 - (i) major disruption to government functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss—

is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

s. 247L

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- (2) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (3) For the purposes of this section—
- (a) a threat may be made by any conduct and may be explicit or implicit, conditional or unconditional; and
 - (b) a threat to a person includes a threat to a group of persons; and
 - (c) fear that a threat will be carried out includes apprehension that it will be carried out.

Pt 1 Div. 3
Subdiv. (16)
(Heading and
s. 247)
repealed by
No. 9228
s. 2(1)(c).

* * * * *

Pt 1 Div. 3
Subdiv. (17)
(Heading and
s. 248)
amended by
No. 8870 s. 3,
repealed by
No. 9228
s. 2(1)(c).

* * * * *

Pt 1 Div. 3
Subdivs
(18)(19)
(Headings
and
ss 249–251)
repealed by
No. 9228
s. 2(1)(c).

* * * * *

Division 4—Contamination of goods

Pt 1 Div. 4
(Heading and
ss 252–289)
amended by
Nos 7705
s. 10, 7876
s. 2(3), 8181
s. 2(1)
(Sch. item 34),
8750 s. 96,
9019 s. 2(1)
(Sch. items
36, 37), 9576
s. 11(1), 10087
s. 3(1)(Sch. 1
item 25),
10244 s. 10,
repealed by
No. 25/1989
s. 8(1), new
Pt 1 Div. 4
(Heading and
s. 248)
inserted by
No. 95/1994
s. 5.

248 Interpretation

(1) In this Division—

contaminate, in relation to goods, includes—

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

goods includes any substance—

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

New s. 248
inserted by
No. 95/1994
s. 5,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 84),
69/1997
s. 22(6),
substituted by
No. 65/1998
s. 5.

s. 249

(2) In this Division, a reference to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through—

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

S. 249
(Heading)
inserted by
No. 66/2005
s. 3(1).

New s. 249
inserted by
No. 65/1998
s. 5,
amended by
No. 66/2005
s. 3(2)(a).

249 Contaminating goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

A person must not contaminate goods with the intention of causing, or being reckless as to whether or not the contamination would cause—

S. 249(a)
amended by
No. 66/2005
s. 3(2)(b).

- (a) public alarm or anxiety; or

S. 249(b)
amended by
No. 66/2005
s. 3(2)(b).

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

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

Note to s. 249
inserted by
No. 80/2001
s. 7(1).

Note

Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section

250 Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

S. 250
(Heading)
inserted by
No. 66/2005
s. 4(1).
New s. 250
inserted by
No. 65/1998
s. 5.

(1) A person must not make a threat that goods will be contaminated with the intention of causing, or being reckless as to whether or not the threat would cause—

S. 250(1)
amended by
No. 66/2005
s. 4(2)(a).

(a) public alarm or anxiety; or

S. 250(1)(a)
amended by
No. 66/2005
s. 4(2)(b).

(b) economic loss through public awareness of the threat.

S. 250(1)(b)
amended by
No. 66/2005
s. 4(2)(a)(b).

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

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

Note

Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

Note to s. 250
inserted by
No. 80/2001
s. 7(2).

s. 251

S. 251
(Heading)
inserted by
No. 66/2005
s. 5(1).
New s. 251
inserted by
No. 65/1998
s. 5.

251 Making false statements concerning contamination of goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

- (1) A person must not make a statement that the person believes to be false—
- (a) with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
 - (b) with the intention of thereby causing, or being reckless as to whether or not the statement would cause—
 - (i) public alarm or anxiety; or
 - (ii) economic loss through public awareness of the statement.

S. 251(1)(b)
amended by
No. 66/2005
s. 5(2)(a).

S. 251(1)(b)(i)
amended by
No. 66/2005
s. 5(2)(b).

S. 251(1)(b)(ii)
amended by
No. 66/2005
s. 5(2)(b)(c).

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

- (2) For the purposes of this section, making a statement includes conveying information by any means.

Note to s. 251
inserted by
No. 80/2001
s. 7(3).

Note

Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

252 Territorial nexus for offences

It is immaterial that the conduct of a person constituting an offence under this Division occurred outside Victoria, so long as the person intended by that conduct to cause, or was reckless as to whether or not that conduct would cause—

(a) public alarm or anxiety in Victoria; or

(b) economic loss in Victoria through public awareness of the contamination.

New s. 252 inserted by No. 65/1998 s. 5, amended by No. 66/2005 s. 6(a).

S. 252(a) amended by No. 66/2005 s. 6(b).

S. 252(b) amended by No. 66/2005 s. 6(b).

Division 5—Destruction of evidence

Pt 1 Div. 5 (Heading and ss 290–313) amended by Nos 7876 s. 2, 8181 s. 2(Sch. item 33), 9554 s. 2(2)(Sch. 2 items 56, 57), 9576 s. 11(1), 9848 s. 18(1), repealed by No. 25/1989 s. 8(1), new Pt 1 Div. 5 (Heading and ss 253–255) inserted by No. 6/2006 s. 3.

253 Definitions

In this Division—

associate, in relation to a body corporate, means—

- (a) an employee or agent of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or

New s. 253 inserted by No. 6/2006 s. 3.

within his or her actual or apparent authority; or

(b) an officer of the body corporate;

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

corporate culture means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant conduct is carried out or the relevant intention formed;

legal proceeding has the same meaning as in the **Evidence (Miscellaneous Provisions) Act 1958**;

S. 253 def. of *legal proceeding* amended by No. 69/2009 s. 39.

officer, in relation to a body corporate, means an officer (as defined by section 9 of the Corporations Act) of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority;

relevant conduct means the destruction, concealment, or rendering illegible, undecipherable or incapable of identification, of a document or other thing of any kind;

relevant intention means the intention of preventing a document or other thing of any kind from being used in evidence in a legal proceeding.

254 Destruction of evidence

New s. 254
inserted by
No. 6/2006
s. 3.

- (1) A person who—
- (a) knows that a document or other thing of any kind is, or is reasonably likely to be, required in evidence in a legal proceeding; and
 - (b) either—
 - (i) destroys or conceals it or renders it illegible, undecipherable or incapable of identification; or
 - (ii) expressly, tacitly or impliedly authorises or permits another person to destroy or conceal it or render it illegible, undecipherable or incapable of identification and that other person does so; and
 - (c) acts as described in paragraph (b) with the intention of preventing it from being used in evidence in a legal proceeding—

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum) or a level 6 fine or both.

Notes

- 1 *Document* is defined in the **Evidence Act 2008**.
 - 2 The maximum fine that may be imposed on a body corporate found guilty of an offence against this section is 3000 penalty units: see **Sentencing Act 1991** s. 113D.
- (2) This section applies with respect to a legal proceeding, whether the proceeding is one that is in progress or is to be, or may be, commenced in the future.

Note 1 to
s. 254(1)
substituted by
No. 69/2009
s. 40.

New s. 255
inserted by
No. 6/2006
s. 3.

**255 Corporate criminal responsibility for offence
against section 254**

- (1) For the purposes of a proceeding against a body corporate for an offence against section 254—
 - (a) relevant conduct engaged in by an associate of the body corporate must also be attributed to the body corporate; and
 - (b) knowledge of an associate of the body corporate must also be attributed to the body corporate; and
 - (c) intention—
 - (i) of the body corporate's board of directors; or
 - (ii) of an officer of the body corporate; or
 - (iii) of any other associate of the body corporate if a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the formation of that intention—
must also be attributed to the body corporate.
- (2) If an officer of a body corporate contravenes section 254, the body corporate must be taken to have also contravened that section and may be proceeded against and found guilty of an offence against that section whether or not the officer has been proceeded against or found guilty of that offence.
- (3) In a proceeding against a body corporate for an offence against section 254, brought in reliance on subsection (2), it is a defence to the charge for the body corporate to prove that it exercised due diligence to prevent the contravention of that section by the officer.

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- (4) The means by which authorisation or permission as required by section 254(1)(b)(ii) may be established include—
- (a) proving that an officer of the body corporate gave that authorisation or permission; or
 - (b) proving that the body corporate's board of directors gave that authorisation or permission; or
 - (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the relevant conduct being carried out.
- (5) Subsection (4)(a) does not apply if the body corporate proves that it exercised due diligence to prevent the authorisation or permission being given.
- (6) Factors relevant to the application of subsection (1)(c)(iii) or (4)(c) include—
- (a) whether authority to commit an offence against section 254 or an offence of a similar character had been given by an officer of the body corporate; and
 - (b) whether the associate of the body corporate who carried out the relevant conduct or formed the relevant intention believed on reasonable grounds, or entertained a reasonable expectation, that an officer of the body corporate would have authorised or permitted the relevant conduct being carried out with the relevant intention.
- (7) Subject to subsection (8), it is not necessary that each element of an offence against section 254 that is attributed to a body corporate by force of subsection (1) be supplied by the same associate of the body corporate.
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- (8) It is necessary that the elements referred to in section 254(1)(b)(i) and (c) be supplied by the same associate of the body corporate.

Division 6—Perjury

314 Perjury

No. 6103
s. 314.

S. 314(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 59),
48/1997
s. 60(1)(Sch. 1
item 85).

- (1) Whosoever commits wilful and corrupt perjury or subornation of perjury shall be liable to level 4 imprisonment (15 years maximum).
- (2) Where in any Act it is provided that any person shall be liable to the penalties of perjury or shall be guilty of perjury or shall be deemed to have committed perjury or any similar expression is used such person shall be deemed to have committed an offence against subsection (1) and may be proceeded against tried and punished accordingly.
- (3) Where by or under any Act it is required or authorized that facts matters or things be verified or otherwise assured or ascertained by or upon the oath affirmation declaration or affidavit of some or any person, any person who in any such case takes or makes any oath affirmation or declaration so required or authorized and who knowingly wilfully and corruptly upon such oath affirmation or declaration deposes swears to or makes any false statement as to any such fact matter or thing, and any person who knowingly wilfully and corruptly upon oath deposes to the truth of any statement for so verifying assuring or ascertaining any such fact matter or thing or purporting so to do, or who knowingly wilfully and corruptly takes makes signs or subscribes any such affirmation

declaration or affidavit as to any such fact matter or thing, such statement affirmation declaration or affidavit being untrue wholly or in part, or who knowingly wilfully and corruptly omits from any such affirmation declaration or affidavit made or sworn under the provisions of any law any matter which by the provisions of such law is required to be stated in such affirmation declaration or affidavit, shall be deemed guilty of wilful and corrupt perjury. Nothing herein contained shall affect any case amounting to perjury at the common law or the case of any offence in respect of which other provision is made by any Act.

315 All evidence material with respect to perjury

No. 6103
s. 315.

All evidence and proof whatsoever, whether given or made orally or by or in any affidavit examination declaration or deposition, shall be deemed and taken to be material with respect to the liability of any person to be proceeded against and punished for perjury or subornation of perjury.

Division 7—Unlawful oaths

316 Unlawful oaths to commit treason, murder etc.

No. 6103
s. 316.

(1) Every person who—

S. 316(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 86(a)).

(a) administers or is present at and consents to the administering of any oath or engagement in the nature of an oath purporting to bind the person who takes it to commit treason or murder; or

S. 316(1)(a)
amended by
No. 9019
s. 2(1)(Sch.
item 38).

s. 316

- (b) takes any such oath or engagement not being compelled to do so; or
- (c) induces or attempts to induce any person to take any such oath or engagement—

shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

S. 316(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 86(b)).

(2) Every person who—

- (a) administers or is present at and consents to the administering of any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following (that is to say):—

- (i) to engage in any mutinous or seditious enterprise;
- (ii) to commit any indictable offence other than treason or murder;

(iii) to disturb the public peace;

(iv) to be of any association society or confederacy formed for the purpose of doing any such act as aforesaid;

(v) to obey the order or commands of any committee or body of men not lawfully constituted or of any leader or commander or other person not having authority by law for that purpose;

(vi) not to inform or give evidence against any associate confederate or other person;

S. 316(2)(a)(ii)
amended by
No. 9019
s. 2(1)(Sch.
item 39).

(vii) not to reveal or discover any unlawful association society or confederacy or any illegal act done or to be done or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person or the import of any such oath or engagement; or

(b) takes any such oath or engagement not being compelled to do so; or

(c) induces or attempts to induce any person to take any such oath or engagement—

shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

(3) A person who takes any such oath or engagement as is mentioned in the last two preceding subsections cannot set up as a defence that he was compelled to do so unless within fourteen days after taking it or if he is prevented by actual force or sickness within fourteen days after the termination of such prevention he declares by evidence on oath before some member of the Executive Council or a magistrate or if he is on actual service in Her Majesty's forces by sea or land either by such evidence or by evidence on oath before his commanding officer the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence and the place where and the time when the oath or engagement was administered or taken.

S. 316(3)
amended by
Nos 57/1989
s. 3(Sch.
item 42.14),
68/2009
s. 97(Sch.
item 40.10).

s. 317

S. 316(4)
amended by
No. 57/1989
s. 3(Sch.
item 42.15).

- (4) A person who has been tried and convicted or acquitted on a charge of any of the offences mentioned in this section shall not be afterwards prosecuted upon the same facts for treason or for failing when he knows that any person intends to commit treason to give information thereof with all reasonable despatch to a magistrate or use other reasonable endeavours to prevent the commission of the crime.

Division 8—Offences connected with explosive substances²¹

No. 6103
s. 317.

317 Offences connected with explosive substances

- (1) In this Division unless inconsistent with the context or subject-matter—

S. 317(1)
def. of
*explosive
substance*
amended by
No. 25/2009
s. 4(1)(a).

explosive substance includes—

- (a) any material for making any explosive substance;
- (b) any apparatus machine implement or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; and
- (c) any part of any such apparatus machine or implement;

S. 317(1)
def. of
public place
inserted by
No. 25/2009
s. 4(1)(b).

public place has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;

S. 317(1)
def. of
vehicle
inserted by
No. 25/2009
s. 4(1)(b).

vehicle includes motor vehicle, aircraft and vessel.

- (2) Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of an indictable offence, and shall be liable to level 4 imprisonment (15 years maximum).
- (3) Any person who unlawfully and maliciously—
- (a) does any act with intent to cause by an explosive substance or conspires to cause by an explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property; or
- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property—
- shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).
- (4) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 317(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 59),
48/1997
s. 60(1)(Sch. 1
item 87(a)).

S. 317(3)
amended by
Nos 9576
s. 11(1),
101/1986 s. 56,
49/1991
s. 119(1)
(Sch. 2
item 60(a)),
48/1997
s. 60(1)(Sch. 1
item 87(b)).

S. 317(4)
amended by
Nos 9576
s. 11(1),
101/1986 s. 56,
49/1991
s. 119(1)
(Sch. 2
item 60(b)),
48/1997
s. 60(1)(Sch. 1
item 87(c)).

s. 317

S. 317(5)
amended by
No. 9576
s. 11(1).

- (5) Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever knowingly procures counsels aids abets or is accessory to the commission of any crime under this Division shall be guilty of an indictable offence, and shall be liable to be tried and punished for that crime as if he had been guilty as a principal.

S. 317(6)
repealed by
No. 9848
s. 18(1).

* * * * *

S. 317(7)
amended by
Nos 25/1989
s. 19(a),
35/1996
s. 453(Sch. 1
item 16.1
(a)–(c)),
68/2009
s. 97(Sch.
item 40.11).

- (7) In any indictment the same criminal act may be charged in different charges as constituting different crimes under this Division, and upon the trial of any such indictment the prosecution shall not be put to its election as to the charge on which it must proceed.

S. 317(8)
amended by
No. 68/2009
s. 97(Sch.
item 40.12).

- (8) This Division shall not exempt any person from any indictment or proceeding for a crime or offence which is punishable at common law or by any enactment other than this Division but no person shall be punished twice for the same criminal act.

S. 317(9)(a)
amended by
Nos 8179 s. 4,
57/1989
s. 3(Sch.
item 42.16(a)),
25/2009
s. 4(2),
37/2014
s. 10(Sch.
item 36.9).

- (9) (a) If a magistrate is satisfied by the evidence on oath or by affidavit of any police officer above the rank of senior sergeant authorized in writing by the Chief Commissioner of Police (whether generally or in any particular case) in that behalf that there is reasonable ground for suspecting that an offence under this Division has been, is being, or is about to be committed he may grant a search warrant authorizing any police officer named therein to enter at any time any premises or

place (including any vehicle on or in the premises or place) mentioned in the warrant, or a particular vehicle mentioned in the warrant located in a public place, if necessary by force, and to search the premises, place or vehicle and every person found therein, and to seize and detain any explosive substance which he finds on the premises or place, or on or in the vehicle, or on any such person, in respect of which or in connexion with which he has reasonable grounds for suspecting that an offence under this Division has been, is being, or is about to be committed.

- (b) The police officer making the search may arrest without warrant any person found on the premises or on or in the vehicle in the public place whom he has reason to believe to be guilty of an offence under this Division.
- (c) Save as aforesaid the rules to be observed with regard to search warrants mentioned in the **Magistrates' Court Act 1989** shall extend and apply to warrants under this section.
- (d) The provisions of this section shall be read and construed as in aid and not in derogation of the provisions with regard to warrants to search contained in the said Act or elsewhere²².

S. 317(9)(b)
amended by
Nos 25/2009
s. 4(3),
37/2014
s. 10(Sch.
item 36.9).

S. 317(9)(c)
amended by
Nos 8731
s. 173, 57/1989
s. 3(Sch.
item 42.16(b)).

s. 317A

317A Bomb hoaxes

S. 317A
inserted by
No. 95/1994
s. 6.

S. 317A(1)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 88),
69/1997
s. 22(7).

- (1) A person must not—
- (a) place an article or substance in any place; or
 - (b) send an article or substance by any means of transportation—

with the intention of inducing in another person a false belief that the article or substance is likely to explode or ignite or discharge a dangerous or deleterious matter.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

S. 317A(2)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 88),
69/1997
s. 22(7).

- (2) A person must not, whether within or outside Victoria, make a statement or convey information to another person which the person making the statement or conveying the information knows or believes to be false with the intention of inducing in that person or any other person a belief that an article or substance liable to explode or ignite or discharge a dangerous or deleterious matter is present in any place in Victoria.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

- (3) For a person to be guilty of an offence against subsection (1) or (2) it is not necessary for him or her to have any particular person in mind as the person in whom he or she intends to induce the belief referred to in that subsection.

Note

Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

Note to
s. 317A
inserted by
No. 80/2001
s. 7(4)

Division 9—Driving offences connected with motor vehicles

Pt 1 Div. 9
(Heading)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.3).

317B Interpretation

S. 317B
inserted by
No. 93/2009
s. 44.

(1) In this Division—

drive, in relation to a motor vehicle, includes
operate a vessel;

motor vehicle includes vessel, whether or not the
vessel is powered by a motor;

operate, in relation to a vessel, means—

- (a) steer or navigate the vessel; or
- (b) direct the steering or navigation of the
vessel or provide instructions as to the
steering or navigation of the vessel; or
- (c) substantially change the movement or
direction of the vessel;

vessel has the same meaning as in the **Marine
Safety Act 2010**.

S. 317B(1)
def. of vessel
amended by
No. 65/2010
s. 420(Sch. 3
item 3).

(2) For the purposes of this Division—

- (a) a person may operate a vessel that is at
anchor, made fast to the shore or aground;
- (b) a person does not operate a vessel solely
because the person is in charge of the vessel.

s. 318

318 Culpable driving causing death

S. 318
amended by
Nos 6762
s. 13(a)(b),
7184 s. 3, 7407
s. 2(a)(b),
substituted by
No. 7645 s. 3.

S. 318(1)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 58), 9576
s. 11(1),
111/1986
s. 180(2)
(Sch. 2
item 5),
127/1986
s. 102(Sch. 4
item 5.4),
49/1991
s. 119(1)
(Sch. 2
item 61),
13/1992
s. 3(1),
48/1997
s. 60(1)(Sch. 1
item 89).

S. 318(2)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.4).

- (1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both.
- (2) For the purposes of subsection (1) a person drives a motor vehicle culpably if he drives the motor vehicle—
 - (a) recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or
 - (b) negligently, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or

-
- (c) whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or
- (d) whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.
- (2A) Without limiting subsection (2)(b), negligence within the meaning of that subsection may be established by proving that—
- (a) a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and
- (b) by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.
- (3) An indictment for an indictable offence under this section shall specify which form of culpability within the meaning of subsection (2) is charged but evidence of the whole of the circumstances shall be admissible on the trial on the indictment.
- (4) A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the death concerned subsequently be prosecuted for unlawful homicide or under this section.
- (5) A person who is convicted or acquitted of any form of unlawful homicide not referred to in this section shall not in respect of the death concerned subsequently be prosecuted under this section and no other form of unlawful homicide shall be
- S. 318(2A)**
inserted by
No. 59/2004
s. 5.
- S. 318(3)**
amended by
Nos 9576
s. 11(1),
68/2009
s. 97(Sch.
item 40.13).
- S. 318(4)**
amended by
No. 9576
s. 11(1).
- S. 318(5)**
amended by
Nos 9576
s. 11(1),
68/2009
s. 97(Sch.
item 40.14).

s. 319

charged in the same indictment with an indictable offence under this section.

S. 318(6) amended by Nos 9576 s. 11(1), 127/1986 s. 102(Sch. 4 item 5.4), 13/1992 s. 3(2), 68/2009 s. 97(Sch. item 40.14), 93/2009 s. 45.

- (6) A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the circumstances concerned be proceeded against under the **Road Safety Act 1986** or the **Marine Act 1988** for having driven a motor vehicle whilst under the influence of alcohol or a drug and no such offence shall be charged in the same indictment with an indictable offence under this section.

S. 318(7) substituted by Nos 8338 s. 4, 78/1987 s. 4(2),

- (7) **Drug** means a drug within the meaning of the **Road Safety Act 1986**.

S. 318(8) repealed by No. 78/1987 s. 4(3).

* * * * *

S. 319 amended by Nos 6658 s. 3, 6762 s. 13(c)(d), 7332 s. 2(Sch. 1 item 19), 7546 s. 6, repealed by No. 7645 s. 5, new s. 319 inserted by No. 59/2004 s. 6.

319 Dangerous driving causing death or serious injury

S. 319(1) amended by No. 7/2008 s. 5(1).

- (1) A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of another person is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

(1A) A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes serious injury to another person is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 319(1A)
inserted by
No. 7/2008
s. 5(2).

(2) In this section *serious injury* has the meaning given by section 15.

319AA Dangerous or negligent driving while pursued by police

S. 319AA
inserted by
No. 83/2012
s. 32.

(1) A person must not drive a motor vehicle dangerously or negligently if he or she knows, or ought reasonably to know, that—

(a) he or she has been given a direction to stop the vehicle by a police officer; and

S. 319AA(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.9).

(b) a police officer is pursuing the vehicle.

S. 319AA(1)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.9).

Penalty: 3 years imprisonment.

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

(a) a person drives a motor vehicle dangerously if he or she drives the vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case; and

(b) a person drives a motor vehicle negligently if he or she fails unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case; and

s. 319AA

S. 319AA(2)(c)
amended by
No. 37/2014
s. 10(Sch.
item 36.9).

(c) a police officer may be pursuing a motor vehicle even if not travelling at the same speed as the vehicle; and

(d) it is irrelevant that the police pursuit is suspended or terminated before the motor vehicle being pursued stops.

(3) In this section—

direction to stop has the same meaning as it has in section 64A(5) of the **Road Safety Act 1986**;

motor vehicle does not include a vessel.

S. 320
amended by
Nos 6762
s. 13(e), 7184
s. 4,
substituted by
No. 7645 s. 4,
amended by
Nos 7876
s. 2(3), 9576
s. 11(1), 10084
s. 5,
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * * *

S. 321
amended by
No. 6561 s. 3,
repealed by
No. 7645 s. 5.

* * * * *

**Division 9AA—Offences connected with dangerous,
menacing and restricted breed dogs and related court
powers**

Pt 1 Div. 9AA
(Heading
amended by
No. 8/2014
s. 32.

Pt 1 Div. 9AA
(Heading and
ss 319A–
319C)
inserted by
No. 55/2011
s. 3.

Subdivision 1—Offences

Pt 1 Div. 9AA
Subdiv. 1
(Heading)
inserted by
No. 8/2014
s. 33.

319A Definitions

S. 319A
inserted by
No. 55/2011
s. 3.

In this Division—

control, in relation to a dangerous dog, menacing dog or restricted breed dog, includes failing to comply with any of the requirements under sections 24, 26(1), 28, 29, 38, 39, 40, 41, 41E, 41F(1)(a), 41G, 41H, 41HA and 41I of the **Domestic Animals Act 1994**;

dangerous dog has the same meaning as in section 3(1) of the **Domestic Animals Act 1994**;

menacing dog has the same meaning as in section 3(1) of the **Domestic Animals Act 1994**;

owner, in relation to a dangerous dog, menacing dog or restricted breed dog, has the same meaning as in section 3(1) of the **Domestic Animals Act 1994** and includes a person who is deemed to be an owner of the dog under section 4 of that Act;

s. 319B

restricted breed dog has the same meaning as in section 3(1) of the **Domestic Animals Act 1994** and includes a dog that is taken under section 3(3) of that Act to be a restricted breed dog.

S. 319B
inserted by
No. 55/2011
s. 3.

319B Failure to control dangerous, menacing or restricted breed dog that kills person

(1) If—

- (a) an owner of a dangerous dog, menacing dog or restricted breed dog fails to keep the dog under control; and
- (b) the dog kills another person (the *victim*); and
- (c) a reasonable person would have realised that that failure would expose the victim or any other person to an appreciable risk of death—

the owner is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

(2) If—

- (a) a person (other than the owner of a dangerous dog, menacing dog or restricted breed dog)—
 - (i) is, for the time being, in charge or has care of the dog; and
 - (ii) fails to keep the dog under control; and
 - (iii) is reckless as to whether the dog is a dangerous dog, menacing dog or restricted breed dog; and
- (b) the dog kills another person (the *victim*); and

- (c) a reasonable person would have realised that that failure would expose the victim or any other person to an appreciable risk of death—

the first mentioned person is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

319C Recklessness as to whether controlling dangerous, menacing or restricted breed dog may place another person in danger of death

S. 319C
inserted by
No. 55/2011
s. 3.

- (1) An owner of a dangerous dog, menacing dog or restricted breed dog who, without lawful excuse, recklessly engages in conduct so that the dog is not under control, and that conduct places or may place another person in danger of death, is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).
- (2) A person (other than the owner of a dangerous dog, menacing dog or restricted breed dog) who—
- (a) for the time being, is in charge or has care of the dog; and
- (b) is reckless as to whether the dog is a dangerous dog, menacing dog or restricted breed dog; and
- (c) without lawful excuse, recklessly engages in conduct so that the dog is not under control, and that conduct places or may place another person in danger of death—

S. 319C(1)
amended by
No. 8/2014
s. 34(1).

S. 319C(2)
amended by
No. 8/2014
s. 34(2).

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

s. 319D

Pt 1 Div. 9AA
Subdiv. 2
(Heading and
ss 319D–
319L)
inserted by
No. 8/2014
s. 35.

Subdivision 2—Disqualification of person from owning or being in charge or control of a dog

S. 319D
inserted by
No. 8/2014
s. 35.

319D Court may disqualify person from owning or being in charge or control of a dog

If a person has been convicted, found guilty or found not guilty because of mental impairment, of an offence against section 319B(1) or (2) or 319C(1) or (2), the court may, in addition to or instead of any other penalty, order—

- (a) that the person be disqualified for the period (not exceeding 10 years) specified in the order, from owning or being in charge or control of a dog; or
- (b) that the conditions, specified in the order, apply for the period specified in the order to the person whenever the person is in charge or control of a dog.

S. 319E
inserted by
No. 8/2014
s. 35.

319E Search warrant for failure to comply with court order

- (1) An authorised officer who is appointed by a Council under section 72 of the **Domestic Animals Act 1994** may apply to a magistrate for the issue of a search warrant in relation to premises (including residential premises) in the municipal district of that Council, if the authorised officer believes on reasonable grounds that a person subject to an order under section 319D is holding a dog on the premises in contravention of that order.

- (2) If the magistrate is satisfied, by the evidence on oath or by affidavit of the authorised officer, that there are reasonable grounds to believe that a person subject to an order under section 319D is holding a dog on the premises in contravention of that order, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an authorised officer who is appointed under section 72 of the **Domestic Animals Act 1994** by the Council for the municipal district in which the premises is located and who is named in the warrant—
- (a) to enter the premises; and
 - (b) to search for and seize the dog; and
 - (c) to dispose of the dog in accordance with the directions set out in the warrant.

319F Certain sections of the Domestic Animals Act 1994 apply to search warrant under this section

S. 319F
inserted by
No. 8/2014
s. 35.

For the purposes of section 319E, sections 84EB, 84F and 84G of the **Domestic Animals Act 1994** apply as if a reference in those sections to a search warrant issued under Part 7A were a reference to a search warrant issued under section 319E.

319G Order under section 319D may be suspended

S. 319G
inserted by
No. 8/2014
s. 35.

A court that has made an order under section 319D may suspend the order—

- (a) for any period which the court considers necessary for the person subject to the order to make arrangements for the custody of a dog; or
- (b) pending the determination of an appeal against the order.

s. 319H

S. 319H
inserted by
No. 8/2014
s. 35.

319H Person subject to order under section 319D may apply for variation, suspension or revocation of order

- (1) A person who is subject to an order under section 319D may apply to the court that made the order for the variation, suspension or revocation of the order.
- (2) An application under subsection (1) may be made no earlier than 12 months after the order is made.

S. 319I
inserted by
No. 8/2014
s. 35.

319I Power of court to vary etc. order under section 319D

- (1) On application under section 319H, the court may by order—
 - (a) vary an order under section 319D as specified, and from the date specified, in the order; or
 - (b) suspend the order, from the date specified in the order, for a specified period; or
 - (c) revoke the order; or
 - (d) refuse the application.
- (2) In making an order under subsection (1), the court may have regard to any one or more of the following matters—
 - (a) the applicant's character;
 - (b) the applicant's conduct since the order under section 319D was made;
 - (c) the nature of the offence or offences (if any) on which that order was based;
 - (d) any other relevant circumstances.

s. 319J

319J Person may not make another application for variation, suspension or revocation of order for 12 months

S. 319J
inserted by
No. 8/2014
s. 35.

If a court makes an order for a variation under section 319I(1)(a) or refuses an application under section 319I(1)(d), the person who applied for the relevant application under section 319H must not make another application under section 319H until 12 months after the order for the variation was made or the application was refused (as the case may be).

319K Orders under section 319D are to operate consecutively

S. 319K
inserted by
No. 8/2014
s. 35.

If a person is disqualified under an order under section 319D(a) and, during the period of disqualification, a court makes a further order under that section in respect of that person, the further order takes effect immediately after the end of the period of disqualification fixed by the initial order.

319L Person must comply with order under section 319D

S. 319L
inserted by
No. 8/2014
s. 35.

A person who is subject to an order under section 319D must comply with the order.

Penalty: 240 penalty units or imprisonment for 2 years.

Division 9A—Penalties for certain common law offences

Pt 1 Div. 9A
(Heading and
s. 320)
inserted by
No. 48/1997
s. 56.

320 Maximum term of imprisonment for certain common law offences

New s. 320
inserted by
No. 48/1997
s. 56,
amended by
No. 8/2008
s. 13.

An offence at common law specified in column 1 of the Table is punishable by the maximum term of imprisonment specified opposite it in column 2 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Common law offence</i>	<i>Maximum Term of Imprisonment</i>
Affray	Level 6 imprisonment (5 years maximum)
Attempt to pervert the course of justice	Level 2 imprisonment (25 years maximum)
Breach of prison	Level 6 imprisonment (5 years maximum)
Bribery of public official	Level 5 imprisonment (10 years maximum)
Common assault	Level 6 imprisonment (5 years maximum)
Conspiracy to cheat and defraud	Level 4 imprisonment (15 years maximum)
Conspiracy to defraud	Level 4 imprisonment (15 years maximum)
Criminal defamation	Level 5 imprisonment (10 years maximum)
Embracery	Level 4 imprisonment (15 years maximum)
False imprisonment	Level 5 imprisonment (10 years maximum)
Kidnapping	Level 2 imprisonment (25 years maximum)
Misconduct in public office	Level 5 imprisonment (10 years maximum)
Perverting the course of justice	Level 2 imprisonment (25 years maximum)
Public nuisance	Level 6 imprisonment (5 years maximum)
Riot	Level 5 imprisonment (10 years maximum)
Rout	Level 6 imprisonment (5 years maximum)
Unlawful assembly	Level 6 imprisonment (5 years maximum)
Wilful exposure	Level 6 imprisonment (5 years maximum).

Division 10—Conspiracy

Pt 1 Div. 10
(Heading and
s. 322)
repealed by
No. 9576
s. 8(a), new
Pt 1 Div. 10
(Heading and
ss 321–321F)
inserted by
No. 10079
s. 7(2).

321 Conspiracy to commit an offence

New s. 321
inserted by
No. 10079
s. 7(2).

- (1) Subject to this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will involve the commission of an offence by one or more of the parties to the agreement, he is guilty of the indictable offence of conspiracy to commit that offence.
- (2) For a person to be guilty under subsection (1) of conspiracy to commit a particular offence both he and at least one other party to the agreement—
 - (a) must intend that the offence the subject of the agreement be committed; and
 - (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time when the conduct constituting the offence is to take place.
- (3) A person may be guilty under subsection (1) of conspiracy to commit an offence notwithstanding the existence of facts of which he is unaware which make commission of the offence by the agreed course of conduct impossible.

s. 321A

S. 321(4)
inserted by
No. 10233
s. 9(a),
amended by
No. 68/2009
s. 97(Sch.
item 40.15).

- (4) An indictment charging an offence against this section must not be filed without the approval of the Director of Public Prosecutions or of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this subsection.

S. 321A
inserted by
No. 10079
s. 7(2).

321A Agreements to commit offences outside Victoria

- (1) The expression *the commission of an offence* in section 321(1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—
- (a) the necessary elements of that offence include elements which, if present or occurring in Victoria, would constitute an offence against a law in Victoria; and
 - (b) one or more of the persons referred to in section 321(1) is or are in Victoria when the agreement referred to in that subsection is made.
- (2) Where all parties to an agreement are outside Victoria when it is made, section 321 shall apply in relation to it if, but only if, that agreement is to pursue a course of conduct which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence against a law in force in Victoria.

(See R. v.
Darby (1982)
40 ALR 594).
S. 321B
inserted by
No. 10079
s. 7(2).

321B As to consequences of acquittal of co-conspirators

It is hereby declared that the conviction of a conspirator whether tried together with or separately from another alleged conspirator or other alleged conspirators may stand notwithstanding that the other alleged conspirator or conspirators is or may be acquitted unless in all the circumstances of the case the conviction is

inconsistent with the acquittal of the other alleged conspirator or conspirators.

321C Penalties for conspiracy

S. 321C
inserted by
No. 10079
s. 7(2).

(1) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force in Victoria—

(a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;

(b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the person shall be liable to level 4 imprisonment (15 years maximum);

S. 321C(1)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 62(a)),
48/1997
s. 60(1)(Sch. 1
item 90(a)).

(ba) despite paragraph (b), if the relevant offence, or any of the relevant offences, is murder or treason, the person is liable to—

S. 321C(1)(ba)
inserted by
No. 41/1993
s. 22(a),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 90(b)(i)).

(i) level 1 imprisonment (life); or

S. 321C(1)
(ba)(i)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 90(b)(ii)).

(ii) imprisonment for such other term as is fixed by the court—

as the court determines;

(c) subject to paragraphs (a), (b), (ba) and (d), if the relevant offence, or any of the relevant offences, is an offence for which a maximum penalty is prescribed by law, the person shall be liable to a penalty not exceeding that

S. 321C(1)(c)
amended by
No. 41/1993
s. 22(b).

s. 321C

maximum penalty or the accumulated maximum penalties, as the case may be; or

S. 321C(1)(d) amended by Nos 57/1989 s. 3(Sch. item 42.17), 49/1991 s. 119(1) (Sch. 2 item 62(b)(i)), 68/2009 s. 97(Sch. item 40.16).

- (d) if the relevant offence, or each of the relevant offences, may be heard and determined only in the Magistrates' Court, the person shall be liable to—

S. 321C(1) (d)(i) substituted by Nos 49/1991 s. 119(1) (Sch. 2 item 62(b)(ii)), 48/1997 s. 60(1)(Sch. 1 item 90(c)(i)).

- (i) level 6 imprisonment (5 years maximum); or

S. 321C(1) (d)(ii) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 62(b)(iii)).

- (ii) imprisonment for a term not exceeding the maximum term of imprisonment (if any) prescribed in respect of the relevant offence or the greatest of the maximum terms prescribed in respect of any of the relevant offences, as the case requires—

whichever is the greater.

- (2) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force only in a place outside Victoria—

S. 321C(2)(a) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 62(c)(i)), 48/1997 s. 60(1)(Sch. 1 item 91).

- (a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to a term of imprisonment not exceeding the maximum term of imprisonment prescribed in respect of the relevant offence; and

(b) the person shall, in any other case, be liable to a level 6 fine (600 penalty units maximum).

S. 321C(2)(b) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 62(c)(ii)), 69/1997 s. 22(8).

321D Application of certain provisions

Sections 321(2) and (3) and 321B shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

S. 321D inserted by No. 10079 s. 7(2).

321E Limitations on prosecution

- (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321 for conspiracy to commit that offence.
- (2) Where—
 - (a) an indictable offence has been committed in pursuance of an agreement; and
 - (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—proceedings under section 321 for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.
- (3) A person shall not be liable to be convicted in respect of the same agreement of both—
 - (a) conspiracy under section 321; and

S. 321E inserted by No. 10079 s. 7(2).

s. 321F

(b) conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

S. 321F
inserted by
No. 10079
s. 7(2).

321F Abolition of certain offences of conspiracy at common law

- (1) The offence of conspiracy at common law is hereby abolished.
- (2) Nothing in subsection (1) shall affect the offence of conspiracy at common law so far as it relates to conspiracy to cheat and defraud and conspiracy to defraud.
- (3) Any offence at common law of incitement to commit the offence of conspiracy or attempt to commit the offence of conspiracy (whether the offence of conspiracy incited or attempted would be an offence at common law or under section 321 or any other enactment) is hereby abolished.
- (4) An indictment charging an offence of conspiracy to cheat and defraud or conspiracy to defraud must not be filed without the approval of the Director of Public Prosecutions or of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this subsection.

S. 321F(4)
inserted by
No. 10233
s. 9(b),
amended by
No. 68/2009
s. 97(Sch.
item 40.17).

Division 11—Incitement

Pt 1 Div. 11
(Heading and
ss 321G–
321L)
inserted by
No. 10079
s. 7(2).

321G Incitement

- (1) Subject to this Act, where a person in Victoria or elsewhere incites any other person to pursue a course of conduct which will involve the commission of an offence by—

S. 321G
inserted by
No. 10079
s. 7(2).

-
- (a) the person incited;
 - (b) the inciter; or
 - (c) both the inciter and the person incited—
if the inciting is acted on in accordance with the inciter's intention, the inciter is guilty of the indictable offence of incitement.
- (2) For a person to be guilty under subsection (1) of incitement the person—
- (a) must intend that the offence the subject of the incitement be committed; and
 - (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence in question will exist at the time when the conduct constituting the offence is to take place.
- (3) A person may be guilty under subsection (1) of incitement notwithstanding the existence of facts of which the person is unaware which make commission of the offence in question by the course of conduct incited impossible.

321H Incitement to commit offences outside Victoria

The expression *the commission of an offence* in section 321G(1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—

- (a) the necessary elements of the offence consist of or include elements which, if present or occurring in Victoria, would constitute an offence against a law in force in Victoria; and
- (b) the person inciting is in Victoria at the time of the inciting.

S. 321H
inserted by
No. 10079
s. 7(2),
amended by
No. 25/1989
s. 20(g).

s. 321I

321I Penalties for incitement

S. 321I
inserted by
No. 10079
s. 7(2).

(1) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law or laws in force in Victoria—

(a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;

S. 321I(1)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 92(a)).

(b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the person shall be liable to level 4 imprisonment (15 years maximum);

S. 321I(1)(ba)
inserted by
No. 41/1993
s. 23(a),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 92(b)(i)).

(ba) despite paragraph (b), if the relevant offence, or any of the relevant offences, is murder or treason, the person is liable to—

S. 321I(1)
(ba)(i)
substituted by
No. 48/1997
s. 60(1)(Sch. 1
item 92(b)(ii)).

(i) level 1 imprisonment (life); or

(ii) imprisonment for such other term as is fixed by the court—

as the court determines;

S. 321I(1)(c)
amended by
No. 41/1993
s. 23(b).

(c) subject to paragraphs (a), (b), (ba) and (d), if the relevant offence, or any of the relevant offences is an offence for which a maximum penalty is prescribed by law, the person shall be liable to a penalty not exceeding that maximum penalty or the accumulated maximum penalties, as the case may be; or

(d) if the relevant offence, or each of the relevant offences, may be heard and determined only in the Magistrates' Court, the person shall be liable to—

S. 321I(1)(d) amended by Nos 57/1989 s. 3(Sch. item 42.18), 49/1991 s. 119(1) (Sch. 2 item 63(a)(i)), 68/2009 s. 97(Sch. item 40.18).

(i) level 6 imprisonment (5 years maximum); or

S. 321I(1)(d)(i) substituted by Nos 49/1991 s. 119(1) (Sch. 2 item 63(a)(ii)), 48/1997 s. 60(1)(Sch. 1 item 92(c)).

(ii) imprisonment for a term not exceeding the maximum term of imprisonment (if any) prescribed in respect of the relevant offence or the greatest of the maximum terms prescribed in respect of any of the relevant offences as the case requires—

S. 321I(1)(d)(ii) amended by No. 49/1991 s. 119(1) (Sch. 2 item 63(a)(iii)).

whichever is the greater.

(2) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law in force only in a place outside Victoria—

(a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to a term of imprisonment not exceeding the maximum term of imprisonment prescribed in respect of the relevant offence; and

S. 321I(2)(a) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 63(b)(i)), 48/1997 s. 60(1)(Sch. 1 item 93).

s. 321J

S. 321I(2)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 63(b)(ii)),
69/1997
s. 22(9).

(b) the person shall, in any other case, be liable to a level 6 fine (600 penalty units maximum).

S. 321J
inserted by
No. 10079
s. 7(2).

321J Application of certain provisions

Subsections (2) and (3) of section 321G shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of incitement under any enactment other than section 321G.

S. 321K
inserted by
No. 10079
s. 7(2).

321K Limitations on prosecution

- (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321G for incitement to commit that offence.
- (2) Where—
 - (a) an indictable offence has been committed; and
 - (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—proceedings under section 321G for incitement to commit that offence shall not be instituted against any person.
- (3) A person shall not be liable to be convicted in respect of the same inciting of both—
 - (a) incitement under section 321G; and
 - (b) incitement under any enactment other than section 321G.

321L Incitement at common law abolished

The offence of incitement at common law is hereby abolished.

S. 321L
inserted by
No. 10079
s. 7(2).

Division 12—Attempts

Pt 1 Div. 12
(Heading and
(ss 321M–
321S)
inserted by
No. 10233 s. 4.

321M Attempt

A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.

S. 321M
inserted by
No. 10233 s. 4.

321N Conduct constituting attempt

S. 321N
inserted by
No. 10233 s. 4.

- (1) A person is not guilty of attempting to commit an offence unless the conduct of the person is—
 - (a) more than merely preparatory to the commission of the offence; and
 - (b) immediately and not remotely connected with the commission of the offence.
- (2) For a person to be guilty of attempting to commit an offence, the person must—
 - (a) intend that the offence the subject of the attempt be committed; and
 - (b) intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time the offence is to take place.
- (3) A person may be guilty of attempting to commit an offence despite the existence of facts of which he or she is unaware which make the commission of the offence attempted impossible.

s. 321O

S. 321O
inserted by
No. 10233 s. 4.

321O Attempts to commit offence outside Victoria

- (1) A person in Victoria who attempts to commit in another State or in a Territory an offence which, if committed in whole or in part in Victoria, would be an indictable offence against the law of Victoria is guilty of the indictable offence of attempting to commit that offence.
- (2) A person outside Victoria who attempts to commit an indictable offence in Victoria is guilty of the indictable offence of attempting to commit that offence.
- (3) In subsection (1), *Territory* means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

S. 321P
inserted by
No. 10233 s. 4.

321P Penalties for attempt

S. 321P(1)
substituted by
No. 49/1991
s. 119(1)
(Sch. 2
item 64).

- (1) A person convicted of attempting to commit an offence is liable—
 - (a) if the penalty for the relevant offence is set out by reference to an expression specified in column 1 of the Table, to the penalty set out opposite it in column 2 of the Table:

TABLE

<i>Column 1</i>	<i>Column 2</i>
Level 1 imprisonment (life)	Level 2 imprisonment (25 years maximum)
Level 2 imprisonment (25 years maximum)	Level 3 imprisonment (20 years maximum)
Level 2 fine (3000 penalty units maximum)	Level 3 fine (2400 penalty units maximum)
Level 3 imprisonment (20 years maximum)	Level 4 imprisonment (15 years maximum)
Level 3 fine (2400 penalty units maximum)	Level 4 fine (1800 penalty units maximum)

S. 321P(1)(a)
Table
substituted by
Nos 48/1997
s. 60(1)(Sch. 1
item 94(a)),
69/1997
s. 23.

Crimes Act 1958
 No. 6231 of 1958
 Part I—Offences

s. 321P

<i>Column 1</i>	<i>Column 2</i>
Level 4 imprisonment (15 years maximum)	Level 5 imprisonment (10 years maximum)
Level 4 fine (1800 penalty units maximum)	Level 5 fine (1200 penalty units maximum)
Level 5 imprisonment (10 years maximum)	Level 6 imprisonment (5 years maximum)
Level 5 fine (1200 penalty units maximum)	Level 6 fine (600 penalty units maximum)
Level 6 imprisonment (5 years maximum)	Level 7 imprisonment (2 years maximum)
Level 6 fine (600 penalty units maximum)	Level 7 fine (240 penalty units maximum)
Level 7 imprisonment (2 years maximum)	Level 8 imprisonment (1 year maximum)
Level 7 fine (240 penalty units maximum)	Level 8 fine (120 penalty units maximum)
Level 8 imprisonment (1 year maximum)	Level 9 imprisonment (6 months maximum)
Level 8 fine (120 penalty units maximum)	Level 9 fine (60 penalty units maximum)
Level 9 imprisonment (6 months maximum)	Level 10 fine (10 penalty units maximum)
Level 9 fine (60 penalty units maximum)	Level 10 fine (10 penalty units maximum)
Level 10 fine (10 penalty units maximum)	Level 11 fine (5 penalty units maximum)
Level 11 fine (5 penalty units maximum)	Level 12 fine (1 penalty unit maximum)
Level 12 fine (1 penalty unit maximum)	Level 12 fine (1 penalty unit maximum)

s. 321Q

- (b) if the penalty for the relevant offence is not set out by reference to an expression specified in column 1 of the Table in paragraph (a), to a penalty not exceeding 60% of the maximum penalty fixed or prescribed by law for the relevant offence; or
- (c) if the maximum penalty for the relevant offence is not fixed or prescribed by law, to level 6 imprisonment (5 years maximum).

S. 321P(1)(c)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 94(b)).

S. 321P(1A)
inserted by
No. 41/1993
s. 24,
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 95(a)(b)).

- (1A) For the avoidance of doubt, it is declared that if a person is convicted of attempting to commit murder or treason, the person is liable to level 2 imprisonment (25 years maximum).
- (2) A person convicted under this Division of attempting to commit an offence for which, under another enactment, a penalty is provided that is lower than that provided under subsection (1), the person is liable only to that lower penalty.
- (3) In this section, a reference to a maximum penalty includes, in relation to an offence against the law of a place outside Victoria, a reference to a maximum penalty (not exceeding life imprisonment) fixed or prescribed by a law of that place and, if a maximum penalty so fixed or prescribed exceeds life imprisonment, is a reference to life imprisonment.

S. 321Q
inserted by
No. 10233 s. 4.

321Q Limitations on prosecution

- (1) Any provision to which this section applies has the same effect with respect to an offence of attempting to commit an offence as it has with respect to the offence attempted.

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- (2) This section applies to provisions of any of the following descriptions made by or under any enactment—
- (a) provisions concerning the power to institute proceedings;
 - (b) provisions conferring a power of search in respect of persons or property;
 - (c) provisions conferring a power of seizure or detention of property;
 - (d) provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than two credible witnesses);
 - (e) provisions conferring a power to fine or of forfeiture, including any power to deal with anything liable to be forfeited;
 - (f) provisions concerning the liability of a person for the commission of an offence by a body corporate.
- (3) A person is not liable to be convicted in respect of the same conduct of both—
- (a) an offence under section 321M; and
 - (b) an offence under any other enactment of attempting to commit an offence.

321R Application of Division

- (1) This Division applies to and in respect of an offence under any other enactment of attempting to commit an offence.

S. 321R
inserted by
No. 10233 s. 4.

s. 321S

- (2) The preceding provisions of this Division do not apply to an attempt—
- (a) to aid, abet, counsel or procure the commission of an indictable offence; or
 - (b) to commit the offence of conspiracy whether that offence is a statutory offence or an offence at common law.

S. 321S
inserted by
No. 10233 s. 4.

321S Abolition of attempt at common law

The offence of attempt at common law is abolished.

PART IA—ABOLITION OF OBSOLETE OFFENCES

Pt 1A
(Heading and
s. 322A)
inserted by
No. 7884
s. 2(2).

322A Maintenance and certain other offences abolished

S. 322A
inserted by
No. 7884
s. 2(2).

Any distinct offences under the common law of maintenance (including champerty but not embracery), or of being a common barrator, a common scold or a common night walker are hereby abolished.

s. 322B

Pt 1B
(Heading and
ss 322B–
322F)
inserted by
No. 9576 s. 2.

PART IB—ABOLITION OF HISTORICAL CLASSIFICATIONS

S. 322B
inserted by
No. 9576 s. 2.

322B Abolition of distinctions between felony and misdemeanour

- (1) All distinctions between felony and misdemeanour are hereby abolished.
- (2) Subject to section 322D, in all matters in which before the commencement of this Part a distinction has been made between felony and misdemeanour (including mode of trial), the law and practice in relation to all indictable offences cognizable under the law of Victoria (including piracy and offences deemed to be piracy) shall be the law and practice applicable immediately before the commencement of this Part in relation to misdemeanour.

S. 322C
inserted by
No. 9576 s. 2.

322C Nomenclature

- (1) Subject to any express amendment or repeal made by the **Crimes (Classification of Offences) Act 1981**, any enactment passed before the commencement of this Part and creating an offence by directing it to be a felony shall be read as directing it to be an indictable offence.
- (2) Nothing in this Part shall affect the operation of any reference to an indictable offence in the enactments specially relating to that offence by reason only of the reference being in terms no longer applicable after the commencement of this Part.

- (3) Any offence known to the common law as a felony or a misdemeanour shall on and from the commencement of this Part be known as an indictable offence.
- (4) Subject to subsection (1) and to any express amendment or repeal made by the **Crimes (Classification of Offences) Act 1981**, a reference in any instrument or document whatsoever (including Acts, rules, regulations and other instruments of a legislative character) to—
- (a) a class of felony; or
 - (b) felonies in general—
- shall be read and construed as a reference to that class of serious indictable offence or to serious indictable offences generally, as the case requires; and for the purposes of this subsection the expression *serious indictable offence* has the same meaning as it has in section 325.
- (5) Where in any Act, rule, regulation or other instrument of a legislative character a provision is expressed to apply to or in relation to indictable offences, the provision shall be read and construed as applying to offences which may be tried on indictment, including offences which may, or may in certain circumstances, also be heard and determined summarily.

S. 322C(5)
amended by
No. 68/2009
s. 97(Sch.
item 40.19).

322D Transitional provisions

S. 322D
inserted by
No. 9576 s. 2.

- (1) This Part, insofar as it affects any matter of procedure or evidence or the jurisdiction or powers of any court in relation to indictable offences, shall have effect in relation to proceedings on indictment or presentment for an offence (except as provided by the following subsections of this section) if, but only if, the person charged with the offence is arraigned after the commencement of this Part.

s. 322E

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- (2) Where a person is arraigned after the commencement of this Part on indictment or presentment for a felony committed before that commencement, the offence shall for the purposes of his trial on that indictment or presentment be deemed always to have been a misdemeanour and, notwithstanding that the indictment or presentment is framed for felony, shall be deemed to be charged as a misdemeanour.
- (3) On an indictment or presentment found or made before the commencement of this Part a person may notwithstanding subsection (2) be found guilty of any offence of which he could have been found guilty on the indictment or presentment if the **Crimes (Classification of Offences) Act 1981** had not come into operation, but not of any other offence.

S. 322E
inserted by
No. 9576 s. 2.

322E Treason and misprision of treason not affected

Nothing in this Part shall be taken to affect directly or indirectly any matter of law or practice applicable to treason or misprision of treason.

S. 322F
inserted by
No. 9576 s. 2.

322F Other enactments not affected

This Part shall not affect the operation of any enactment restricting the institution of proceedings for an offence.

PART II—OFFENDERS

Division 1—Abettors, accessories and concealers of offences

Pt 2 Div. 1
(Heading)
substituted by
No. 9576
s. 4(1).

(1) Abettors in indictable offences

Pt 2 Div. 1
Subdiv. (1)
(Heading and
s. 323)
substituted by
No. 9576
s. 4(1).

323 Abettors in indictable offences triable as principal offenders

S. 323
substituted by
No. 9576
s. 4(1),
amended by
No. 68/2009
s. 97(Sch.
item 40.20).

A person who aids, abets, counsels or procures the commission of an indictable offence may be tried or indicted and punished as a principal offender.

(2) Abettors in offences punishable summarily

Pt 2 Div. 1
Subdiv. (2)
(Heading and
ss 324–328)
substituted as
Pt 2 Div. 1
Subdiv. (2)
(Heading and
s. 324) by
No. 9576
s. 4(1).

324 Abettors in summary offences triable as principal offenders

S. 324
substituted by
No. 9576
s. 4(1).

A person who aids, abets, counsels or procures the commission of an offence which is by this Act punishable on summary conviction either for every time of its commission or for the first and second time only shall be liable for every first, second or subsequent offence of aiding, abetting, counselling or procuring to the same punishment as a principal offender.

s. 325

Pt 2 Div. 1
Subdiv. (3)
(Heading)
inserted by
No. 9576
s. 4(1).

(3) Accessories

S. 325
substituted by
No. 9576
s. 4(1).

325 Accessories

- (1) Where a person (in this section called *the principal offender*) has committed a serious indictable offence (in this section called *the principal offence*), any other person who, knowing or believing the principal offender to be guilty of the principal offence or some other serious indictable offence, without lawful authority or reasonable excuse does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of the principal offender shall be guilty of an indictable offence.
- (2) If, on the trial of any person for a serious indictable offence, the jury are satisfied that the offence charged (or some other serious indictable offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).
- (3) A person charged with an offence against subsection (1) may be indicted and convicted together with or before or after the principal offender and whether or not the principal offender is amenable to justice.

S. 325(3)
amended by
No. 68/2009
s. 97(Sch.
item 40.21).

(4) A person convicted of an offence against subsection (1) shall be liable—

(a) if the principal offence is one for which the penalty is level 1 imprisonment (life) to level 3 imprisonment (20 years maximum); or

S. 325(4)(a) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 65(a)), amended by No. 48/1997 s. 60(1)(Sch. 1 item 96(a)).

(b) in any other case, to imprisonment for a term which is neither—

(i) more than 5 years in length; nor

S. 325(4)(b)(i) amended by No. 49/1991 s. 119(1) (Sch. 2 item 65(b)), substituted by No. 48/1997 s. 60(1)(Sch. 1 item 96(b)).

(ii) more than one-half the length of the longest term which may be imposed on first conviction for the principal offence.

* * * * *

S. 325(5) repealed by No. 9848 s. 18(1).

(6) In this section, *serious indictable offence* means an indictable offence which, by virtue of any enactment, is punishable on first conviction with imprisonment for life or for a term of five years or more.

s. 326

Pt 2 Div. 1
Subdiv. (4)
(Heading)
inserted by
No. 9576
s. 4(1).

(4) *Concealers of offences*

S. 326
substituted by
No. 9576
s. 4(1).

326 Concealing offences for benefit

S. 326(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 66),
48/1997
s. 60(1)(Sch. 1
item 97(a)(b)).

- (1) Where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence, has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information shall be guilty of a summary offence and liable to level 8 imprisonment (1 year maximum).
- (2) Notwithstanding anything to the contrary in subsection (1), it is no offence against this section to fail to disclose the commission of any offence against—
 - (a) Division 2 of Part I; or
 - (b) subdivision (1), (2) or (3) of Division 3 of Part I—

if the only benefit accepted in return for failing to disclose the commission of the offence is the making good of any loss or injury caused by its commission or the making of reasonable compensation for any such loss or injury.

(3) For the purposes of this section a person shall be deemed to accept a benefit if he accepts or agrees to accept any benefit or advantage, or the promise of any benefit or advantage, either to himself or to another, whether or not the benefit or advantage is in money or money's worth.

* * * * * S. 326(4)
repealed by
No. 9848
s. 18(1).

(5) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

(6) In this section, *serious indictable offence* has the same meaning as it has in section 325.

* * * * * Ss 327–332
repealed.²³

* * * * * Pt 2 Div. 1
Subdivs (4)(5)
(Headings
and
ss 333, 334)
repealed by
No. 9576
s. 4(1).

* * * * * Pt 2 Div. 2
(Heading)
repealed by
No. 74/2000
s. 3(Sch. 1
item 30.3).

* * * * * S. 335
repealed by
No. 56/1989
s. 286(Sch. 2
item 7.1).

s. 336

Pt 2 Div. 3
(Heading and
ss 336–350)
amended by
Nos 7705
s. 10, 7876
s. 2(3),
repealed by
No. 8338 s. 5,
new Pt 2
Div. 3
(Heading and
ss 336–339)
inserted by
No. 9073
s. 2(b).

New s. 336
inserted by
No. 9073
s. 2(b).

S. 336(2)
amended by
No. 77/2005
s. 9.

Division 3—Criminal liability of married persons

336 Marital coercion

- (1) Any presumption that an offence committed by a wife in the presence of her husband is committed under his coercion is hereby abolished.
- (2) Where a woman is charged with an offence other than treason or murder, that woman shall have a complete defence to such charge if her action or inaction (as the case may be) was due to coercion by a man to whom she was then married.
- (3) For the purposes of this section *coercion* means pressure, whether in the form of threats or in any other form, sufficient to cause a woman of ordinary good character and normal firmness of mind, placed in the circumstances in which the woman was placed, to conduct herself in the manner charged.
- (4) Without limiting the generality of the expression "the circumstances in which the woman was placed" in subsection (3), such circumstances shall include the degree of dependence, whether economic or otherwise, of the woman on her husband.

- (5) The accused shall bear the burden of adducing evidence that she conducted herself in the manner charged because she was coerced by her husband, but if such evidence has been adduced, the prosecution shall bear the burden of proving that the action or inaction charged was not due to coercion by the husband.
- (6) This section shall operate in substitution for the common law as to any presumption or defence of marital coercion.
- (7) This section shall not affect the law relating to the defence of duress.

337 Misprision

A married person shall not become guilty of misprision by concealing or failing to disclose the commission of an indictable offence by his or her spouse, or by the spouse and another party or parties, nor by concealing or failing to disclose facts which might lead to the apprehension of the spouse, or the spouse and such other or others, in respect of the offence.

New s. 337
inserted by
No. 9073
s. 2(b).

338 Accessory after the fact

A married person shall not become an accessory to any indictable offence by receiving, relieving, comforting or assisting his or her spouse, or the spouse and another person or persons, though with knowledge that the spouse, whether alone or with the other person or persons, has committed an offence and though the purpose of what is done is to enable the spouse, or the spouse and the other person or persons, to escape being apprehended, tried or punished.

New s. 338
inserted by
No. 9073
s. 2(b),
amended by
Nos 9228
s. 2(1)(i), 9576
s. 11(1),
19/1987 s. 28.

s. 339

New s. 339
inserted by
No. 9073
s. 2(b).

339 Conspiracy and incitement

- (1) A married person shall be criminally responsible for incitement or conspiracy to commit treason or murder and for any offence specified in section 4 as if he or she were unmarried.
- (2) Subject to subsection (1), a married person shall not be criminally responsible for conspiracy with his or her spouse alone, nor for incitement of his or her spouse to commit a criminal offence.
- (3) Nothing in subsection (2) shall affect the liability of a married person as a principal offender in any offence except conspiracy or incitement.

S. 339(3)
amended by
No. 9576
s. 11(1).

Ss 340–350
repealed by
No. 8338 s. 5.

* * * * *

PART IIA—EXTRA-TERRITORIAL OFFENCES

Pt 2A
(Heading and
ss 340–345)
inserted by
No. 70/1987
s. 4.

340 Definitions

New s. 340
inserted by
No. 70/1987
s. 4.

(1) In this Part—

appropriate authority means—

S. 340(1)
def. of
*appropriate
authority*
amended by
No. 37/2014
s. 10(Sch.
item 36.10(a)).

- (a) in relation to another State of the Commonwealth, or a Territory of the Commonwealth (other than the Australian Capital Territory)—an authority exercising in relation to the police force or police service of that State or Territory functions corresponding to those of the Chief Commissioner appointed under the **Victoria Police Act 2013** in relation to Victoria Police;
- (b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police;

corresponding law means a law of another State, or of a Territory, of the Commonwealth declared by Proclamation to be a corresponding law;

night means the interval between 9 o'clock in the evening and 6 o'clock in the morning;

obstruct includes assault, threaten, abuse, insult, intimidate, hinder and attempt to obstruct;

offence to which this Part applies means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs which, if done or occurring in Victoria, would attract criminal liability under the law of Victoria);

owner, of an object, includes a person entitled to possession of the object;

S. 340(1)
def. of
police force
repealed by
No. 37/2014
s. 10(Sch.
item 36.10(b)).

* * * * *

premises means a building, structure or any place whatsoever (whether built upon or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle;

reciprocating State means another State, or a Territory, of the Commonwealth—

- (a) in which a corresponding law is in force; and
- (b) in relation to which arrangements are in force under section 344;

search warrant means a warrant under this Part authorising a search of premises.

(2) For the purposes of this Part—

- (a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed; or
- (b) anything that may afford evidence of the commission of an offence; or

(c) anything intended to be used for the purpose of committing an offence—

is an object relevant to the investigation of the offence.

- (3) The Governor in Council may, by proclamation published in the Government Gazette, declare a law of another State, or of a Territory, of the Commonwealth to be a corresponding law.

341 Issue of search warrant

New s. 341
inserted by
No. 70/1987
s. 4.

- (1) If, upon the application of a police officer, a magistrate is satisfied that there are reasonable grounds to believe—
- (a) that an offence to which this Part applies has been, or is intended to be, committed; and
- (b) that there is at any premises an object relevant to the investigation of that offence—

S. 341(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

the magistrate may issue a search warrant in respect of those premises.

- (2) The grounds of an application for a search warrant must be verified by affidavit.
- (3) A magistrate by whom a search warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, with the principal registrar of the Court.

S. 341(3)
amended by
No. 57/1989
s. 3(Sch.
item 42.19).

342 Authority conferred by and other incidents of a search warrant

New s. 342
inserted by
No. 70/1987
s. 4.

S. 342(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

S. 342(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

S. 342(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

S. 342(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

- (1) A search warrant authorises any police officer, with such assistants as he or she thinks necessary, to enter and search the premises to which the warrant relates, and anything in those premises.
- (2) Subject to any direction by a magistrate authorising execution of a search warrant at night, or during specified hours of the night, it must not be executed at night.
- (3) A police officer, or a person assisting him or her, may use such force as is reasonably necessary for the execution of a search warrant.
- (4) A police officer executing a search warrant may seize and remove any object that he or she believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.
- (5) An object seized and removed under subsection (4) must be dealt with in accordance with arrangements in force under section 344.
- (6) A police officer who executes a search warrant—
 - (a) must prepare a notice in the prescribed form containing—
 - (i) his or her own name and rank;
 - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and

- (iii) a description of any objects seized and removed in pursuance of the warrant; and
- (b) as soon as practicable, after the execution of the warrant, must give the notice to the occupier (if any) of the premises in respect of which the warrant was issued or leave it for him or her in a prominent position on those premises.
- (7) A search warrant, if not executed at the expiration of one month from the date of its issue, then expires.

343 Obstruction

New s. 343 inserted by No. 70/1987 s. 4, amended by Nos 49/1991 s. 119(1) (Sch. 2 item 67), 48/1997 s. 60(1)(Sch. 1 item 98).

- (1) A person must not, without lawful excuse, obstruct a police officer, or a person assisting a police officer, in the execution of a search warrant.

S. 343(1) amended by Nos 69/1997 s. 22(10), 37/2014 s. 10(Sch. item 36.11).

Penalty: Level 9 fine (60 penalty units maximum).

- (2) An offence under subsection (1) is a summary offence.

S. 343(2) inserted by No. 48/1997 s. 60(1)(Sch. 1 item 99).

344 Ministerial arrangements for transmission and return of seized objects

New s. 344 inserted by No. 70/1987 s. 4.

- (1) The Minister may enter into arrangements with a Minister to whom the administration of a corresponding law is committed under which—

-
- (a) objects seized under this Part that may be relevant to the investigation of an offence against the law of the State, or Territory in which the corresponding law is in force—
- (i) are to be transmitted to the appropriate authority in that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and
 - (ii) when no longer required for the purpose of any such investigation or proceedings, are (unless disposed of by order or direction of a court) to be returned to the Chief Commissioner of Police for Victoria; and
- (b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the law of Victoria—
- (i) are to be transmitted to the Chief Commissioner of Police of Victoria; and
 - (ii) when no longer required for the purposes of investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority in the State or Territory in which they were seized.
- (2) The owner of an object returned to the Chief Commissioner of Police in pursuance of arrangements under subsection (1) is entitled to the return of the objects.
- (3) The right referred to in subsection (2) is enforceable by action in detinue in a court of competent jurisdiction.

345 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Part to be prescribed to give effect to this Part.

New s. 345
inserted by
No. 70/1987
s. 4,
amended by
No. 10/1999
s. 31(5)(a).

s. 351

PART III—PROCEDURE AND PUNISHMENT

Division 1—Pleading procedure, proof &c.

<p>Pt 3 Div. 1 Subdiv. (1) (Heading and ss 351–356) repealed.²⁴</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (2) (Heading) repealed by No. 25/1989 s. 20(h)(i).</p>	*	*	*	*	*
<p>S. 357 amended by Nos 8338 s. 7(c), 9554 s. 2(2)(Sch. 2 item 59), 9576 s. 11(1), 9848 s. 18(1), repealed by No. 10260 s. 114(Sch. 4 item 4).</p>	*	*	*	*	*
<p>New Pt 3 Div. 1 Subdiv. (2) (Heading and s. 357) inserted by No. 49/1991 s. 119(7) (Sch. 4 item 4.1), repealed by 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 358

*	*	*	*	*	Pt 3 Div. 1 Subdiv. (3) (Heading) repealed by No. 7703 s. 5, new Pt 3 Div. 1 Subdiv. (3) (Heading) inserted by No. 8280 s. 13, amended by No. 9019 s. 2(1) (Sch. item 40), repealed by No. 9902 s. 2(1)(Sch. item 52).
*	*	*	*	*	S. 358 repealed by No. 7703 s. 5, new s. 358 inserted by No. 8280 s. 13, repealed by No. 9008 s. 2(1)(Sch. item 2(b)).
*	*	*	*	*	Pt 3 Div. 1 Subdiv. (4) (Heading) repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).
*	*	*	*	*	S. 359 repealed²⁵

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 359AA

S. 359AA
inserted by
No. 10026 s. 4,
amended by
Nos 110/1986
s. 140(2),
25/1989
s. 19(b),
57/1989
s. 3(Sch.
items 42.24,
42.25),
92/2000 s. 11,
50/2006 s. 12,
repealed by
No. 7/2009
s. 422(3) (as
amended by
No. 68/2009
s. 54(h))

* * * * *

S. 359A
inserted by
No. 8950 s. 4,
substituted by
No. 9509
s. 7(1),
amended by
Nos 110/1986
s. 140(2),
25/1989 s. 7,
57/1989
s. 3(Sch. item
42.26), 8/1991
s. 4, 81/1991
s. 10(Sch.
item 1.1),
35/1999
s. 34(2),
67/2000
s. 7(3),
50/2006
s. 7(3)(4),
18/2008 s. 3,
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

Crimes Act 1958
 No. 6231 of 1958
 Part III—Procedure and Punishment

s. 359B

*	*	*	*	*	<p>S. 359B inserted by No. 50/2006 s. 8, repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (5) (Heading and s. 360) repealed.²⁶</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (6) (Heading and s. 361) repealed.²⁷</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (7) (Heading) repealed by No. 9902 s. 2(1)(Sch. item 53).</p>
*	*	*	*	*	<p>S. 362 amended by No. 8338 s. 7(a), repealed by No. 9008 s. 2(1)(Sch. item 2(e)).</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (8) (Heading and s. 363) amended by Nos 8425 s. 2(1)(i), 9576 s. 11(1), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>

Crimes Act 1958
 No. 6231 of 1958
 Part III—Procedure and Punishment

s. 364

<p>Pt 3 Div. 1 Subdiv. (9) (Heading and ss 364–387) repealed.²⁸</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (10) (Heading and s. 388) amended by No. 35/1996 s. 453(Sch. 1 item 16.3), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (11) (Heading and s. 389) amended by Nos 7705 s. 10, 9576 s. 11(1), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (12) (Heading and ss 390–396) repealed. <small>29,30,31</small></p>	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 397

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Pt 3 Div. 1
Subdiv. (13)
(Heading and
s. 397)
amended by
Nos 35/1996
s. 453(Sch. 1
item 16.6),
18/2005
s. 18(Sch. 1
item 27.6),
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

**(14) Evidence. Depositions. Subpoenas and warrants against
witnesses**

* * * * *

S. 398
amended by
Nos 87/31
s. 173, 25/1989
s. 19(e),
57/1989
s. 3(Sch.
item 42.32),
12/1993
s. 4(a),
35/1996
s. 453(Sch. 1
item 16.7),
repealed by
No. 7/2009
s. 422(2)(b) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

S. 398A
inserted by
No. 37/1986
s. 5(a),
repealed by
No. 12/1993
s. 4(b),
new s. 398A
inserted by
No. 81/1997
s. 14,
repealed by
No. 69/2009
s. 42.

Crimes Act 1958
 No. 6231 of 1958
 Part III—Procedure and Punishment

s. 399

	*	*	*	*	*
<p>S. 399 amended by Nos 7546 s. 8, 8870 s. 5(2), 9008 s. 2(1)(Sch. item 2(f)), substituted by No. 9230 s. 2, amended by Nos 37/1986 s. 5(b), 25/1989 s. 19(f)(g), 57/1989 s. 3(Sch. items 42.33, 42.34), 12/1993 s. 4(c)–(e), 35/1996 s. 453(Sch. 1 item 16.8), 68/2009 s. 97(Sch. item 40.22), repealed by No. 69/2009 s. 43.</p>					
<p>S. 399A inserted by No. 8870 s. 4(1), amended by Nos 9848 s. 18(1), 57/1989 s. 3(Sch. item 42.35), 35/1996 s. 453(Sch. 1 item 16.9), repealed by No. 7/2009 s. 422(2)(b) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 399B

* * * * *

S. 399B
inserted by
No. 8870
s. 4(1),
amended by
No. 35/1996
s. 453(Sch. 1
item 16.10),
repealed by
No. 7/2009
s. 422(2)(b) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

S. 400
substituted by
No. 7546 s. 9,
amended by
Nos 7994 s. 3,
8338 s. 6, 8410
s. 2, 9019
s. 2(1)(Sch.
item 44),
substituted by
No. 9230 s. 3,
amended by
Nos 25/1989
s. 19(h),
57/1989
s. 3(Sch.
items 42.36,
42.37),
35/1996
s. 453(Sch. 1
item 16.11),
repealed by
No. 69/2009
s. 44.

* * * * *

S. 401
amended by
Nos 8338
s. 7(h)(k), 9576
s. 11(1),
repealed by
No. 7/2009
s. 422(2)(b) (as
amended by
No. 68/2009
s. 54(h))³².

s. 404

S. 402
amended by
No. 9576
s. 11(1),
repealed by
No. 7/2009
s. 422(2)(b) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

S. 403
repealed by
No. 6758 s. 3.

* * * * *

No. 6103
s. 404.

404 Proof of marriage on trial for bigamy

S. 404
amended by
No. 57/1989
s. 3(Sch.
item 42.38).

On the hearing before a magistrate of or on the trial of any person on a charge of having (during the life of his or her wife or husband) gone through the form or ceremony of marriage with some other person, the production of a copy of the register or other official record of a marriage or of an extract from such register or other official record shall on proof of the identity of such first-mentioned person be prima facie evidence of his or her marriage or of his or her having gone through the ceremony of marriage—

- (a) if such copy or extract is proved to be an examined copy or extract of or from the register or other official record of marriages kept in any portion of Her Majesty's dominions; or
- (b) if such copy or extract purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and if the facts that such officer is an officer intrusted with the custody of the original register or official record and that the signature thereto is the signature of such officer and that such register or other official record is an official record within the meaning of this Act purports to be certified

to by a judge of a superior court or Governor or Administrator of the Government of that portion of Her Majesty's dominions in which such register or official record is kept.

405 Meaning of term *official record*

No. 6103
s. 405.

- (1) For the purposes of the last preceding section, an official record of a marriage shall be such record of marriages as is required by law to be kept, or as is made by law evidence of marriages celebrated in that portion of Her Majesty's dominions in which the same is kept.
- (2) Nothing in this or the last preceding section shall apply to the proof of a marriage celebrated or of a ceremony of marriage performed in Victoria.

* * * * * Ss 406–408A
repealed.³³

* * * * * S. 409
amended by
Nos 8425
s. 2(1)(l), 9576
s. 11(1),
25/1989 s. 10,
repealed by
No. 7/2009
s. 422(2)(b) (as
amended by
No. 68/2009
s. 54(h)).

* * * * * S. 410
repealed by
No. 51/1989
s. 143(b).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 411

S. 411 amended by Nos 7705 s. 10, 7876 s. 2(3), 57/1989 s. 3(Sch. item 42.39), repealed by No. 69/2009 s. 46.	*	*	*	*	*
S. 412 repealed by No. 7/2009 s. 422(2)(b) (as amended by No. 68/2009 s. 54(h)).	*	*	*	*	*
S. 413 amended by Nos 8275 s. 12, 9059 s. 2(1)(Sch. item 10), 57/1989 s. 3(Sch. item 42.40), 10/1999 s. 8(5), 68/2009 s. 97(Sch. item 40.23), repealed by No. 69/2009 s. 47.	*	*	*	*	*
No. 6103 s. 414. S. 414 amended by No. 7703 s. 5, repealed by No. 7/2009 s. 422(2)(b) (as amended by No. 68/2009 s. 54(h)).	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 415

* * * * *

S. 415
amended by
Nos 7705
s. 10, 8410
s. 3, 9554
s. 2(2)(Sch. 2
item 60),
110/1986
s. 140(2),
19/1989
s. 16(Sch.
items 16.6,
16.7), 57/1989
s. 3(Sch.
items 42.41,
42.42),
49/1991
s. 119(1)
(Sch. 2
item 68),
69/1997
s. 22(11),
repealed by
No. 69/2009
s. 48.

* * * * *

Pt 3 Div. 1
Subdiv. (15)
(Heading and
s. 416)
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

Crimes Act 1958
 No. 6231 of 1958
 Part III—Procedure and Punishment

s. 417

<p>Pt 3 Div. 1 Subdiv. (16) (Heading and s. 417) amended by Nos 7705 s. 10, 8870 s. 5(1), 37/1986 s. 5(c), 12/1993 s. 4(f)(g), 35/1996 s. 453(Sch. 1 item 16.12), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (17) (Heading and s. 418) amended by Nos 8870 s. 5(1), 10084 s. 7, 37/1986 s. 5(d), 12/1993 s. 4(h), 35/1996 s. 453(Sch. 1 item 16.13), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (18) (Heading) repealed by No. 43/2012 s. 3(Sch. item 11.1)).</p>	*	*	*	*	*
<p>S. 419 repealed by No. 69/2009 s. 49.</p>	*	*	*	*	*

(19) Verdicts. Attempts, &c.

Pt 3 Div. 1
Subdiv. (19)
(Heading)
amended by
No. 65/1997
s. 82(2)(b).

* * * * *

S. 420
amended by
Nos 6884
s. 2(2),
102/1986
s. 8(c)(d),
repealed by
No. 65/1997
s. 82(2)(c).³⁴

420A Where person charged with unlawful publication of defamatory matter

cf. [1792] 32
George III
c. LX s. 1.

On the trial of a person charged with the unlawful publication of defamatory matter—

S. 420A
inserted by
No. 9407
s. 2(e).

- (a) the jury may give a general verdict of guilty or not guilty upon the whole matter in issue, in like manner as in other cases; and
- (b) the question whether any matter alleged to be defamatory is or is not capable of a defamatory meaning is a question of law.

421 Alternative verdicts on charge of murder

S. 421
substituted by
No. 9576 s. 6.

(1) On an indictment for murder a person found not guilty of murder may be found guilty of—

S. 421(1)
amended by
No. 68/2009
s. 97(Sch.
item 40.24).

- (a) manslaughter;
- (ab) child homicide;

S. 421(1)(ab)
inserted by
No. 7/2008
s. 7(3)(c).

- (b) any offence of which he may be found guilty under an enactment specifically so providing;

s. 422

- (c) an offence against section 325; or
- (d) an attempt to commit murder or an attempt to commit any offence of which he may by virtue of this subsection be found guilty—
- but may not be found guilty of any other offence.

S. 421(2)(3)
repealed by
No. 7/2009
s. 422(2)(c) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

S. 421(4)
amended by
Nos 110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 16.8),
repealed by
No. 7/2009
s. 422(2)(c) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

S. 422
substituted by
No. 9576 s. 6,
repealed by
No. 68/2009
s. 97(Sch.
item 40.25),
new s. 422
inserted by
No. 6/2013
s. 5.

422 Alternative verdict on charge of causing serious injury in circumstances of gross violence

- (1) If on the trial of a person charged with an offence against section 15A the jury are not satisfied that the person is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 16, the jury may acquit the accused of the offence charged and find the person guilty of an offence against section 16 and the person charged is liable to punishment accordingly.
- (2) If on the trial of a person charged with an offence against section 15B the jury are not satisfied that the person is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 17, the jury may acquit the accused of the offence charged and find the person guilty

of an offence against section 17 and the person charged is liable to punishment accordingly.

422A Alternative verdict for certain charges relating to driving

S. 422A inserted by No. 59/2004 s. 7.

(1) If on the trial of a person charged with an offence against section 318 (culpable driving causing death) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 319(1) (dangerous driving causing death), the jury may acquit the accused of the offence charged and find him or her guilty of the offence against section 319(1) and he or she is liable to punishment accordingly.

S. 422A(1) substituted by No. 7/2008 s. 5(3).

(1A) If on the trial of a person charged with an offence against section 24 (negligently causing serious injury) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 319(1A) (dangerous driving causing serious injury), the jury may acquit the accused of the offence charged and find him or her guilty of the offence against section 319(1A) and he or she is liable to punishment accordingly.

S. 422A(1A) inserted by No. 7/2008 s. 5(3).

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S. 422A(2) repealed by No. 68/2009 s. 97(Sch. item 40.26).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 425

<p>No. 6103 s. 423. S. 423 amended by Nos 9576 s. 11(1), 77/2005 s. 8(3)(b), 7/2008 s. 7(3)(d), repealed by No. 68/2009 s. 97(Sch. item 40.27).</p>	*	*	*	*	*
<p>No. 6103 s. 424. S. 424 amended by No. 9576 s. 11(1), repealed by No. 68/2009 s. 97(Sch. item 40.28).</p>	*	*	*	*	*
<p>S. 425 substituted by Nos 7577 s. 4, 9509 s. 8, 8/1991 s. 5.</p>	<p>425 Alternative verdicts for certain charges of sexual offences</p> <p>(1) If on the trial of a person charged with rape the jury are not satisfied that he or she is guilty of rape or of an attempt to commit rape but are satisfied that he or she is guilty of—</p> <p style="padding-left: 40px;">(a) assault with intent to commit rape; or</p> <p style="padding-left: 40px;">(b) an offence against section 39 (indecent assault); or</p> <p style="padding-left: 40px;">(c) assault with intent to commit an offence against section 45(1) (sexual penetration of child under the age of 16); or</p>				
<p>S. 425(1)(b) amended by No. 81/1991 s. 10(Sch. item 1.2).</p>					
<p>S. 425(1)(c) amended by No. 67/2000 s. 7(4).</p>					
<p>S. 425(1)(d) repealed by No. 67/2000 s. 7(5).</p>	*	*	*	*	*

- (e) an offence against section 47(1) (indecent act with child under the age of 16); or
- (f) an offence against section 18 (causing injury intentionally or recklessly)—

the jury may acquit the accused of rape and find him or her guilty of whichever of those offences they are satisfied he or she is guilty and he or she is liable to punishment accordingly.

* * * * *

S. 425(2)
repealed by
No. 81/1991
s. 10(Sch.
item 1.3).

- (3) If on the trial of a person charged with an offence against section 44 or 45(1) the jury are not satisfied that he or she is guilty of the offence charged or of an attempt to commit the offence charged but are satisfied that he or she is guilty of—

S. 425(3)
amended by
No. 67/2000
s. 7(6).

- (a) assault with intent to commit the offence charged; or
- (b) an offence against section 47(1) (indecent act with child under the age of 16); or
- (c) an offence against section 18 (causing injury intentionally or recklessly)—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is guilty and he or she is liable to punishment accordingly.

* * * * *

S. 425(3)
re-numbered
as s. 425(4) by
No. 65/1991
s. 4,
repealed by
No. 68/2009
s. 97(Sch.
item 40.29).

s. 426

S. 426
repealed by
No. 9576
s. 11(1)(Sch.),
new s. 426
inserted by
No. 22/2009
s. 4.

426 Alternative verdict for identity crime offences

If, on the trial of a person charged with an offence against section 192B, the jury are not satisfied that the person charged is guilty of the offence charged but are satisfied that the person charged is guilty of an offence against section 192C, the jury may acquit the person charged of the offence charged and find the person charged guilty of an offence against section 192C and the person charged is liable to punishment accordingly.

S. 427
repealed by
No. 8425
s. 2(1)(h),
new s. 427
inserted by
No. 9228
s. 2(1)(j),
amended by
No. 48/1997
s. 58(1).

427 Alternative verdict for destroying property charges

(1) Where a person is charged with committing an offence against section 197(2) or section 197(3) and the jury are not satisfied that he is guilty of that offence but are satisfied that he is guilty of an offence against section 197(1), the jury may return as their verdict that he is not guilty of the offence charged but is guilty of the offence against section 197(1).

S. 427(2)
inserted by
No. 48/1997
s. 58(2).

(2) If on the trial of a person charged with an offence against section 197A the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 197, the jury may acquit the accused of the offence charged and find him or her guilty of whichever of the offences against section 197 they are satisfied that he or she is guilty of and he or she is liable to punishment accordingly.

428 Alternative verdict for charges of unauthorised modification of data to cause impairment

If on the trial of a person charged with an offence against section 247C the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of—

- (a) an offence under section 197(1); or
- (b) an offence under section 247D—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is guilty and he or she is liable to punishment accordingly.

S. 428 amended by Nos 8425 s. 2(1)(m), 9019 s. 2(1)(Sch. item 45), repealed by No. 9576 s. 11(1), new s. 428 inserted by 10/2003 s. 7.

429 Alternative verdict for charges of unauthorised impairment of electronic communication

If on the trial of a person charged with an offence against section 247D the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of—

- (a) an offence under section 197(1); or
- (b) an offence under section 247C—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is guilty and he or she is liable to punishment accordingly.

New s. 429 inserted by No. 10/2003 s. 7.

* * * * *

Ss 429–434 repealed by No. 8425 s. 2(1)(h).

435 Alternative verdict for charges relating to riots

Where on the trial of a person for any offence against section 206(1) the jury are not satisfied that he is guilty of the offence charged but are

S. 435 substituted by No. 9576 s. 11(1).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 435

satisfied that he is guilty of an offence against section 206(2), the jury may return as their verdict that he is not guilty of the offence charged but is guilty of the offence against section 206(2); and he shall be liable to punishment accordingly.

Pt 3 Div. 1
Subdiv. (19A)
(Heading)
inserted by
No. 8870
s. 6(1),
repealed by
No. 25/1989
s. 20(h)(ii).

* * * * *

S. 435A
inserted by
No. 8870
s. 6(1),
amended by
No. 9848
s. 18(1),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * * *

Pt 3 Div. 1
Subdiv. (20)
(Heading and
s. 436)
amended by
No. 9902
s. 2(1)(Sch.
item 54)
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 437

* * * * *

Pt 3 Div. 1
Subdiv. (21)
(Heading and
ss 437–439)
amended by
Nos 7184 s. 6,
7703 s. 5, 7705
s. 10, 7876
s. 2(3), 8338
s. 7(a)(d), 8731
s. 173, 9427
s. 6(1)(Sch. 5
item 39), 9576
s. 11(1), 10152
s. 9(a),
57/1989
s. 3(Sch.
item 42.44),
53/2000
s. 94(3),
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

* * * * *

Pt 3 Div. 1
Subdiv. (22)
(Heading and
ss 440–443)
amended by
Nos 7577 s. 5,
8280 s. 15,
8425 s. 2(1)(h),
9554
s. 2(2)(Sch. 2
item 61), 9848
s. 18(1),
49/1991
s. 119(1)
(Sch. 2
item 69),
69/1997
s. 22(12),
repealed by
No. 7/2009
s. 422(2)(a) (as
amended by
No. 68/2009
s. 54(h)).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 444

<p>Pt 3 Div. 1 Subdiv. (23) (Heading and s. 444) repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (24) (Heading and s. 445) amended by Nos 7705 s. 10, 7876 s. 2(3), 9008 s. 2(1)(Sch. item 2(g)), 110/1986 s. 140(2), 57/1989 s. 3(Sch. item 42.45) repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (25) (Heading and ss 446–450) repealed.³⁵</p>	*	*	*	*	*
<p>Pt 3 Div. 1 Subdiv. (26) (Heading and ss 451–453) amended by Nos 110/1986 s. 140(2), 35/1996 s. 453(Sch. 1 items 16.15, 16.16), 78/2008 s. 25(3), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 454

*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (27) (Heading and s. 454) amended by Nos 9576 s. 11(1), 57/1989 s. 3(Sch. item 42.46), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (28) (Heading and s. 455) amended by No. 7705 s. 10, repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>
*	*	*	*	*	<p>Pt 3 Div. 1 Subdiv. (29) (Heading and s. 456) amended by No. 19/1989 s. 16(Sch. items 16.9, 16.10), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).</p>

s. 456AA

Pt 3 Div. 1
Subdiv. (29A)
(Heading and
s. 456AA)
inserted by
No. 129/1993
s. 4 (as
amended by
No. 33/1994
s. 27(5)).

(29A) *Giving name and address on demand*

S. 456AA
inserted by
No. 129/1993
s. 4 (as
amended by
No. 33/1994
s. 27(5)).

456AA Requirement to give name and address

S. 456AA(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.12(a)).

- (1) A police officer may request a person to state his or her name and address if the police officer believes on reasonable grounds that the person—
- (a) has committed or is about to commit an offence, whether indictable or summary; or
 - (b) may be able to assist in the investigation of an indictable offence which has been committed or is suspected of having been committed.

S. 456AA(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.12(b)).

- (2) A police officer who makes a request under subsection (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.

S. 456AA(3)
amended by
Nos 69/1997
s. 22(13),
37/2014
s. 10(Sch.
item 36.12(b)).

- (3) A person who, in response to a request made by a police officer in accordance with this section—
- (a) refuses or fails to comply with the request; or
 - (b) states a name that is false in a material particular; or

(c) states an address other than the full and correct address of his or her ordinary place of residence or business—

is guilty of a summary offence punishable on conviction by a level 11 fine (5 penalty units maximum).

(4) A person who is requested by a police officer under subsection (1) to state his or her name and address may request the member to state, orally or in writing, his or her name, rank and place of duty.

S. 456AA(4) amended by No. 37/2014 s. 10(Sch. item 36.12(c)).

(5) A police officer who, in response to a request under subsection (4)—

S. 456AA(5) amended by Nos 69/1997 s. 22(13), 37/2014 s. 10(Sch. item 36.12(d)(i)).

(a) refuses or fails to comply with the request; or

(b) states a name or rank that is false in a material particular; or

(c) states as his or her place of duty an address other than the name of the police station which is the police officer's ordinary place of duty; or

S. 456AA(5)(c) amended by No. 37/2014 s. 10(Sch. item 36.12(d)(ii)).

(d) refuses to comply with the request in writing if requested to do so—

is guilty of a summary offence punishable on conviction by a level 11 fine (5 penalty units maximum).

* * * * *

Pt 3 Div. 1 Subdiv. (29B) (Heading and ss 456A–456F) inserted by No. 120/1993 s. 79, repealed by No. 30/1997 s. 6.

(30) *Apprehension of offenders*

S. 457
substituted by
No. 8247 s. 2.

457 No person to be arrested without warrant except under this Act etc.

After the commencement of the **Crimes (Powers of Arrest) Act 1972** no person shall be arrested without warrant except pursuant to the provisions of—

- (a) this Act; or
- (b) some other Act expressly giving power to arrest without warrant.

S. 458
substituted by
No. 8247 s. 2,
amended by
No. 57/1989
s. 3(Sch.
item 42.47).

458 Person found committing offences may be arrested without warrant by any person

S. 458(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.13).

(1) Any person, whether a police officer or not, may at any time without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law or deliver to a police officer to be so taken, any person—

(a) he finds committing any offence (whether an indictable offence or an offence punishable on summary conviction) where he believes on reasonable grounds that the apprehension of the person is necessary for any one or more of the following reasons, namely—

S. 458(1)(a)(i)
amended by
No. 68/2009
s. 97(Sch.
item 40.30).

- (i) to ensure the attendance of the offender before a court of competent jurisdiction;
- (ii) to preserve public order;
- (iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or

-
- (iv) for the safety or welfare of members of the public or of the offender;
- (b) when instructed so to do by any police officer having power under this Act to apprehend that person; or
- (c) he believes on reasonable grounds is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend that person in the circumstances of the case.
- (2) For the purposes of paragraph (a) in subsection (1) *offence* means offence at common law or a contravention of or failure to comply with a provision of an Act of Parliament and unless otherwise by Act of Parliament expressly provided does not include a contravention of or failure to comply with a rule regulation by-law or other law made under an Act of Parliament.
- (3) A person who has been apprehended without warrant pursuant to the provisions of paragraph (a) in subsection (1) in respect of any offence punishable on summary conviction (not being an indictable offence that may be heard and determined summarily) and taken into custody shall be held in the custody of the person apprehending him only so long as any reason referred to in the said paragraph for his apprehension continues and where, before that person is charged with an offence, it appears to the person arresting that person that the reason no longer continues the person arresting that other person shall, without any further or other authority than this subsection, release that person from custody without bail or cause him to be so released and whether or not a summons has been
- S. 458(1)(b) amended by No. 37/2014 s. 10(Sch. item 36.13).
- S. 458(1)(c) amended by No. 117/1986 s. 6(Sch. 1 item 1(8)(a)).
- S. 458(3) amended by Nos 9008 s. 2(1)(Sch. item 2(k)), 68/2009 s. 97(Sch. item 40.31).

s. 459

issued against him or a notice to appear has been served on him with respect to the offence alleged.

- (4) In subsection (3), *notice to appear* has the same meaning as in the **Criminal Procedure Act 2009**.

S. 458(4)
inserted by
No. 68/2009
s. 97(Sch.
item 40.32).

459 Powers of police officer or protective services officer to apprehend offenders

S. 459
(Heading)
inserted by
No. 43/2011
s. 17(1),
amended by
No. 37/2014
s. 10(Sch.
item 36.14).

S. 459
substituted by
No. 8247 s. 2,
amended by
No. 43/2011
s. 17(2)(3)
(ILA s. 39B(1)).

- (1) In addition to exercising any of the powers conferred by section 458 or by or under any other Act a police officer, or a protective services officer on duty at a designated place, may at any time without warrant apprehend any person—

S. 459(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.15(a)).

- (a) he believes on reasonable grounds has committed an indictable offence in Victoria (including any indictable offence which may be heard and determined summarily); or

S. 459(a)
amended by
No. 68/2009
s. 97(Sch.
item 40.33).

- (b) he believes on reasonable grounds has committed an offence elsewhere which if committed in Victoria would be an indictable offence against the law of Victoria (including any indictable offence which may be heard and determined summarily).

S. 459(b)
amended by
No. 68/2009
s. 97(Sch.
item 40.33).

-
- (2) If a protective services officer arrests a person under subsection (1), the protective services officer must hand the person into the custody of a police officer as soon as practicable after the person is arrested.
- (3) In this section, *designated place* has the same meaning as it has in the **Victoria Police Act 2013**.

459A Entry and search of premises

- (1) A police officer may, for the purpose of arresting under section 458 or 459 or any other enactment a person whom he—
- (a) believes on reasonable grounds—
- (i) to have committed in Victoria a serious indictable offence;
- (ii) to have committed an offence elsewhere which if committed in Victoria would be a serious indictable offence; or
- (iii) to be escaping from legal custody; or
- (b) finds committing a serious indictable offence—
- enter and search any place where the police officer on reasonable grounds believes him to be.
- (2) In order to enter a place pursuant to subsection (1), a police officer may, if it is necessary to do so, use reasonable force.

s. 461

- (3) In this section *serious indictable offence* has the same meaning as it has in section 325.

S. 460 substituted by No. 8247 s. 2, amended by Nos 8410 s. 4, 9008 s. 2(1)(Sch. item 2(i)), substituted by No. 10076 s. 4(1), amended by No. 16/1986 s. 30, repealed by No. 37/1988 s. 4.

* * * * *

S. 461 amended by No. 7546 s. 11, substituted by No. 8247 s. 2.

461 Arrest on reasonable grounds not to be taken to be unlawful

- (1) Where an apprehension is made under a belief on reasonable grounds in accordance with the provisions of section 458 or section 459 the apprehension shall not cease to be lawful or be taken to be unlawful where it subsequently appears or is found that the person apprehended did not commit the offence alleged.
- (2) A police officer shall not be bound to take into custody or to take before a bail justice or the Magistrates' Court any person found committing an offence if the police officer believes on reasonable grounds that proceedings can effectively be brought against that person by way of summons or notice to appear.
- (3) In subsection (2) *notice to appear* has the same meaning as in the **Criminal Procedure Act 2009**.

S. 461(2) amended by Nos 57/1989 s. 3(Sch. item 42.54), 68/2009 s. 97(Sch. item 40.34), 37/2014 s. 10(Sch. item 36.17).

S. 461(3) inserted by No. 68/2009 s. 97(Sch. item 40.35).

462 Definition of *finds committing*

In this Act the expression *finds committing* and any derivative thereof extends to the case of a person found doing any act or so behaving or conducting himself or in such circumstances that the person finding him believes on reasonable grounds that the person so found is guilty of an offence.

S. 462
substituted by
No. 8247 s. 2.

462A Use of force to prevent the commission of an indictable offence

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

S. 462A
inserted by
No. 9576
s. 7(b).

* * * * *

S. 463
repealed by
No. 8247 s. 2.

463A Arrest of offenders on board aircraft

- (1) The person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom he finds committing, or reasonably suspects of having committed, or of having attempted to commit, an offence on or in relation to or affecting the use of an aircraft and that person in command or a person authorized by him may hold the person so arrested in custody until he can be brought before a bail justice or the Magistrates' Court or other proper authority to be dealt with in accordance with law.
- (2) The person in command of an aircraft may, where he considers it necessary so to do in order to prevent an offence on or in relation to or affecting the use of an aircraft or to avoid danger to the

S. 463A
inserted by
No. 7088
s. 2(e),
amended by
No. 57/1989
s. 3(Sch.
item 42.55).

s. 463B

safety of the aircraft or of persons on board the aircraft, with such assistance as he thinks necessary—

- (a) place a person who is on board the aircraft under restraint or in custody; and
- (b) if the aircraft is not in the course of a flight—remove a person from the aircraft.

S. 463B
inserted by
No. 7546 s. 3.

463B Prevention of suicide

Every person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which he believes on reasonable grounds would, if committed, amount to suicide.

S. 464
repealed by
No. 8425
s. 2(1)(h).

* * * * *

Pt 3 Div. 1
Subdiv. (30A)
(Heading and
ss 464–464J)
inserted by
No. 37/1988
s. 5.

(30A) *Custody and investigation*

New s. 464
inserted by
No. 37/1988
s. 5.

464 Definitions

- (1) For the purposes of this Subdivision a person is in custody if he or she is—
 - (a) under lawful arrest by warrant; or
 - (b) under lawful arrest under section 458 or 459 or a provision of any other Act; or
 - (c) in the company of an investigating official and is—
 - (i) being questioned; or
 - (ii) to be questioned; or

(iii) otherwise being investigated—

to determine his or her involvement (if any) in the commission of an offence if there is sufficient information in the possession of the investigating official to justify the arrest of that person in respect of that offence.

(2) In this Subdivision—

appropriate authority means—

- (a) in relation to the Commonwealth or the Australian Capital Territory—the Commissioner (within the meaning of section 23WA of the Crimes Act 1914 of the Commonwealth) of the Australian Federal Police or any other prescribed authority; or
- (b) in relation to any other participating jurisdiction—an authority exercising, in relation to the police force or police service of that jurisdiction, functions corresponding to those of the Chief Commissioner of Police or any other prescribed authority;

S. 464(2)
def. of
appropriate authority
inserted by
No. 16/2002
s. 5,
amended by
No. 37/2014
s. 10(Sch.
item
36.18(a)(i)).

* * * * *

S. 464(2)
def. of
approved mental health service
inserted by
No. 81/1997
s. 16(a),
repealed by
No. 26/2014
s. 455(Sch.
item 7.2(a)).

s. 464

S. 464(2)
def. of
*authorised
person*
inserted by
No. 25/1989
s. 11(a),
repealed by
No. 23/1991
s. 8(1)(a),
new def. of
*authorised
person*
inserted by
No. 23/1991
s. 8(1)(b).

authorised person means a person appointed as an authorised person under subsection (3);

S. 464(2)
def. of
*compulsory
procedure*
inserted by
No. 129/1993
s. 6(a).

compulsory procedure means the taking of an intimate or non-intimate sample or the conduct of a physical examination;

S. 464(2)
def. of
*correspond-
ing law*
inserted by
No. 16/2002
s. 5.

corresponding law means a law relating to the carrying out of forensic procedures and DNA databases that—

- (a) substantially corresponds to this Subdivision; or
- (b) is prescribed for the purposes of this definition;

S. 464(2)
def. of
*crime scene
index*
inserted by
No. 16/2002
s. 5.

crime scene index means an index of DNA profiles derived from forensic material found or other material found—

- (a) at any place (whether within or outside Victoria) where an offence (whether under the law of Victoria or of a participating jurisdiction) was, or is reasonably suspected of having been, committed; or

- (b) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
- (c) on an object or person reasonably believed to have been associated with the commission of the offence;

CrimTrac means the CrimTrac Agency, established as an Executive Agency by the Governor-General by order under section 65 of the Public Service Act 1999 of the Commonwealth;

S. 464(2)
def. of
CrimTrac
inserted by
No. 32/2007
s. 4(2).

dentist means a person registered under the Health Practitioner Regulation National Law—

S. 464(2)
def. of
dentist
inserted by
No. 129/1993
s. 6(a),
substituted by
No. 26/1999
s. 107(Sch.
item 1),
amended by
No. 97/2005
s. 182(Sch. 4
item 14.2(a)),
substituted by
No. 13/2010
s. 51(Sch.
item 17.3(a)).

- (a) to practise in the dental profession as a dentist (other than as a student);
- (b) in the dentists division of that profession;

designated mental health service has the same meaning as in the **Mental Health Act 2014**;

S. 464(2)
def. of
***designated
mental health
service***
inserted by
No. 26/2014
s. 455(Sch.
item 7.2(b)).

destruction, in relation to any sample taken or given and any related material and information, means—

S. 464(2)
def. of
destruction
inserted by
No. 72/2013
s. 3(b).

- (a) the physical destruction of the sample;
and

- (b) the removal from any DNA database on which matching occurs of any DNA profile derived from analysis of the sample; and
- (c) the destruction of the DNA profile in any form that can readily be recombined with information that identifies the person from whom the sample was taken or who gave the sample, except for a DNA profile held on an electronic system used for forensic analysis by the Victoria Police Forensic Services Department;

S. 464(2)
def. of
*detained or
protected
person*
inserted by
No. 84/1989
s. 4(a),
amended by
Nos 93/1990
s. 27(a),
23/2006
s. 236(4),
48/2006
s. 42(Sch.
item 9.2(a)),
26/2014
s. 455(Sch.
item 7.2(c)).

detained or protected person means a person who—

- (a) is held in a prison, police gaol, youth justice centre or youth residential centre; or
- (b) is held in an institution within the meaning of section 56 of the **Corrections Act 1986**; or
- (c) is a security resident within the meaning of the **Disability Act 2006**; or
- (d) a patient within the meaning of the **Mental Health Act 2014**;

S. 464(2)
def. of
*DNA
database*
inserted by
No. 16/2002
s. 5,
substituted by
No. 32/2007
s. 4(1).

DNA database means—

- (a) the Victorian DNA database; or
- (b) NCIDD; or
- (c) another DNA database system that is kept under a corresponding law of a participating jurisdiction;

DNA database system means a database (whether in computerised or other form and however described) containing—

S. 464(2)
def. of
DNA
database
system
inserted by
No. 16/2002
s. 5.

(a) one or more of the following indexes of DNA profiles—

- (i) a crime scene index;
- (ii) a missing persons index;
- (iii) an unknown deceased persons index;
- (iv) a serious offenders index;
- (v) a volunteers (unlimited purposes) index;
- (vi) a volunteers (limited purposes) index;
- (vii) a suspects index—

and information that may be used to identify the person from whose forensic material each DNA profile was derived; and

- (b) a statistical index; and
- (c) any other prescribed index;

fingerprints includes finger, palm, toe and sole prints;

S. 464(2)
def. of
fingerprints
inserted by
No. 38/1988
s. 5(a).

fingerscan means fingerprints taken by means of a device to obtain a record of the fingerprints;

S. 464(2)
def. of
fingerscan
inserted by
No. 41/2004
s. 3.

Example

Fingerprints may be taken by a scanning device to obtain a digital record of the fingerprints.

s. 464

S. 464(2)
def. of
*forensic
material*
inserted by
No. 16/2002
s. 5.

forensic material means any material—

- (a) from which a DNA profile may be derived; and
- (b) which is obtained from samples taken or procedures conducted in accordance with this Subdivision—

but does not include a sample taken for the sole purpose of establishing the identity of the person from whom it is taken;

S. 464(2)
def. of
*forensic
procedure*
inserted by
No. 129/1993
s. 6(b).

forensic procedure means the taking of a sample from any part of the body, whether an intimate or non-intimate sample or any other type of sample, or the conduct of any procedure on or physical examination of the body but does not include the taking of a fingerprint;

held in a prison, police gaol, youth justice centre or youth residential centre means—

- (a) deemed by section 4 of the **Corrections Act 1986** to be in the custody of the Secretary within the meaning of that Act; or
- (b) deemed by section 11(7) of the **Corrections Act 1986** to be in the custody of the Chief Commissioner of Police; or
- (c) detained in a youth justice centre in the custody of the Secretary within the meaning of the **Children, Youth and Families Act 2005**; or
- (d) detained in a youth residential centre in the custody of the Secretary within the meaning of the **Children, Youth and Families Act 2005**;

S. 464(2)
def. of
held in a prison, police gaol, youth training centre or youth residential centre
inserted by
No. 38/1988
s. 5(a),
amended by
Nos 93/1990
s. 27(b)(i)(ii),
56/1989
s. 286(Sch. 2
item 7.3),
46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 6)),
amended as
held in a prison, police gaol, youth justice centre or youth residential centre
by
No. 48/2006
s. 42(Sch.
item 9.2(b)).

intimate part of the body means the genital or anal region of a male or female or the breast of a female;

S. 464(2)
def. of
intimate part of the body
inserted by
No. 129/1993
s. 6(c).

intimate sample means—

- (a) a blood sample;
- (b) a sample of pubic hair, including the root if required;

S. 464(2)
def. of
intimate sample
inserted by
No. 129/1993
s. 6(c).

s. 464

- (c) a swab, washing or sample taken from the external genital or anal region of a male or female or from the breast of a female;
- (d) a sample of saliva;
- (e) a scraping taken from the mouth;
- (f) a dental impression;

S. 464(2)
def. of
*investigating
official*
amended by
No. 37/2014
s. 10(Sch.
item
36.18(a)(ii)).

investigating official means a police officer or a person appointed by or under an Act (other than a police officer or person who is engaged in covert investigations under the orders of a superior) whose functions or duties include functions or duties in respect of the prevention or investigation of offences;

S. 464(2)
def. of
*legal
practitioner*
repealed by
No. 18/2005
s. 18(Sch. 1
item 27.3).

* * * * *

S. 464(2)
def. of
*medical
practitioner*
inserted by
No. 129/1993
s. 6(d),
substituted by
No 81/1997
s. 16(b),
amended by
No. 97/2005
s. 182(Sch. 4
item 14.2(b)),
substituted by
No. 13/2010
s. 51(Sch.
item 17.3(b)).

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

<p><i>mental impairment</i> includes impairment because of mental illness, intellectual disability, dementia or brain injury;</p>	<p>S. 464(2) def. of <i>mental impairment</i> inserted by No. 23/1991 s. 4(a).</p>
<p><i>midwife</i> means a person registered under the Health Practitioner Regulation National Law—</p> <p>(a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and</p> <p>(b) in the register of midwives kept for that profession;</p>	<p>S. 464(2) def. of <i>midwife</i> inserted by No. 13/2010 s. 51(Sch. item 17.3(d)).</p>
<p><i>missing persons index</i> means an index of DNA profiles, derived from forensic material, of—</p> <p>(a) persons who are missing; and</p> <p>(b) volunteers who are relatives by blood of missing persons;</p>	<p>S. 464(2) def. of <i>missing persons index</i> inserted by No. 16/2002 s. 5.</p>
<p><i>National Criminal Investigation DNA Database</i> means the DNA database system that—</p> <p>(a) is known as the National Criminal Investigation DNA Database; and</p> <p>(b) is managed by the Commonwealth;</p>	<p>S. 464(2) def. of <i>National Criminal Investigation DNA Database</i> inserted by No. 32/2007 s. 4(2).</p>
<p><i>NCIDD</i> means the National Criminal Investigation DNA Database;</p>	<p>S. 464(2) def. of <i>NCIDD</i> inserted by No. 32/2007 s. 4(2).</p>
<p><i>non-intimate part of the body</i> means any part of the body other than an intimate part;</p>	<p>S. 464(2) def. of <i>non-intimate part of the body</i> inserted by No. 129/1993 s. 6(e).</p>

s. 464

S. 464(2)
def. of
*non-intimate
sample*
inserted by
No. 129/1993
s. 6(e).

non-intimate sample means—

- (a) a sample of hair, other than pubic hair, including the root if required;
- (b) a sample of matter taken from under a fingernail or toenail;
- (c) a swab, washing or sample taken from any external part of the body other than the genital or anal region of a male or female or the breast of a female;

S. 464(2)
def. of
nurse
inserted by
No. 81/1997
s. 16(c),
amended by
No. 97/2005
s. 182(Sch. 4
item 14.2(c)),
substituted by
No. 13/2010
s. 51(Sch.
item 17.3(c)).

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 464(2)
def. of
*participating
jurisdiction*
inserted by
No. 16/2002
s. 5.

participating jurisdiction means the Commonwealth, another State or a Territory in which there is a corresponding law in force;

S. 464(2)
def. of
*physical
examination*
inserted by
No. 129/1993
s. 6(e).

physical examination means an examination of the external part of a person's body requiring touching of the person or removal of the person's clothing;

police gaol has the same meaning as in the **Corrections Act 1986**;

prison has the same meaning as in the **Corrections Act 1986** but includes a youth justice centre established under section 478 of the **Children, Youth and Families Act 2005**;

S. 464(2)
def. of
prison
amended by
No. 56/1989
s. 286(Sch. 2
item 7.4),
substituted by
No. 48/2006
s. 42(Sch.
item 9.2(c)).

* * * * *

S. 464(2)
def. of
*registered
medical
practitioner*
inserted by
No. 23/1994
s. 118(Sch. 1
item 15.1),
repealed by
No. 81/1997
s. 16(d).

related material and information—

- (a) in relation to any sample taken in a forensic procedure conducted in accordance with sections 464R to 464ZA or section 464ZF or 464ZFAAA, means notes and audiovisual recording made of the forensic procedure and any information which may identify the person contained in any record of or report relating to the forensic procedure and in any copy of a record or report;
- (b) in relation to any sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, means notes and audiovisual recording (if any) made of the procedure to take the sample and any information which may identify the person contained in any record of or report relating to the taking

S. 464(2)
def. of
*related
material and
information*
inserted by
No. 81/1997
s. 16(e),
amended by
No. 27/2006
ss 3(a), 17(1).

of the sample and in any copy of a record or report;

S. 464(2)
def. of
relevant suspect
inserted by
No. 84/1989
s. 4(b),
substituted by
No. 23/1991
s. 4(b),
amended by
Nos 81/1997
s. 16(f),
61/2001
s. 16(1)(a),
16/2002
s. 17(1),
35/2002
s. 28(Sch.
item 3.1),
72/2004 s. 24,
substituted by
No. 72/2013
s. 3(a).

relevant suspect means a person of or above the age of 18 years who—

- (a) is suspected of having committed or attempted to commit an indictable offence; or
- (b) has been charged with an indictable offence;

S. 464(2)
def. of
responsible Minister
inserted by
No. 16/2002
s. 5.

responsible Minister, in relation to a participating jurisdiction means a Minister of that jurisdiction who is responsible for administration of a corresponding law;

S. 464(2)
def. of
responsible person
inserted by
No. 32/2007
s. 4(2).

responsible person, in relation to a DNA database, means the person responsible for the care, control and management of the system;

S. 464(2)
def. of
security patient
inserted by
No. 81/1997
s. 16(g),
amended by
No. 26/2014
s. 455(Sch.
item 7.2(d)).

security patient has the same meaning as in the **Mental Health Act 2014**;

senior police officer means a police officer of or above the rank of senior sergeant;

S. 464(2)
def. of
senior police officer
inserted by
No. 41/2004
s. 8,
amended by
No. 37/2014
s. 10(Sch.
item
36.18(a)(iii)).

serious offenders index means an index of DNA profiles derived from forensic material taken from—

S. 464(2)
def. of
serious offenders index
inserted by
No. 16/2002
s. 5.

- (a) offenders in accordance with section 464ZF, or under a corresponding law of a participating jurisdiction; and
- (b) suspects who have been convicted of—
 - (i) an offence and an order has been made under section 464ZFB(1); or
 - (ii) an offence in respect of which a forensic procedure may be conducted under a corresponding law of a participating jurisdiction;

* * * * *

S. 464(2)
def. of
sexual offence
inserted by
No. 84/1989
s. 4(b),
amended by
No. 8/1991
s. 6(d),
repealed by
No. 23/1991
s. 4(c).

s. 464

S. 464(2)
def. of
*statistical
index*
inserted by
No. 16/2002
s. 5.

statistical index means an index of information that—

- (a) is obtained from the analysis of forensic material taken from persons in accordance with this Subdivision or under a corresponding law of a participating jurisdiction; and
- (b) has been compiled for statistical purposes; and
- (c) cannot be used to discover the identity of persons from whom the forensic material was taken;

S. 464(2)
def. of
suspect
inserted by
No. 38/1988
s. 5(b),
amended by
Nos 25/1989
s. 14(a),
72/2004 s. 25.

suspect means a person of or above the age of 18 years who—

- (a) is suspected of having committed an offence; or
- (b) has been charged with an offence; or
- (c) has been summonsed to answer to a charge;

S. 464(2)
def. of
*suspects
index*
inserted by
No. 16/2002
s. 5,
amended by
No. 27/2006
s. 3(b).

suspects index means an index of DNA profiles derived from forensic material taken from suspects in accordance with section 464R, 464T or 464U or under a corresponding law of a participating jurisdiction or taken from persons found not guilty because of mental impairment in accordance with section 464ZFAAA;

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S. 464(2)
def. of
*tape
recording*
repealed by
No. 27/2006
s. 3(c).

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- unknown deceased persons index*** means an index of DNA profiles of deceased persons whose identities are unknown where the DNA profile is derived from forensic material;
- Victorian DNA database*** means the DNA database system kept under section 464ZFD;
- volunteer*** means a person who volunteers to give a sample under section 464ZGB;
- volunteers (limited purposes) index*** means an index of DNA profiles derived from forensic material taken from volunteers, under section 464ZGB or a corresponding law of a participating jurisdiction, who have chosen that the information obtained from analysis of the material may be used only for a limited purpose that is specified by the volunteer and noted on the index;
- volunteers (unlimited purposes) index*** means an index of DNA profiles derived from forensic material taken from volunteers, under section 464ZGB or a corresponding law of a participating jurisdiction, who have chosen that the information obtained from analysis of the material may be used for the purpose of a criminal investigation or any other purpose for which the DNA database may be used;
- S. 464(2)
def. of
unknown deceased persons index
inserted by
No. 16/2002
s. 5.
- S. 464(2)
def. of
Victorian DNA database
inserted by
No. 32/2007
s. 4(2).
- S. 464(2)
def. of
volunteer
inserted by
No. 16/2002
s. 5.
- S. 464(2)
def. of
volunteers (limited purposes) index
inserted by
No. 16/2002
s. 5.
- S. 464(2)
def. of
volunteers (unlimited purposes) index
inserted by
No. 16/2002
s. 5.

s. 464AA

S. 464(2)
def. of
*youth
residential
centre*
inserted by
No. 129/1993
s. 6(g),
amended by
No. 48/2006
s. 42(Sch.
item 9.2(d)).

youth residential centre has the same meaning as
in the **Children, Youth and Families Act
2005**;

S. 464(2)
def. of
*young
person*
inserted by
No. 38/1988
s. 5(c),
repealed by
No. 129/1993
s. 6(f).

* * * * *

S. 464(3)
inserted by
No. 25/1989
s. 11(b).
amended by
No. 37/2014
s. 10(Sch.
item 36.18(b)).

- (3) The Minister administering the **Victoria Police Act 2013** may appoint by notice published in the Government Gazette a person or class of persons as a person or persons authorised to take fingerprints in accordance with this Subdivision.

S. 464AA
inserted by
No. 27/2006
s. 4.

464AA Digital recordings

If this Subdivision requires an audio recording or an audiovisual recording to be made and the recording is made in a digitised format, the maker of the recording must certify that the recording has not been altered after its making and that the prescribed requirements, if any, in relation to the method of recording have been met.

S. 464A
inserted by
No. 37/1988
s. 5.

464A Detention of person in custody

- (1) Every person taken into custody for an offence (whether committed in Victoria or elsewhere) must be—
- (a) released unconditionally; or
 - (b) released on bail; or

(c) brought before a bail justice or the Magistrates' Court—

S. 464A(1)(c)
amended by
No. 57/1989
s. 5(1)(a)(i).

within a reasonable time of being taken into custody.

(2) If a person suspected of having committed an offence is in custody for that offence, an investigating official may, within the reasonable time referred to in subsection (1)—

(a) inform the person of the circumstances of that offence; and

(b) question the person or carry out investigations in which the person participates in order to determine the involvement (if any) of the person in that offence.

(3) Before any questioning (other than a request for the person's name and address) or investigation under subsection (2) commences, an investigating official must inform the person in custody that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.

S. 464A(3)
amended by
No. 129/1993
s. 5.

(4) In determining what constitutes a reasonable time for the purposes of subsection (1) the following matters may be considered—

(a) the period of time reasonably required to bring the person before a bail justice or the Magistrates' Court;

S. 464A(4)(a)
amended by
No. 57/1989
s. 5(1)(a)(ii).

(b) the number and complexity of offences to be investigated;

(c) any need of the investigating official to read and collate relevant material or to take any other steps that are reasonably necessary by

-
- way of preparation for the questioning or investigation;
- (d) any need to transport the person from the place of apprehension to a place where facilities are available to conduct an interview or investigation;
 - (e) the number of other people who need to be questioned during the period of custody in respect of the offence for which the person is in custody;
 - (f) any need to visit the place where the offence is believed to have been committed or any other place reasonably connected with the investigation of the offence;
 - (g) any time taken to communicate with a legal practitioner, friend, relative, parent, guardian or independent person;
 - (h) any time taken by a legal practitioner, interpreter, parent, guardian or independent person to arrive at the place where questioning or investigation is to take place;
 - (i) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to receive medical attention;
 - (j) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to rest;
 - (k) the total period of time during which the person has been in the company of an investigating official before and after the commencement of custody;
 - (l) any other matters reasonably connected with the investigation of the offence.
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Note

Section 78D of the **Corrections Act 1986** provides for the application of section 464A in relation to persons detained under that Act.

Note to s. 464A inserted by **No. 25/2014** s. 14.

464B Questioning or investigation of person already held for another matter

S. 464B inserted by **No. 37/1988** s. 5.

(1) An investigating official may apply to the Magistrates' Court or, if the application is in respect of a child, the Children's Court for an order that a person—

S. 464B(1) amended by **Nos 56/1989** s. 286(Sch. 2 item 7.5), **57/1989** s. 5(1)(b)(i), **86/2000** s. 4(1)(a).

(a) who is—

S. 464B(1)(a) substituted by **No. 86/2000** s. 4(1)(b).

(i) held in a prison or police gaol; or

(ii) a forensic resident or a security resident within the meaning of the **Disability Act 2006**; or

S. 464B(1)(a)(ii) amended by **No. 23/2006** s. 236(5).

(iii) a forensic patient or a security patient within the meaning of the **Mental Health Act 2014**; and

S. 464B(1)(a)(iii) substituted by **No. 26/2014** s. 455(Sch. item 7.3).

* * * * *

S. 464B(1)(a)(iv) repealed by **No. 26/2014** s. 455(Sch. item 7.3).

(b) reasonably suspected of having committed an offence (being, in the case of an application in respect of a child, an indictable offence), whether in Victoria or

S. 464B(1)(b) amended by **Nos 86/2000** s. 4(1)(c), **72/2013** s. 4(1).

s. 464B

elsewhere, other than the offence for which he or she is being held—

be delivered into the custody of the investigating official for the purpose of questioning or investigation in respect of the first-mentioned offence.

(2) An application under subsection (1) must—

(a) be in writing; and

(b) state the grounds on which the application is made; and

(c) be served on the person who is the subject of the application by delivering a true copy of the application—

(i) to the person personally; or

(ii) to the person in charge of the place where the person is being held or detained.

S. 464B(2)(c) amended by No. 86/2000 s. 4(2)(a).

S. 464B(2)(c)(ii) substituted by No. 86/2000 s. 4(2)(b).

(3) At any time after the filing of an application under subsection (1), the Magistrates' Court or Children's Court (as the case may be) may order that the person who is the subject of the application be brought before the court for the hearing of the application under subsection (1).

(4) While an order made under subsection (3) is being carried out, the person is to be taken to be in the legal custody of the person acting under the order.

(4A) The Magistrates' Court or the Children's Court (as the case may be) must not hear or determine an application under subsection (1) unless the person who is the subject of the application is before the Court.

S. 464B(3) amended by Nos 56/1989 s. 286(Sch. 2 item 7.6), 86/2000 s. 4(3).

S. 464B(4A) inserted by No. 86/2000 s. 4(4).

(4B) If the person who is the subject of an application under subsection (1) is not legally represented in a proceeding on the application, the Magistrates' Court or the Children's Court (as the case may be)—

S. 464B(4B)
inserted by
No. 86/2000
s. 4(4).

(a) must adjourn the hearing of the proceeding to enable the person to obtain legal representation unless satisfied that the person has had, or has refused to have, legal advice provided to him or her in relation to the application; and

(b) must not resume the hearing unless the person is legally represented or the Court is satisfied that he or she has had, or has refused to have, legal advice provided to him or her in relation to the application.

(4C) The Magistrates' Court or the Children's Court (as the case may be) may order Victoria Legal Aid to provide legal assistance (of a kind to which section 26(1) of the **Legal Aid Act 1978** applies) to the person who is the subject of an application under subsection (1) and, despite anything to the contrary in that Act, Victoria Legal Aid must provide legal assistance in accordance with the order.

S. 464B(4C)
inserted by
No. 86/2000
s. 4(4).

(5) On an application under subsection (1), the Magistrates' Court or the Children's Court (as the case may be) may, if satisfied that it is in the interests of justice to do so but subject to subsection (5C), order the transfer of the custody of the person who is the subject of the application to the applicant for the purpose of questioning or investigation for a maximum period of time specified in the order, being a reasonable period within which the questioning or investigation may take place.

S. 464B(5)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.7),
57/1989
s. 5(1)(b)(ii),
substituted by
No. 86/2000
s. 4(4).

s. 464B

S. 464B(5A)
inserted by
No. 86/2000
s. 4(4).

(5A) In determining what constitutes a reasonable period for the purposes of an order under subsection (5), the Magistrates' Court or the Children's Court (as the case may be) must have regard to—

- (a) the matters specified in section 464A(4), with any necessary modifications; and
- (b) if the person is a child, his or her age.

S. 464B(5B)
inserted by
No. 86/2000
s. 4(4).

(5B) The Magistrates' Court or the Children's Court (as the case may be), on making an order under subsection (5), may make any further order that it thinks fit as to where, and the circumstances under which, the questioning or investigation may take place but it must not order that the questioning or investigation take place somewhere other than the place at which the person who is the subject of the order was held or detained at the time of the application for the order under subsection (5) unless it is not practicable for the questioning or investigation to take place there.

S. 464B(5C)
inserted by
No. 86/2000
s. 4(4).

(5C) The Magistrates' Court or the Children's Court (as the case may be) must not make an order under subsection (5) in respect of a person referred to in subsection (1)(a)(ii), (iii) or (iv) unless—

- (a) having considered any known likely psychological effect of the questioning on the person; and
- (b) having received evidence (whether oral or written) on the fitness of the person to be questioned given by a medical practitioner—

it is satisfied on the balance of probabilities that the person is fit to be questioned.

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- (5D) A person is unfit to be questioned for the purposes of subsection (5C) if, because the person's mental processes are disordered or impaired, the person is or, at some time during the questioning, will be—
- (a) unable to understand the nature of the questioning (namely that it is questioning to ascertain his or her involvement in the commission of an offence); or
 - (b) unable to follow the course of questioning; or
 - (c) unable to give instructions to his or her legal practitioner; or
 - (d) unable to understand that he or she does not have to say or do anything but that anything he or she does say or do may be given in evidence.
- (5E) On making an order under subsection (5) in respect of a person referred to in subsection (1)(a)(ii), (iii) or (iv), the Magistrates' Court or the Children's Court (as the case may be)—
- (a) must include in that order a condition that—
 - (i) subject to subsection (5F), an independent person is to be present while any questioning or investigation takes place in accordance with the order; and
 - (ii) before the commencement of any questioning or investigation, the investigating official must allow the person to communicate with the independent person in circumstances in which as far as practicable the communication will not be overheard; and

S. 464B(5D)
inserted by
No. 86/2000
s. 4(4).

S. 464B(5E)
inserted by
No. 86/2000
s. 4(4).

s. 464B

(b) may include in that order any other condition that it thinks fit in the interests of the well-being of the person during any questioning or investigation.

S. 464B(5F)
inserted by
No. 86/2000
s. 4(4).

(5F) The Magistrates' Court or the Children's Court (as the case may be) is not required to include in an order under subsection (5) a condition referred to in subsection (5E)(a)(i) if the person who is the subject of the order applies to the Court for that condition not to be included and the Court is satisfied that, in all the circumstances, it is appropriate not to include it.

S. 464B(5G)
inserted by
No. 86/2000
s. 4(4).

(5G) On making an order under subsection (5), the Magistrates' Court or the Children's Court (as the case may be) must inform the person who is the subject of the order—

(a) that he or she does not have to say or do anything but that anything he or she does say or do may be given in evidence; and

(b) that the investigating official must give him or her the information required to be given by subsection (6) and section 464C(1); and

(c) if the person was held in a prison or police gaol at the time of the application, that the making of the order does not prevent a senior police officer from authorising the conduct of a non-intimate compulsory procedure on the person under section 464SA.

S. 464B(5G)(b)
amended by
No. 41/2004
s. 9(1)(a).

S. 464B(5G)(c)
inserted by
No. 41/2004
s. 9(1)(b).

S. 464B(5H)
inserted by
No. 86/2000
s. 4(4),
amended by
No. 27/2006
s. 17(2).

(5H) An audiovisual recording must be made of the following—

(a) the giving of any information required to be given by subsection (6) and section 464C(1);

(b) any response of the person in custody to the giving of that information;

-
- (c) any questioning that takes place in accordance with an order made under subsection (5) and anything said by the person questioned.
- (6) If an order is made under subsection (5), before any questioning or investigation commences, an investigating official must inform the person who is the subject of the order that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.
- (7) An order under subsection (5) has effect as a suspension of a direction in a warrant of commitment to deliver a person to the place of detention specified in the warrant or to hold a person in that place (as the case may be).
- (8) The Magistrates' Court or the Children's Court (as the case may be) may, subject to subsection (8A)—
- (a) extend a period of custody ordered under subsection (5); or
- (b) on a subsequent application under subsection (1), make orders whether in respect of the same or a different offence reasonably suspected of having been committed by the person.
- (8A) The Magistrates' Court or the Children's Court (as the case may be) must not extend a period of custody ordered under subsection (5) or, on a subsequent application under subsection (1), make an order against the same person in respect of the same offence unless satisfied that there is a reasonable prospect that further questioning or investigation will assist in determining the involvement (if any) of the person in the commission of the offence.
- S. 464B(6) amended by No. 86/2000 s. 4(5).**
- S. 464B(8) amended by Nos 56/1989 s. 286(Sch. 2 item 7.7), 57/1989 s. 5(1)(b)(iii), 86/2000 s. 4(6)(a).**
- S. 464B(8)(b) amended by No. 86/2000 s. 4(6)(b).**
- S. 464B(8A) inserted by No. 86/2000 s. 4(7).**

s. 464B

S. 464B(8B)
inserted by
No. 86/2000
s. 4(7).

(8B) In determining the length of any extension of a period of custody ordered under subsection (5), the Magistrates' Court or the Children's Court (as the case may be) must have regard to—

- (a) the matters specified in section 464A(4), with any necessary modifications; and
- (b) if the person is a child, his or her age.

S. 464B(9)
amended by
No. 86/2000
s. 4(8)(a)(b).

(9) At—

- (a) the end of the period, or any extended period, specified in an order under subsection (5); or
- (b) the cessation of questioning or investigation—

whichever is the earlier, the investigating official must deliver the person who is the subject of the order to the place of detention at which the person was held or detained at the time of the application for the order.

S. 464B(9A)
inserted by
No. 41/2004
s. 9(2).

(9A) The making of an order under subsection (5) does not prevent a senior police officer from giving an authorisation under section 464SA.

S. 464B(10)
inserted by
No. 86/2000
s. 4(9),
amended by
No. 72/2004
s. 26(a)(b).

(10) In this section—

S. 464B(10)
def. of
child
amended by
No. 72/2013
s. 4(2)(a).

child, in relation to a person suspected of having committed an offence, means a person who at the time of the suspected commission of the offence was under the age of 18 years but does not include any person who is of or above the age of 19 years at the time of the making of an application in respect of him or her or the giving of informed consent by him or her under this section;

investigating official, in relation to an offence committed outside Victoria, includes a person (other than a person who is engaged in covert investigations under the orders of a superior) who is—

S. 464B(10)
def. of
*investigating
official*
inserted by
No. 72/2013
s. 4(2)(b).

- (a) a member of—
 - (i) the Australian Federal Police; or
 - (ii) the police force of another State or a Territory; or
- (b) a person appointed by or under an Act of the Commonwealth or another State or a Territory whose functions or duties include functions or duties in respect of the prevention or investigation of offences;

Note

Part IC of the Crimes Act 1914 of the Commonwealth applies if the investigating official is a member of the Australian Federal Police.

offence includes an offence against a law of the Commonwealth or another State or a Territory.

S. 464B(10)
def. of *offence*
inserted by
No. 72/2013
s. 4(2)(b).

- (11) An investigating official may question a person (other than a child) who is held in a prison or police gaol and is reasonably suspected of having committed an offence (whether in Victoria or elsewhere) other than the offence for which he or she is being held about his or her involvement (if any) in that offence if—
 - (a) the investigating official is satisfied that the person is not incapable of giving informed consent by reason of mental impairment; and

S. 464B(11)
inserted by
No. 72/2013
s. 4(3).

s. 464B

- (b) the person gives informed consent in accordance with subsection (13).

Note

Section 41 of the **Corrections Act 1986** provides for visits by the police to prisoners, which may include questioning to which this section does not apply.

S. 464B(12)
inserted by
No. 72/2013
s. 4(3).

- (12) A person must not be removed from the prison or police gaol in which he or she is being held for the purpose of questioning under subsection (11).

Note

Questioning or investigations involving removal from prison or police gaol may be authorised by a court order under subsection (5).

S. 464B(13)
inserted by
No. 72/2013
s. 4(3).

- (13) A person gives informed consent to be questioned if the person consents after an investigating official informs the person, in language likely to be understood by the person, of the following matters—

- (a) the nature of the offence which the person is suspected of having committed;
- (b) that the person may refuse to be questioned;
- (c) that if the person gives consent, he or she does not have to say or do anything but that anything the person does say or do may be given in evidence;
- (d) that if the person gives consent, he or she may withdraw that consent at any time before the questioning is completed but anything the person says or does before withdrawal of consent may be given in evidence;
- (e) that if the person refuses to be questioned, an application may be made to the Magistrates' Court for an order under this section;

- (f) that if the Magistrates' Court makes an order under this section, the person may be delivered into the custody of the investigating official for the purpose of questioning;
- (g) the person's rights under sections 464C, 464D and 464F, unless Part IC of the Crimes Act 1914 of the Commonwealth applies.
- (14) A person may exercise any applicable right under section 464C, 464D or 464F before deciding whether or not to consent to be questioned.
- (15) An audiovisual recording must be made of—
- (a) the giving of the information referred to in subsection (13); and
 - (b) any response of the person in custody to the giving of that information; and
 - (c) any questioning of the person that takes place and anything said by the person questioned; and
 - (d) any withdrawal of consent to the questioning.

S. 464B(14)
inserted by
No. 72/2013
s. 4(3).

S. 464B(15)
inserted by
No. 72/2013
s. 4(3).

Note

Section 78D of the **Corrections Act 1986** provides for the application of section 464B in relation to persons detained under that Act.

Note to
s. 464B
inserted by
No. 25/2014
s. 15.

464C Right to communicate with friend, relative and legal practitioner

S. 464C
inserted by
No. 37/1988
s. 5.

- (1) Before any questioning or investigation under section 464A(2) commences, an investigating official must inform the person in custody that he or she—

s. 464C

S. 464C(1)(b)
amended by
No. 72/2013
s. 5(1).

- (a) may communicate with or attempt to communicate with a friend or relative to inform that person of his or her whereabouts; and
- (b) may communicate with or attempt to communicate with a legal practitioner (whether the term legal practitioner or lawyer is used)—

and, unless the investigating official believes on reasonable grounds that—

- (c) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (d) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed—

the investigating official must defer the questioning and investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.

- (2) Subject to subsection (1), if a person wishes to communicate with a friend, relative or legal practitioner, the investigating official in whose custody the person then is—
 - (a) must afford the person reasonable facilities as soon as practicable to enable the person to do so; and
 - (b) must allow the person's legal practitioner or a clerk of the legal practitioner to communicate with the person in custody in circumstances in which as far as practicable the communication will not be overheard.

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- (3) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5) or any questioning conducted by consent under section 464B(11), unless Part IC of the Crimes Act 1914 of the Commonwealth applies.
- (4) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

S. 464C(3)
amended by
Nos 86/2000
s. 5, 72/2013
s. 5(2).

464D Right to an interpreter

- (1) If a person in custody does not have a knowledge of the English language that is sufficient to enable the person to understand the questioning, an investigating official must, before any questioning or investigation under section 464A(2) commences, arrange for the presence of a competent interpreter and defer the questioning or investigation until the interpreter is present.
- (2) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5) or any questioning conducted by consent under section 464B(11), unless Part IC of the Crimes Act 1914 of the Commonwealth applies.
- (3) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

S. 464D
inserted by
No. 37/1988
s. 5.

S. 464D(2)
amended by
No. 72/2013
s. 6.

s. 464E

464E Persons under 18 years

S. 464E
(Heading)
inserted by
No. 72/2004
s. 27(1).

S. 464E
inserted by
No. 37/1988
s. 5.

S. 464E(1)
amended by
No. 72/2004
s. 27(2).

- (1) If a person in custody is under the age of 18 years, an investigating official must not, subject to subsection (2), question or carry out an investigation under section 464A(2) unless—
 - (a) a parent or guardian of the person in custody or, if a parent or guardian is not available, an independent person is present; and
 - (b) before the commencement of any questioning or investigation, the investigating official has allowed the person in custody to communicate with his or her parent or guardian or the independent person in circumstances in which as far as practicable the communication will not be overheard.
- (2) Subsection (1) does not apply if the investigating official believes on reasonable grounds that—
 - (a) the communication necessary to give effect to subsection (1)(a) would result in the escape of an accomplice or the fabrication or destruction of evidence; or
 - (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed.
- (3) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5).

- (4) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

464F Right of foreign national to communicate with consular office

S. 464F
inserted by
No. 37/1988
s. 5.

- (1) If a person in custody is not a citizen or permanent resident of Australia, the investigating official in whose custody the person then is must, before any questioning or investigation under section 464A(2) commences, inform the person in custody that he or she may communicate with or attempt to communicate with the consular office of the country of which the person is a citizen and, unless the investigating official believes on reasonable grounds that—
- (a) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
 - (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed—

the investigating official must defer the questioning or investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.

- (2) Subject to subsection (1), if a person referred to in that subsection wishes to communicate with the consular office of the country of which he or she is a citizen, the investigating official in whose custody the person then is must afford the person reasonable facilities as soon as practicable to enable the person to do so.

s. 464G

S. 464F(2A)
inserted by
No. 72/2013
s. 7.

- (2A) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5) or any questioning conducted by consent under section 464B(11), unless Part IC of the Crimes Act 1914 of the Commonwealth applies.
- (3) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

S. 464G
(Heading)
inserted by
No. 27/2006
s. 17(3).

464G Recording of information required to be given to person in custody

S. 464G
inserted by
No. 37/1988
s. 5,
amended by
No. 86/2000
s. 8(1) (ILA
s. 39B(1)).

S. 464G(1)
amended by
No. 27/2006
s. 17(4).

- (1) If a person is in custody in relation to an indictable offence, an investigating official who is required by sections 464A(3), 464C(1) and 464F(1) to give the person in custody certain information must record (by audio recording or audiovisual recording), if practicable, the giving of that information and the person's responses, if any.
- (2) Subsection (1) is subject to section 464B(5H) and (15).

S. 464G(2)
inserted by
No. 86/2000
s. 8(1),
amended by
No. 72/2013
s. 8.

464H Recording of confessions and admissions

(1) Subject to subsection (2), evidence of a confession or admission made to an investigating official by a person who—

(a) was suspected; or

(b) ought reasonably to have been suspected—

of having committed an offence is inadmissible as evidence against the person in proceedings for an indictable offence unless—

(c) if the confession or admission was made before the commencement of questioning, the confession or admission was recorded by audio recording or audiovisual recording, or the substance of the confession or admission was confirmed by the person and the confirmation was recorded by audio recording or audiovisual recording; or

(d) if the confession or admission was made during questioning at a place where facilities were available to conduct an interview, the questioning and anything said by the person questioned was recorded by audio recording or audiovisual recording; or

(e) if the confession or admission was made during questioning at a place where facilities were not available to conduct an interview, the questioning and anything said by the person questioned was recorded by audio recording or audiovisual recording, or the substance of the confession or admission was

S. 464H
(Heading)
inserted by
No. 27/2006
s. 17(5).

S. 464H
inserted by
No. 37/1988
s. 5.

S. 464H(1)
amended by
Nos 86/2000
s. 6(1)(c),
27/2006
s. 17(6)(c),
87/2009
s. 3(1).

S. 464H(1)(c)
amended by
No. 27/2006
s. 17(6)(a).

S. 464H(1)(d)
amended by
No. 27/2006
s. 17(6)(a).

S. 464H(1)(e)
amended by
Nos 86/2000
s. 6(1)(a),
27/2006
s. 17(6)(a).

s. 464H

confirmed by the person questioned and the confirmation was recorded by audio recording or audiovisual recording; or

S. 464H(1)(f)
inserted by
No. 86/2000
s. 6(1)(b),
amended by
No. 27/2006
s. 17(6)(b).

(f) if the confession or admission was made during questioning in accordance with an order made under section 464B(5), the questioning and anything said by the person was recorded by audiovisual recording—

and, if either an audio recording or an audiovisual recording was made, that recording or, if both an audio recording and an audiovisual recording were made, the audiovisual recording is available to be tendered in evidence.

(2) A court may admit evidence of a confession or admission otherwise inadmissible by reason of subsection (1) if the person seeking to adduce the evidence satisfies the court on the balance of probabilities that the circumstances—

(a) are exceptional; and

(b) justify the reception of the evidence.

S. 464H(3)
amended by
No. 86/2000
s. 6(2)(a).

(3) If the questioning or confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section or the giving of information is recorded as required under section 464B(5H) or 464G, the investigating official must give to the person or his or her legal practitioner without charge—

S. 464H(3)(a)
amended by
Nos 86/2000
s. 6(2)(b),
27/2006
s. 17(7)(a),
substituted by
No. 87/2009
s. 3(2).

(a) if either an audio recording or an audiovisual recording was made, a copy of that recording as soon as practicable but not later than 7 days after the recording was made; and

- (b) if both an audio recording and an audiovisual recording were made—
- (i) the audio recording as soon as practicable but not later than 7 days after the recording was made; and
 - (ii) if the person is charged with an offence to which the recording relates, a copy of the audiovisual recording as soon as practicable but not later than 7 days after the person is charged; and
- (c) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable but not later than 7 days after the transcript was made.
- (3A) On request by a person charged with an offence or the legal practitioner representing that person, the investigating official must provide an additional copy of the audiovisual recording referred to in subsection (3).
- (4) Nothing in this section prevents the use of an audio recording or audiovisual recording in a proceeding for a summary offence.

S. 464H(3)(b) amended by Nos 86/2000 s. 6(2)(b), 27/2006 s. 17(7)(b), substituted by No. 87/2009 s. 3(2).

S. 464H(3)(c) inserted by No. 87/2009 s. 3(2).

S. 464H(3A) inserted by No. 87/2009 s. 3(3).

S. 464H(4) amended by Nos 86/2000 s. 6(3), 27/2006 s. 17(8).

464I No power to detain person not under arrest

Nothing in sections 464 to 464H (except as provided by an order made under section 464B(5)) confers a power to detain against his or her will a person who is not under arrest.

S. 464I inserted by No. 37/1988 s. 5, amended by No. 86/2000 s. 8(2).

464J Right to remain silent etc. not affected

Nothing in this subdivision affects—

- (a) the right of a person suspected of having committed an offence to refuse to answer questions or to participate in investigations

S. 464J inserted by No. 37/1988 s. 5, amended by No. 84/1989 s. 6.

s. 464JA

except where required to do so by or under an Act or a Commonwealth Act; or

(b) the onus on the prosecution to establish the voluntariness of an admission or confession made by a person suspected of having committed an offence; or

S. 464J(ba) inserted by No. 69/2009 s. 50.

(ba) the onus on the prosecution to prove that an admission or confession was made in such circumstances as to make it unlikely that the truth of the admission or confession was adversely affected; or

(c) the discretion of a court to exclude unfairly obtained evidence; or

(d) the discretion of a court to exclude illegally or improperly obtained evidence.

S. 464JA inserted by No. 87/2009 s. 4.

464JA Offences in relation to recordings

(1) In this section—

authorised person means—

S. 464JA(1) def. of *authorised person* amended by Nos 64/2010 s. 3(1), 43/2012 s. 3(Sch. item 11.2), 82/2012 s. 159(1), 37/2014 s. 10(Sch. item 36.19(a)).

(a) a member of Victoria Police personnel (other than a protective services officer);

(b) a person or body engaged to provide services to Victoria Police in relation to the installation or maintenance of recording equipment;

(c) the Director of Public Prosecutions for Victoria or a person acting under the authority of the Director;

(d) the Chief Crown Prosecutor or a Crown Prosecutor or Associate Crown Prosecutor appointed under the **Public Prosecutions Act 1994**;

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- (e) a person employed in the Office of Public Prosecutions under the **Public Prosecutions Act 1994**;
 - (f) a legal practitioner representing—
 - (i) the State; or
 - (ii) an informant;
 - (g) a legal practitioner representing—
 - (i) a suspect recorded under section 464B(5H), 464G or 464H; or
 - (ii) a co-accused of the suspect;
 - (h) an officer or employee of Victoria Legal Aid employed under the **Legal Aid Act 1978**;
 - (i) a court or a person acting under the direction of a court;
 - (j) a coroner within the meaning of the **Coroners Act 2008** or a person acting under the direction of a coroner;
 - (k) the Commissioner for Law Enforcement Data Security appointed under Part 2 of the **Commissioner for Law Enforcement Data Security Act 2005** or a person acting under his or her direction;
 - (l) the Chief Examiner or an Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004** or a person acting under the direction of the Chief Examiner or an Examiner;
 - (m) the Commissioner within the meaning of the **Independent Broad-based Anti-corruption Commission Act**
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2011 or a person acting under his or her direction;

- (n) the Inspector within the meaning of the **Victorian Inspectorate Act 2011** or a person acting under his or her direction;
- (o) a member of the Legislative Assembly or Legislative Council or a person acting under his or her direction;
- (p) a person, or person belonging to a class of persons, prescribed for the purposes of this definition;
- (q) an investigating official or person acting under his or her direction;
- (r) a person engaged by a Department or agency to store or retrieve a record;

publish means—

- (a) insert in a newspaper or other publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) bring to the notice of the public or any member of the public by any other means, including by publication on the Internet;

recording means a recording made in accordance with section 464B(5H), 464G or 464H.

- (2) A person must not knowingly possess an audio recording or an audiovisual recording unless the person—
 - (a) is the suspect; or
 - (b) is a legal practitioner representing the suspect; or

- (c) is an authorised person acting in the performance of his or her duties; or
- (d) has possession of the recording in a sealed package in the course of his or her duties as a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording to that person.

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

- (3) A person must not play an audio recording or an audiovisual recording to another person unless—

- (a) the recording is played for purposes connected with any civil or criminal proceeding and any inquiry before any court or tribunal; or
- (b) the recording is played for purposes connected with an investigation of a death or a fire or an inquest held by a coroner; or
- (c) the recording is played for purposes connected with disciplinary action against a police officer under the **Victoria Police Act 2013**; or
- (d) the recording is played for purposes connected with disciplinary action against a legal practitioner; or
- (e) the recording is played in accordance with the direction of a court under section 464JB; or

S. 464JA(3)(a) substituted by No. 64/2010 s. 3(2).

S. 464JA(3)(c) amended by No. 37/2014 s. 10(Sch. item 36.19(b)).

- (f) the recording is played in accordance with section 464JD; or
- (g) the recording is played by an authorised person acting in the course of his or her duties.

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

- (4) A person must not supply or offer to supply an audio recording or an audiovisual recording to another person other than—
 - (a) the suspect in relation to whom the recording was made;
 - (b) a legal practitioner representing the suspect;
 - (c) an authorised person acting in the performance of his or her duties;
 - (d) a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording.

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

- (5) A person, other than an authorised person acting in the performance of his or her duties, must not copy the whole or any part of an audio recording or an audiovisual recording or permit another person to make such a copy, unless the person is

acting in accordance with the direction of a court under section 464JB.

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

- (6) An authorised person must not knowingly or recklessly tamper with, modify or erase (in whole or in part) a recording while the recording is being retained under section 464JC, except in accordance with the direction of a court under section 464JB.

S. 464JA(6)
amended by
No. 64/2010
s. 3(3).

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

- (7) A person must not publish or cause to be published the whole or any part of an audio recording or an audiovisual recording except in accordance with the direction of a court under section 464JB.

Penalty: Level 7 imprisonment (2 years maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 1200 penalty units: see section 113D of the **Sentencing Act 1991**.

- (8) An offence against a provision of this section is a summary offence.

s. 464JB

S. 464JB
inserted by
No. 87/2009
s. 4.

464JB Court may give directions in relation to a recording

(1) In this section—

recording has the same meaning as in section 464JA.

(2) A court may give directions, with or without conditions, as to the supply, copying, editing, erasure, playing or publishing of an audio recording or an audiovisual recording.

S. 464JC
inserted by
No. 87/2009
s. 4.

464JC Retention of copy of recording

(1) In this section—

authorised person has the same meaning as in section 464JA;

court means—

- (a) if a criminal proceeding to which the recording relates has commenced but has not been completed, the court hearing the proceeding;
- (b) in any other case, the Magistrates' Court;

Department Head has the same meaning as in the **Public Administration Act 2004**;

S. 464JC(1)
def. of
Department Head
inserted by
No. 64/2010
s. 4(1).

recording has the same meaning as in section 464JA.

S. 464JC(2)
amended by
Nos 64/2010
s. 4(2)(3),
37/2014
s. 10(Sch.
item 36.20).

(2) The Chief Commissioner of Police must keep a copy of a recording, if the recording has been made by a police officer in the course of an investigation, in safe custody.

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- (2A) If the recording has been made by an investigating official who is not a police officer, the recording must be kept in the custody of the Department Head for the Department, where the investigating official made the recording in the course of carrying out duties for or on behalf of that Department.
- (2B) A recording referred to in subsection (2) or (2A) must be kept for a period of 7 years from the making of the recording.
- (3) If the court is satisfied that there is good cause to keep a copy of a recording for a period longer than 7 years, the court may order that the Chief Commissioner of Police or the Department Head retain the copy for a further period specified in the order.
- (4) An application for an order under subsection (3) may be made by—
- (a) the suspect in relation to whom the recording was made; or
 - (b) an authorised person acting in the performance of his or her duties.
- (5) The court must not make an order under subsection (3) unless—
- (a) the court is satisfied that the applicant has given reasonable notice of the application to the suspect and the Chief Commissioner of Police or the Department Head; and
 - (b) the court has given the suspect and the Chief Commissioner of Police or the Department Head a reasonable opportunity to be heard.

S. 464JC(2A)
inserted by
No. 64/2010
s. 4(4),
amended by
Nos 48/2012
s. 47, 37/2014
s. 10(Sch.
item 36.20).

S. 464JC(2B)
inserted by
No. 64/2010
s. 4(4).

S. 464JC(3)
amended by
No. 64/2010
s. 4(5).

S. 464JC(5)(a)
amended by
No. 64/2010
s. 4(6)(a).

S. 464JC(5)(b)
amended by
No. 64/2010
s. 4(6)(b).

s. 464JD

S. 464JD
inserted by
No. 87/2009
s. 4.

S. 464JD(1)
def. of
*prescribed
person*
amended by
Nos 64/2010
s. 5(1),
37/2014
s. 10(Sch.
item 36.21).

464JD Use of recordings for training, teaching or testing purposes

(1) In this section—

prescribed person means—

- (a) a member of Victoria Police personnel (other than a protective services officer);
- (b) a person or body engaged to provide services to Victoria Police in relation to the installation or maintenance of recording equipment;
- (c) a legal practitioner or a person training to become a legal practitioner;
- (d) a person, or a person belonging to a class of persons, prescribed for the purposes of this section;
- (e) an investigating official or a person acting under his or her direction;

recording has the same meaning as in section 464JA.

- (2) Subject to section 464JA, a recording may be played to a prescribed person for the purposes of training or teaching that person or testing the recording equipment if—
- (a) the suspect has been convicted or found guilty of the charge to which the recording relates; and
 - (b) all legal proceedings in relation to the subject matter in the recording have been concluded; and
 - (c) all reasonable measures have been taken to prevent the identification of the suspect or any other person (including an alleged victim) from the recording when it is played.

Fingerprinting

Heading
inserted by
No. 16/2002
s. 4(a).

464K Fingerprinting of adults and children aged 15 or above

S. 464K
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 11(c),
57/1989
s. 5(1)(c),
substituted by
No. 129/1993
s. 7.

- (1) A police officer may take, or cause to be taken by an authorised person, the fingerprints of a person of or above the age of 15 years who—
- (a) is believed on reasonable grounds to have committed; or
 - (b) has been charged with; or
 - (c) has been summonsed to answer to a charge for—
- an indictable offence or a summary offence referred to in Schedule 7.
- (2) A police officer intending to fingerprint a person under this section must inform the person in language likely to be understood by him or her—
- (a) of the purpose for which the fingerprints are required; and
 - (b) of the offence which the person is believed to have committed or with which the person has been charged or for which the person has been summonsed to answer to a charge; and
 - (c) that the fingerprints may be used in evidence in court; and

S. 464K(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

S. 464K(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 464K

S. 464K(2)(d)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

(d) that if the person refuses to give his or her fingerprints voluntarily, a police officer may use reasonable force to obtain them; and

(e) that if the person is not charged with a relevant offence within 6 months or is so charged but the charge is not proceeded with or the person is not found guilty of the offence or any other relevant offence before the end of that period, the fingerprints will be destroyed.

S. 464K(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

(3) Subject to subsection (4), the police officer who informs a person of the matters in subsection (2) must—

S. 464K(3)(a)
substituted by
No. 27/2006
s. 17(9).

(a) record (whether by audio recording or audiovisual recording); or

(b) record in writing signed by the person—the giving of that information and the person's responses, if any.

S. 464K(4)
amended by
No. 27/2006
s. 17(10).

(4) If a person is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of the information under subsection (2) and the person's responses, if any, must be recorded by audio recording or audiovisual recording.

S. 464K(5)
amended by
Nos 27/2006
s. 17(11)(a),
37/2014
s. 10(Sch.
item 36.22(a)).

(5) If information and a person's responses are recorded by audio recording or audiovisual recording in accordance with this section, the police officer giving the information must give or send by post to the person or his or her legal practitioner without charge—

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- (a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and
- (b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable.
- (6) If information and a person's responses are recorded in writing in accordance with this section, the police officer requesting the person's fingerprints must give to the person, or cause the person to be given, a copy of the signed record forthwith.
- (7) A police officer may use reasonable force to take the fingerprints of a person referred to in subsection (1) who refuses to give them voluntarily if the use of reasonable force is authorised by a police officer in charge of a police station at the time of the request or a police officer of or above the rank of sergeant.
- (8) If the person from whom fingerprints are required is a child aged 15, 16 or 17 years—
- (a) a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person must be present during the request for the fingerprints, the giving of the information referred to in subsection (2) and the taking of the fingerprints; and
- (b) if the use of reasonable force has been authorised in accordance with subsection (7), the taking of the fingerprints must be recorded by audiovisual recording, if practicable, or by audio recording.
- S. 464K(5)(a) amended by No. 27/2006 s. 17(11)(b).
- S. 464K(5)(b) amended by No. 27/2006 s. 17(11)(c).
- S. 464K(6) amended by No. 37/2014 s. 10(Sch. item 36.22(b)).
- S. 464K(7) amended by No. 37/2014 s. 10(Sch. item 36.22(c)).
- S. 464K(8) amended by No. 72/2004 s. 28.
- S. 464K(8)(b) amended by No. 27/2006 s. 17(12).

s. 464L

464L Fingerprinting of children aged 14 or under

S. 464L
inserted by
No. 38/1988
s. 4,
amended by
No. 23/1991
s. 5(a)(b),
substituted by
No. 129/1993
s. 7.

(1) A child under the age of 10 years who is suspected of having done or omitted to have done any act which would have constituted an offence had the child been of the age of criminal responsibility must not—

- (a) be requested to give his or her fingerprints;
or
- (b) have his or her fingerprints taken.

S. 464L(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(a)).

(2) A police officer may take, or cause to be taken by an authorised person, the fingerprints of a child aged 10 years or more but under 15 years who—

- (a) is believed on reasonable grounds to have committed; or
- (b) has been charged with; or
- (c) has been summonsed to answer to a charge for—

an indictable offence or a summary offence referred to in Schedule 7 if—

- (d) both the child and a parent or guardian of the child consent; or
- (e) where consent is refused or the parent or guardian cannot be located, the Children's Court makes an order under section 464M(5).

S. 464L(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(a)).

(3) A police officer wishing to fingerprint a child referred to in subsection (2) must inform the child and the parent or guardian of the child in language likely to be understood by each of them—

- (a) of the purpose for which the fingerprints are required; and

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- (b) of the offence which the child is believed to have committed or with which the child has been charged or for which the child has been summonsed to answer to a charge; and
 - (c) that the fingerprints may be used in evidence in court; and
 - (d) that the child's parent or guardian may refuse consent to the child's fingerprints being taken; and
 - (e) that if consent is refused, an application may be made to the Children's Court for an order directing the child to give his or her fingerprints; and
 - (f) that if the child is not charged with a relevant offence within 6 months or is so charged but the charge is not proceeded with or the child is not found guilty of the offence or any other relevant offence before the end of that period, the fingerprints will be destroyed.
- (4) A parent or guardian of a child must be present during the request for the fingerprints under this section, the giving of the information referred to in subsection (3) and the taking of the fingerprints with consent.
- (5) Subject to subsection (6), the police officer who informs a child of the matters in subsection (3) must—
- (a) record by audio recording or audiovisual recording; or

S. 464L(5)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(a)).

S. 464L(5)(a)
substituted by
No. 27/2006
s. 17(13).

s. 464L

(b) record in writing signed by the child and the parent or guardian present—

the giving of that information and the responses, if any, of the child and the parent or guardian.

S. 464L(6)
amended by
No. 27/2006
s. 17(14).

(6) If a child is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of the information under subsection (3) and the responses, if any, of the child and the parent or guardian must be recorded by audio recording or audiovisual recording.

S. 464L(7)
amended by
Nos 27/2006
s. 17(15)(a),
37/2014
s. 10(Sch.
item 36.23(a)).

(7) If information and the responses of the child and parent or guardian are recorded by audio recording or audiovisual recording, the police officer giving the information must give or send by post to the child or his or her legal practitioner without charge—

S. 464L(7)(a)
amended by
No. 27/2006
s. 17(15)(b).

(a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and

S. 464L(7)(b)
amended by
No. 27/2006
s. 17(15)(c).

(b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable.

S. 464L(8)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(b)).

(8) If information and the responses of the child and parent or guardian are recorded in writing, the police officer requesting the child's fingerprints must give to the child, or cause the child to be given, a copy of the signed record forthwith.

464M Children's Court may order fingerprinting

S. 464M
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 14(b),
57/1989
s. 5(1)(d)(e),
23/1991
s. 6(1),
substituted by
No. 129/1993
s. 7.

- (1) If a child referred to in section 464L(2) or his or her parent or guardian refuses to consent to the taking of the child's fingerprints or the parent or guardian cannot be located, a police officer may apply to the Children's Court for an order under subsection (5).
- (2) An application under subsection (1)—
 - (a) must be in writing supported by evidence on oath or by affidavit; and
 - (b) if the child is held in a police gaol or is detained in a youth residential centre, must state that fact.
- (3) Notice of an application under subsection (1) must be served on—
 - (a) a parent or guardian of the child; and
 - (b) if the child is not in custody within the meaning of this Subdivision, the child.
- (4) The court may dispense with the requirement of subsection (3)(a) if satisfied that it is impracticable for the applicant to comply.
- (5) The Children's Court may make an order directing a child aged 10 years or more but under 15 years to give his or her fingerprints if satisfied on the balance of probabilities that—

S. 464M(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.24).

s. 464M

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- (a) there are reasonable grounds to believe that the child has committed an indictable offence or a summary offence referred to in Schedule 7; and
 - (b) in all the circumstances the making of the order is justified.
- (6) In considering whether the making of the order is justified, the court must take into account amongst other things—
- (a) the seriousness of the circumstances surrounding the commission of the offence; and
 - (b) the alleged degree of participation by the child in the commission of the offence; and
 - (c) the age of the child.
- (7) A child in respect of whom an application under subsection (1) is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the court, other than in respect of any matter referred to in subsection (5)(a) or (b) or subsection (6).
- (8) In exercising the right of address under subsection (7)(c), a child may be represented by a legal practitioner or, with the leave of the court, a parent or guardian of the child.
- (9) If the court makes an order under subsection (5)—
- (a) a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person must be present during the taking of the child's fingerprints; and

S. 464M(8)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

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- (b) a police officer may use reasonable force to take the fingerprints; and **S. 464M(9)(b) amended by No. 37/2014 s. 10(Sch. item 36.24).**
- (c) the taking of the fingerprints must be recorded by audiovisual recording, if practicable, or otherwise by audio recording. **S. 464M(9)(c) amended by No. 27/2006 s. 17(16).**
- (10) After an order under subsection (5) is executed—
- (a) the independent person, if any, who witnessed the taking of the fingerprints must endorse on the order his or her name and sign the endorsement; and
- (b) the person who took the fingerprints must endorse on the order the name of the person, if any, who made the audiovisual recording of the taking of the fingerprints; and **S. 464M(10)(b) amended by No. 27/2006 s. 17(17).**
- (c) the person who took the fingerprints must give a copy of the order so endorsed to the child.
- (11) The endorsements required by subsection (10) to be made on an order under subsection (5) may be made on a copy of the order transmitted by facsimile machine.
- (12) If the Children's Court makes an order under subsection (5), it may issue a warrant authorising the person to whom it is directed—
- (a) to break, enter and search, if necessary, any place where the child named or described in the warrant is suspected to be; and
- (b) to arrest the child named or described in the warrant; and
- (c) to take the child without delay to the nearest accessible police station for fingerprinting.

s. 464M

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- (13) If the Children's Court makes an order under subsection (5) or issues a warrant under subsection (12), it must—
- (a) give reasons for its decision; and
 - (b) cause a note of the reasons to be entered in the records of the court.
- (14) The failure of the court to comply with subsection (13) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464Q(1)(a).
- (15) If a child is apprehended under a warrant issued under subsection (12), the warrant ceases to have effect immediately after the child's fingerprints have been taken.
- (16) If the Children's Court makes an order under subsection (5) in respect of a child who is held in a prison, police gaol, youth justice centre or youth residential centre, the court must also order that the officer in charge of the place at which the child is held must take the fingerprints of the child or cause them to be taken and must deliver the fingerprints to the applicant within a period of time specified in the order.

S. 464M(16)
amended by
No. 48/2006
s. 42(Sch.
item 9.3).

464N Taking of fingerprints

S. 464N
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
ss 11(d),
12(1)(2),
14(c)(d),
56/1989
s. 286(Sch. 2
items 7.8–
7.10),
substituted by
No. 129/1993
s. 7.

(1) Fingerprints may be taken by means of a device to obtain a record of the fingerprints (a fingerscan) or by any other means.

S. 464N(1)
inserted by
No. 41/2004
s. 4(1).

(2) If—

S. 464N(2)
amended by
Nos 41/2004
s. 4(2),
37/2014
s. 10(Sch.
item 36.24).

(a) fingerprints are to be taken in accordance with a court order; or

(b) reasonable force is to be used to take fingerprints—

a person of the same sex as the person to be fingerprinted must, if practicable, take the fingerprints and a police officer involved in investigating the offence for which the fingerprints are required must not, if practicable, take the fingerprints.

464NA Fingerscanning for identification purposes

S. 464NA
inserted by
No. 35/2002
s. 3.

* * * * *

S. 464NA(1)
repealed by
No. 41/2004
s. 5(1).

s. 464NA

S. 464NA(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.25(a)).

- (2) If a person of or above the age of 15 years—
- (a) has been charged with an indictable offence or a summary offence referred to in Schedule 7; and
 - (b) is present in a police station because of the charging or has been remanded in custody in relation to the charge—

a police officer may take a fingerscan of the person for the purpose only of identifying the person.

S. 464NA(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.25(a)).

- (3) Before fingerscanning a person under this section, a police officer must inform the person, in language likely to be understood by the person, that the fingerscan—
- (a) is to be taken only for the purpose of identifying the person; and
 - (b) is inadmissible as evidence.

S. 464NA(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.25
(b)(i)).

- (4) A police officer may use reasonable force to take the fingerscan of a person referred to in subsection (2) who refuses to allow it to be taken voluntarily if—

S. 464NA(4)(a)
amended by
No. 37/2014
s. 10(Sch.
item
36.25(b)(ii)).

- (a) the use of reasonable force is authorised by a police officer in charge of a police station at the relevant time or a police officer or above the rank of sergeant; and

S. 464NA(4)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.25
(b)(i)).

- (b) before fingerscanning the person, the police officer informs the person, in language likely to be understood by the person, that reasonable force may be used to obtain it.

- (5) A person of the same sex as the person to be fingerscanned must, if practicable, take the fingerscan.

S. 464NA(6)
amended by
No. 41/2004
s. 5(2).

- (6) A fingerscan taken under this section is inadmissible as evidence in any proceeding.

- (7) A fingerscan taken under this section which is not required to be destroyed under section 464O may be recorded on a computerised database and may be accessed, disclosed, communicated or made use of by a person for the performance of official duties if the recording, accessing, disclosing, communicating or making use of fingerscans on that database by that person, or a person belonging to a class of persons, for that purpose is authorised in writing by the Chief Commissioner of Police.

S. 464NA(7)
amended by
No. 41/2004
s. 5(3).

464O Destruction of records

- (1) In this section—

S. 464O
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 11(e),
56/1989
s. 286(Sch. 2
items 7.11–
7.13), 57/1989
s. 5(1)(f)(i)–(iii),
substituted by
No. 129/1993
s. 7.

destroy, in relation to a fingerscan, means permanently de-identify information—

S. 464O(1)
def. of
destroy
inserted by
No. 35/2002
s. 4.

- (a) which identifies the person from whom the fingerscan was taken; or
(b) from which the person's identity may be ascertained;

fingerprints includes fingerscan taken under section 464NA or any other provision of this Subdivision;

S. 464O(1)
def. of
fingerprints
inserted by
No. 35/2002
s. 4,
amended by
No. 41/2004
s. 6.

relevant offence means—

- (a) the offence in respect of which the fingerprints were taken; or
 - (b) any other offence arising out of the same circumstances; or
 - (c) any other offence in respect of which the fingerprints have probative value.
- (2) If a person has been fingerprinted in accordance with this Subdivision and—
- (a) the person has not been charged with a relevant offence at the end of the period of 6 months after the taking of the fingerprints; or
 - (b) the person has been so charged but the charge is not proceeded with or the person is not found guilty of the offence or any other relevant offence, whether on appeal or otherwise, before the end of that period—
- the Chief Commissioner of Police must, subject to subsection (4), destroy the fingerprints and any record, copy or photograph of them, or cause them to be destroyed at the time specified in subsection (3).
- (3) For the purposes of subsection (2), fingerprints taken in accordance with this Subdivision and any record, copy or photograph of them must be destroyed—
- (a) where the person has not been so charged or the charge is not proceeded with, immediately after that period of 6 months; or
 - (b) where the person is not found guilty, within 1 month after the conclusion of the proceedings and the end of any appeal period.

- (4) A police officer may, within the period referred to in subsection (3)(a) or (b) and on one occasion only, apply without notice to any other person to the Magistrates' Court or the Children's Court (as the case requires) for an order extending the period by not more than 6 months within which the fingerprints and any record, copy or photograph of them must be destroyed.
- (5) If a court makes an order under subsection (4), it must cause a copy of the order to be served on the person from whom the fingerprints were taken.
- (6) If fingerprints or any record, copy or photograph of them are destroyed in accordance with this section, the Chief Commissioner of Police must give notice within 14 days of the destruction to the person from whom the fingerprints were taken.
- (7) A person who—
- (a) fails to destroy; or
 - (b) uses or makes, or causes or permits to be used or made—
- any record, copy or photograph of fingerprints required by this section to be destroyed is guilty of a summary offence punishable on conviction by a level 10 fine (10 penalty units maximum).

S. 464O(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

S. 464O(7)
amended by
No. 69/1997
s. 22(14).

464P Records of juvenile

S. 464P
inserted by
No. 38/1988
s. 4,
amended by
No. 25/1989
s. 11(f),
substituted by
No. 129/1993
s. 7.

- (1A) In this section, *fingerprints* includes fingerscan taken under section 464NA or any other provision of this Subdivision.

S. 464P(1A)
inserted by
No. 35/2002
s. 5,
amended by
No. 41/2004
s. 7.

- (1) Subject to subsection (2), if—
- (a) a person is fingerprinted as a child in accordance with this Subdivision, whether before or after the commencement of section 7 of the **Crimes (Amendment) Act 1993**; and
 - (b) the fingerprints are not required to be destroyed under this Subdivision; and
 - (c) the person is not found guilty of any further offence before attaining the age of 26 years; and
 - (d) in the case of fingerprints taken before the commencement of section 7 of that Act, a request has been made to the Chief Commissioner of Police for their destruction—

the Chief Commissioner must without delay destroy the fingerprints and any record, copy or photograph of them, or cause them to be destroyed.

- (2) Subsection (1) does not apply to fingerprints retained as a result of a finding of guilt of any of the following offences—

- (a) murder, attempted murder, manslaughter, child homicide or defensive homicide;
- (b) an offence or attempt to commit an offence against section 16, 17, 18, 25, 26, 29 or 31;
- (c) an offence or attempt to commit an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I;

S. 464P(2)(a)
amended by
Nos 77/2005
s. 8(3)(c),
7/2008
s. 7(3)(e).

- (d) an offence or attempt to commit an offence against section 75 or 75A;
- (e) an offence of arson against section 197.

464Q Evidence of fingerprints

- (1) Evidence in respect of fingerprints taken from a person is inadmissible as part of the prosecution case in proceedings against that person for an offence if—
 - (a) the requirements of sections 464K to 464N have not been complied with; or
 - (b) the fingerprints or any record, copy or photograph of them should have been but have not been destroyed as required by section 464O or 464P.
- (2) A court may admit evidence in respect of fingerprints otherwise inadmissible by reason of subsection (1)(a) if—
 - (a) the prosecution satisfies the court on the balance of probabilities that the circumstances are exceptional and justify the reception of the evidence; or
 - (b) the accused consents to the reception of the evidence.
- (3) For the purposes of subsection (2)(a), the probative value of the fingerprints is not to be regarded as an exceptional circumstance.

S. 464Q
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
ss 11(g)(h),
13(a)(b),
56/1989
s. 286(Sch. 2
item 7.14),
57/1989
s. 5(1)(g)(i)(ii),
substituted by
No. 129/1993
s. 7.

s. 464R

Forensic procedures

Heading
inserted by
No. 16/2002
s. 4(b).

464R Forensic procedure on adult

S. 464R
inserted by
No. 38/1988
s. 4,
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.15),
57/1989
s. 5(1)(h),
49/1991
s. 119(1)
(Sch. 2
item 70),
substituted by
No. 129/1993
s. 7.

S. 464R(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

- (1) A police officer may request a suspect to undergo a forensic procedure only if there are reasonable grounds to believe that the procedure would tend to confirm or disprove the involvement of the suspect in the commission of an indictable offence and the suspect—
 - (a) is suspected on reasonable grounds of having committed the indictable offence; or
 - (b) has been charged with the indictable offence; or
 - (c) has been summonsed to answer to a charge for the indictable offence.
- (2) A forensic procedure may be conducted on a suspect if—
 - (a) the suspect gives his or her informed consent; or
 - (b) the Magistrates' Court makes an order under section 464T(3) or 464V(5); or

S. 464R(2)(b)
amended by
No. 41/2004
s. 10(a).

- (c) a senior police officer gives an authorisation under section 464SA.

S. 464R(2)(c)
inserted by
No. 41/2004
s. 10(b).

464S Informed consent³⁶

S. 464S
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 7(a)(b),
substituted by
No. 129/1993
s. 7.

- (1) A person gives informed consent to a request to undergo a forensic procedure if he or she consents to the request after a police officer informs the person in language likely to be understood by the person—
- (a) of the purpose for which the procedure is required; and
 - (b) of the nature of the procedure sought to be conducted; and
 - (c) that the person may request that the procedure be conducted by or in the presence of a medical practitioner or nurse or midwife of his or her choice or, where the procedure is the taking of a dental impression, a dentist of his or her choice; and
 - (d) of the offence which the person is suspected of having committed or with which the person has been charged or for which the person has been summonsed to answer to a charge; and
 - (e) that the procedure could produce evidence to be used in a court; and
 - (ea) that information obtained from analysis of forensic material obtained by the procedure will be placed on a DNA database and may

S. 464S(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

S. 464S(1)(c)
amended by
Nos 81/1997
s. 19(1),
13/2010
s. 51(Sch.
item 17.4).

S. 464S(1)(ea)
inserted by
No. 16/2002
s. 6.

s. 464S

be used for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this Subdivision or under a corresponding law of a participating jurisdiction; and

(f) that the person may refuse to undergo the procedure; and

S. 464S(1)(g)
amended by
No. 41/2004
s. 11(a).

(g) where the sample or examination sought may be obtained by a compulsory procedure and the person refuses to undergo the procedure, that an application may be made to the Magistrates' Court for an order authorising the conduct of the procedure; and

S. 464S(1)(h)
inserted by
No. 41/2004
s. 11(b).

(h) where the sample or examination sought may be obtained by a non-intimate compulsory procedure within the meaning of section 464SA and the person refuses to consent to the procedure, that a senior police officer may authorise the conduct of the procedure.

S. 464S(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(2) A police officer who informs a person of the matters in subsection (1)—

S. 464S(2)(a)
amended by
No. 27/2006
s. 17(18)(a).

(a) must record the giving of the information and the person's responses, if any, by audio recording or audiovisual recording or in writing signed by the person; and

(b) must give or send by registered post to the person or his or her legal practitioner, without charge—

S. 464S(2)(b)(i)
amended by
No. 27/2006
s. 17(18)(b).

(i) if the giving of the information and the responses are recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable, but not more than 7 days after the information is given, and, if a

transcript of the recording is prepared, a copy of the transcript as soon as practicable; and

- (ii) if the giving of the information and the responses are recorded in writing signed by the person, a copy of the record forthwith.

(3) If—

- (a) a person is held in a prison, police gaol or youth justice centre or in an institution within the meaning of section 56 of the **Corrections Act 1986**; and

S. 464S(3)(a) amended by No. 48/2006 s. 42(Sch. item 9.3).

- (b) within 24 hours after the giving of the information referred to in subsection (1) the person refuses or fails to consent to the request to undergo a forensic procedure—

the person is to be taken as having refused consent.

464SA Senior police officer may authorise non-intimate compulsory procedure for certain adults

S. 464SA inserted by No. 41/2004 s. 12.

- (1) In this section and section 464SB, *non-intimate compulsory procedure* means the taking of a non-intimate sample or the conduct of a physical examination of a non-intimate part of the body.
- (2) A senior police officer who is not involved in investigating the offence for which the compulsory procedure is required may authorise the conduct of a non-intimate compulsory procedure on a person if the senior police officer is satisfied that—

s. 464SA

S. 464SA(2)(b)
amended by
No. 72/2004
s. 29.

- (a) the person is a relevant suspect who is—
 - (i) under lawful arrest by warrant; or
 - (ii) under lawful arrest under section 458 or 459 or a provision of any other Act; or
 - (iii) in the custody of an investigating official in accordance with an order of the Magistrates' Court under section 464B(5) and, at the time of the application for that order, the person was held in a prison or police gaol; and
 - (b) the person is not under the age of 18 years; and
 - (c) the person is not incapable of giving informed consent by reason of mental impairment; and
 - (d) the person has refused to give consent to a request under section 464R(1); and
 - (e) there are reasonable grounds to believe that the person has committed the offence in respect of which the authorisation is sought; and
 - (f) the requirements of section 464T(3)(c), (d), (e) and (f) are met; and
 - (g) in all the circumstances, the giving of the authorisation is justified.
- (3) A senior police officer must not give an authorisation for a compulsory procedure on a person if—
- (a) an application to a court for an order under this Subdivision in respect of that person has been made in relation to the same matter and on the same grounds but has been refused; or

- (b) a previous application for an authorisation under this section in respect of that person has been considered in relation to the same matter and on the same grounds but has not been given.
- (4) An authorisation given in contravention of subsection (3) is void.
- (5) Nothing in subsection (3) prevents a later application for an order under this Subdivision or an authorisation under this section on different or further grounds.
- (6) An authorisation under this section may only be given to a police officer.

S. 464SA(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

464SB Making or refusing authorisation

S. 464SB
inserted by
No. 41/2004
s. 12.

- (1) Before a senior police officer gives or refuses to give an authorisation under section 464SA, the senior police officer must allow the suspect or the suspect's legal practitioner, if any, a reasonable opportunity, if practicable in person, to inform the senior police officer whether there is any reason why the non-intimate compulsory procedure should not be conducted.
- (2) An authorisation under section 464SA must be made in writing signed by the senior police officer giving it and include—
 - (a) the date and time when the authorisation is given; and
 - (b) the grounds for giving the authorisation; and
 - (c) the type of sample or examination authorised.
- (3) The senior police officer must give, or cause another police officer to give, to the suspect a copy of the authorisation as soon as practicable

S. 464SB(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

s. 464SB

after the authorisation is made and, in any event, before the conduct of the compulsory procedure.

S. 464SB(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(4) Before the compulsory procedure is conducted, a police officer must inform the suspect orally and in person of the following—

(a) that an authorisation under section 464SA has been given; and

(b) the matters referred to in subsection (2)(a), (b) and (c); and

(c) that a police officer may use reasonable force to enable the compulsory procedure to be conducted; and

S. 464SB(4)(c)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(d) if the authorisation is to take a sample of hair, that the suspect may elect to provide instead a scraping taken by the suspect from his or her mouth, if it is considered appropriate to do so.

(5) The person who gives the information required to be given by subsection (4) must—

S. 464SB(5)(a)
amended by
No. 27/2006
s. 17(19)(a).

(a) record, or cause to be recorded, the giving of that information by audio recording or audiovisual recording; and

S. 464SB(5)(b)
amended by
No. 27/2006
s. 17(19)(b).

(b) give or send by registered post, or cause to be given or sent by registered post, to the suspect or his or her legal practitioner, without charge, a copy of the recording as soon as practicable, but not more than 7 days after the conduct of the compulsory procedure.

(6) If a senior police officer refuses to give an authorisation under section 464SA in respect of a suspect, the senior police officer must—

- (a) inform, or cause another police officer to inform, the suspect orally of the decision as soon as practicable after the refusal; and
- (b) give written notice of the decision to the suspect within 7 days after the refusal.
- (7) A failure of the senior police officer or a police officer to comply with this section does not invalidate any authorisation made by the senior police officer but constitutes non-compliance for the purposes of section 464ZE(1)(a).

464T Court may order compulsory procedure

- (1) If—
- (a) a person refuses to undergo a forensic procedure after being requested to do so or is incapable of giving informed consent by reason of mental impairment; and
- (b) the sample or examination sought may be obtained by a compulsory procedure; and
- (c) the person is a relevant suspect³⁷; and
- (d) a police officer believes on reasonable grounds that the person has committed the offence in respect of which the procedure was requested—

the police officer may apply to the Magistrates' Court for an order directing the person to undergo the compulsory procedure.

S. 464SB(6)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

S. 464SB(7)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

S. 464T
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 7(c),
substituted by
No. 129/1993
s. 7.

S. 464T(1)
amended by
No. 37/2014
s. 10(Sch.
item
36.27(a)(ii)).

S. 464T(1)(d)
amended by
No. 37/2014
s. 10(Sch.
item 36.27
(a)(i)).

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- (2) An application under subsection (1)—
- (a) must be in writing supported by evidence on oath or by affidavit; and
 - (b) if the person is a detained or protected person, must state that fact and identify the place where the person is held or resides; and
 - (c) must specify the type of compulsory procedure sought to be conducted.
- (3) The Court may make an order directing a person to undergo a compulsory procedure if the Court is satisfied on the balance of probabilities that—
- (a) the person is a relevant suspect; and
 - (b) there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and
 - (c) in the case of an application for a sample other than one referred to in paragraph (d), any of the following applies—
 - (i) material reasonably believed to be from the body of a person who committed the offence has been found—
 - (A) at the scene of the offence; or
 - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (C) on an object or person reasonably believed to have been associated with the commission of the offence; or
 - (ii) there are reasonable grounds to believe that, because of the nature of the offence or injuries inflicted during the

S. 464T(3)(c)
amended by
No. 81/1997
s. 17(1).

commission of the offence, material from the body or clothing of the victim is present—

- (A) on the person who committed the offence or on anything reasonably believed to have been worn or carried by that person when the offence was committed; or
- (B) on an object reasonably believed to have been associated with the commission of the offence; or
- (iii) the victim of the offence has not been found, and there are reasonable grounds to believe that material reasonably believed to be from the body of the victim is present on a person suspected of having committed the offence; or
- (iv) the offence in respect of which the application is made is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I and there are reasonable grounds to believe that the conduct of the procedure on the person may be relevant in determining the paternity of a child that has been conceived allegedly as a result of the offence; and
- (d) in the case of an application to take a sample or washing from the skin to determine the presence of gunshot residue, a firearm was discharged during the commission of the offence; and
- (e) in the case of an application to conduct a physical examination, the person who committed the offence had distinguishing

S. 464T(3)(c)(ii)(B)
inserted by
No. 81/1997
s. 17(2).

S. 464T(3)(c)(iii)
inserted by
No. 81/1997
s. 17(3).

S. 464T(3)(c)(iv)
inserted by
No. 81/1997
s. 17(3).

s. 464T

- marks or injuries, whether acquired during the commission of the offence or otherwise; and
- (f) there are reasonable grounds to believe that the conduct of the procedure on the person may tend to confirm or disprove his or her involvement in the commission of the offence; and
 - (g) the person has refused to give consent to a request under section 464R(1) or the person is incapable of giving informed consent by reason of mental impairment; and
 - (h) in all the circumstances, the making of the order is justified.
- (4) Except on an application made in accordance with section 464V or 464W, the Magistrates' Court must not make an order directing a person to undergo a compulsory procedure unless the person is present.
- (5) A relevant suspect in respect of whom an application is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the Court, other than in respect of any matter referred to in subsection (3)(a) to (h).
- (6) In exercising the right of address under subsection (5)(c), a relevant suspect may be represented by a legal practitioner.
- (7) If the Magistrates' Court makes an order under subsection (3), it must—
- (a) give reasons for its decision; and

S. 464T(6)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

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- (b) state the evidence on which it is satisfied of the matters referred to in subsection (3); and
- (c) cause a note of the reasons to be entered in the records of the Court; and
- (d) inform the person ordered to undergo a compulsory procedure that a police officer may use reasonable force to enable the procedure to be conducted. **S. 464T(7)(d) amended by No. 37/2014 s. 10(Sch. item 36.27(b)).**
- (8) A failure of the Court to comply with subsection (7) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (9) If— **S. 464T(9) amended by No. 37/2014 s. 10(Sch. item 36.27(b)).**
- (a) a police officer proposes to make an application to the Magistrates' Court under subsection (1) in respect of a person; and **S. 464T(9)(a) amended by No. 37/2014 s. 10(Sch. item 36.27(b)).**
- (b) the person is a detained or protected person—
the Court may, on the application of a police officer, issue a warrant directing the officer-in-charge of the place where the person is held to deliver the person into the custody of the applicant or another police officer for the purpose—
- (c) of attending the hearing of the application under subsection (1); and
- (d) if that application is granted, of conducting the procedure on the person.
- (10) A police officer into whose custody the person is delivered under a warrant issued under subsection (9) must return the person to the officer-in-charge of the place where the person was held— **S. 464T(10) amended by No. 37/2014 s. 10(Sch. item 36.27(b)).**

s. 464U

- (a) forthwith after the hearing of the application under subsection (1); or
- (b) if the application is granted, within such period after the hearing of the application as reasonably permits the conduct of the procedure on the person.

S. 464U
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
s. 7(d)–(h)
(j)(ii), 23/1991
s. 6(2)(3),
substituted by
No. 129/1993
s. 7.

464U Forensic procedure on child

S. 464U(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.28).

- (1) A police officer must not request a child to undergo a forensic procedure or request that a compulsory procedure be conducted on the child if the child—
 - (a) is under the age of 10 years; and
 - (b) is suspected of having done or omitted to have done any act which would have constituted an offence had the child been of the age of criminal responsibility.

S. 464U(2)
amended by
Nos 72/2004
s. 30(1),
37/2014
s. 10(Sch.
item 36.28).

- (2) A police officer must not request a child aged 10 years or more but under 18 years who—
 - (a) is suspected of having committed; or
 - (b) has been charged with; or
 - (c) has been summonsed to answer to a charge for—

an offence, whether indictable or summary, to undergo a forensic procedure or request that a compulsory procedure be conducted on the child unless the Children's Court has made an order under subsection (7) or section 464V(5).

(3) A police officer may apply to the Children's Court for an order under subsection (7) if the child—

S. 464U(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.28).

(a) is suspected on reasonable grounds of having committed or attempted to commit an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**; or

S. 464U(3)(a)
amended by
Nos 81/1997
s. 18, 61/2001
s. 16(1)(b)(i),
16/2002
s. 17(2),
35/2002
s. 28(Sch.
item 3.2).

(b) has been charged with an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**.

S. 464U(3)(b)
amended by
Nos 81/1997
s. 18, 61/2001
s. 16(1)(b)(ii),
16/2002
s. 17(2),
35/2002
s. 28(Sch.
item 3.2).

(4) An application under subsection (3)—

(a) must be in writing supported by evidence on oath or by affidavit; and

s. 464U

- (b) if the child is a detained or protected person, must state that fact and identify the place where the child is held or resides; and
 - (c) must specify the type of compulsory procedure sought to be conducted.
- (5) Notice of an application under subsection (3) must be served on³⁸—
- (a) a parent or guardian of the child; and
 - (b) if the child is not in custody within the meaning of this Subdivision, the child.
- (6) The court may dispense with the requirement of subsection (5)(a) if satisfied that it is impracticable for the applicant to comply.
- (7) The Children's Court may make an order directing a child aged 10 years or more but under 18 years to undergo a compulsory procedure if satisfied on the balance of probabilities that—
- (a) the child is a person referred to in subsection (3)(a) or (b); and
 - (b) there are reasonable grounds to believe that the child has committed the offence in respect of which the application is made; and
 - (c) in the case of an application for a sample other than one referred to in paragraph (d), either—
 - (i) material reasonably believed to be from the body of a person who committed the offence has been found—
 - (A) at the scene of the offence; or
 - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

S. 464U(7)
amended by
No. 72/2004
s. 30(2).

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- (C) on an object or person reasonably believed to have been associated with the commission of the offence; or
 - (ii) there are reasonable grounds to believe that, because of the nature of the offence or injuries inflicted during the commission of the offence, material from the body or clothing of the victim is present—
 - (A) on the person who committed the offence or on anything reasonably believed to have been worn or carried by that person when the offence was committed; or
 - (B) on an object reasonably believed to have been associated with the commission of the offence; and
 - (d) in the case of an application to take a sample or washing from the skin to determine the presence of gunshot residue, a firearm was discharged during the commission of the offence; and
 - (e) in the case of an application to conduct a physical examination, the person who committed the offence had distinguishing marks or injuries, whether acquired during the commission of the offence or otherwise; and
 - (f) there are reasonable grounds to believe that the conduct of the procedure on the child may tend to confirm or disprove his or her involvement in the commission of the offence; and
 - (g) in all the circumstances, the making of the order is justified.
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- (8) In considering whether the making of the order is justified, the court must take into account amongst other things—
- (a) the seriousness of the circumstances surrounding the commission of the offence; and
 - (b) the alleged degree of participation by the child in the commission of the offence; and
 - (c) the age of the child.
- (9) If the Children's Court makes an order under subsection (7), it must—
- (a) give reasons for its decision; and
 - (b) state the evidence on which it is satisfied of the matters referred to in subsection (7); and
 - (c) cause a note of the reasons to be entered in the records of the court; and
 - (d) inform the child ordered to undergo a compulsory procedure that a police officer may use reasonable force to enable the procedure to be conducted.
- (10) A failure of the court to comply with subsection (9) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (11) Except on an application made in accordance with section 464V or 464W, the Children's Court must not make an order under subsection (7) unless the child is present.
- (12) A child in respect of whom an application is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and

S. 464U(9)(d)
amended by
No. 37/2014
s. 10(Sch.
item 36.28).

- (c) may not address the court, other than in respect of any matter referred to in subsection (7)(a) to (g) or subsection (8).
- (13) In exercising the right of address under subsection (12)(c), a child may be represented by a legal practitioner or, with the leave of the court, a parent or guardian of the child.
- (14) The provisions of section 464T(9) and (10) apply as if—
- (a) a reference to an application to the Magistrates' Court under subsection (1) of that section were a reference to an application to the Children's Court under subsection (3) of this section; and
 - (b) a reference to the person were a reference to the child; and
 - (c) a reference to the Magistrates' Court were a reference to the Children's Court.

S. 464U(13)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

464V Interim orders

- (1) This section does not apply to an application in respect of a blood sample.
- (2) A police officer may apply, with or without notice to any other person, for an interim order directing a person to undergo a compulsory procedure if the police officer believes on reasonable grounds that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the procedure is delayed until the final determination of the application.

S. 464V
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
ss 7(i)(j),
8(a)(i)–(iv),
23/1991
s. 7(1)(2),
substituted by
No. 129/1993
s. 7.

S. 464V(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.29(a)).

s. 464V

S. 464V(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.29(b)).

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- (3) Section 464T(1), (2), (5), (6), (7) and (8) or section 464U(3), (4), (9), (10), (12) and (13) as the case requires apply to applications for interim orders.
- (4) If a police officer believes on reasonable grounds that—
- (a) it is necessary to obtain an interim order; and
 - (b) the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the making of an application for an interim order is delayed until the time when the application could be made in person—
- the police officer may apply for an interim order by telephone in accordance with the procedure in section 464W.
- (5) The court may make an interim order directing a person to undergo a compulsory procedure if—
- (a) the court is satisfied that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the procedure is delayed until the final determination of the application; and
 - (b) on the evidence, whether sworn or unsworn, before it at that time, it appears to the court that there may be sufficient evidence to satisfy it of the matters set out in section 464T(3) or 464U(7) (as the case requires); and
 - (c) on an application by telephone, the court is satisfied that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the making of the application is delayed until the time when the application could be made in person.

- (6) If the court makes an interim order—
- (a) it must adjourn the further hearing of the application to enable the compulsory procedure to be conducted; and
 - (b) section 464T or 464U (as the case requires) applies to the further hearing; and
 - (c) the further hearing must not be conducted by telephone; and
 - (d) the person on whom the compulsory procedure is conducted must attend the further hearing³⁹.
- (7) On the further hearing of an application—
- (a) if the court is satisfied of the matters set out in section 464T(3) or 464U(7), it must confirm the order made under this section; or
 - (b) if the court is not so satisfied, it must order the destruction of any sample taken and any other evidence obtained as a result of the compulsory procedure.
- (8) A sample taken in accordance with an interim order must not be analysed before the final determination of the application.

464W Application by telephone for interim order

- (1) A police officer making an application by telephone for an interim order must make the application in accordance with this section.

S. 464W
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
ss 7(k), 8(b),
8/1991
s. 22(1)(a)–(d),
substituted by
No. 129/1993
s. 7.

S. 464W(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(a)).

s. 464W

S. 464W(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(b)).

(2) Before making the application, the police officer must prepare an affidavit setting out the grounds on which the order is sought, but may, if necessary, make the application before the affidavit has been sworn.

S. 464W(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(b)).

(3) If transmission by facsimile machine is available, the police officer must transmit a copy of the affidavit, whether sworn or unsworn, to the magistrate or Children's Court magistrate constituting the court that is to hear the application by telephone.

(4) If the person the subject of the application is present with the applicant, the court must, if practicable, hear the person on any matter referred to in section 464T(3)(a) to (h), in the case of a relevant suspect, or section 464U(7)(a) to (g) and section 464U(8), in the case of a child.

(5) If the court makes an interim order on an application made by telephone, the court must inform the applicant of the terms of the order, the date on which and the time at which it was made, and the date on which and the venue of the court at which the further hearing of the application will take place.

(6) If transmission by facsimile machine is available, the court must transmit a copy of its order to the applicant.

(7) A failure of the court to comply with subsection (4), (5) or (6) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

(8) If an interim order is made on an application made by telephone, the applicant must—

(a) if a copy of the order has not been transmitted by facsimile machine, complete a form of order in the terms indicated by the

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- court under subsection (5) and must write on it the name of the magistrate or Children's Court magistrate who constituted the court that made the order and the date on which and the time at which it was made; and
- (b) if a copy of the order has been transmitted by facsimile machine, serve a copy of the order on the person ordered to undergo the compulsory procedure; and
- (c) inform the person ordered to undergo the compulsory procedure—
- (i) of the terms of the order; and
 - (ii) that a police officer may use reasonable force to enable the procedure to be conducted; and
- (d) give notice in writing to the person ordered to undergo the compulsory procedure of the date on which and venue of the court at which the further hearing of the application will take place and that the person is required to be present at that further hearing; and
- (e) not later than the day following the making of the order, send the form of order, if any, completed by the applicant to the magistrate or Children's Court magistrate who constituted the court that made the order.
- (9) A police officer who informs a person of the matters in subsection (8)(c)—
- (a) must record the giving of the information by audio recording or audiovisual recording or in writing signed by the person; and

S. 464W(8)
(c)(ii)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(c)).

S. 464W(9)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(c)).

S. 464W(9)(a)
amended by
No. 27/2006
s. 17(20)(a).

s. 464X

(b) must give or send by registered post to the person or his or her legal practitioner, without charge—

**S. 464W(9)
(b)(i)
amended by
No. 27/2006
s. 17(20)(b).**

(i) if the giving of the information is recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and

(ii) if the giving of the information is recorded in writing, a copy of the record forthwith.

(10) If an application is made by telephone, whether or not an interim order is made, the applicant must, not later than the day following the making of the application, send the affidavit duly sworn to the magistrate or Children's Court magistrate who constituted the court that heard the application.

**S. 464X
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.**

464X Warrants

(1) If an application is made to⁴⁰—

(a) the Magistrates' Court under section 464T(1) or 464V(2); or

(b) the Children's Court under section 464U(3) or 464V(2)—

and the person in respect of whom the application is made is not a detained or protected person, the court may issue a warrant authorising the person to whom it is directed, if necessary—

(c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and

(d) to arrest the person; and

- (e) to bring the person before the court for the hearing of the application; and
 - (f) if that application is granted, to detain the person for as long as reasonably permits the conduct of the compulsory procedure.
- (2) If a court issues a warrant under subsection (1) it must—
- (a) give reasons for its decision; and
 - (b) cause a note of the reasons to be entered in the records of the court.
- (3) A failure of a court to comply with subsection (2) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (4) If a person is apprehended under a warrant issued under subsection (1), the warrant ceases to have effect immediately after the procedure is completed or on the expiration of a reasonable time (whichever is the earlier).

464Y Caution before forensic procedure

- (1) Immediately before a forensic procedure is conducted in accordance with sections 464R to 464ZA or section 464ZF or 464ZFAAA (as the case may be), a police officer must inform the person on whom the procedure is to be conducted that he or she does not have to answer any questions asked by the registered medical practitioner, nurse, midwife or other person conducting the procedure but that anything the person does say may be given in evidence.

S. 464Y
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 8(c),
substituted by
No. 129/1993
s. 7.

S. 464Y(1)
amended by
Nos 23/1994
s. 118(Sch. 1
item 15.7),
81/1997
s. 20(a)(b),
27/2006 s. 5,
13/2010
s. 51(Sch.
item 17.5),
37/2014
s. 10(Sch.
item 36.31).

s. 464Z

S. 464Y(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.31).

(2) A police officer who informs a person of the matters in subsection (1)—

S. 464Y(2)(a)
amended by
No. 27/2006
s. 17(21)(a).

- (a) must record the giving of the information and the person's responses, if any, by audio recording or audiovisual recording or in writing signed by the person or, if the person refuses to sign, by an independent person, if present; and
- (b) must give or send by registered post to the person or his or her legal practitioner, without charge—

S. 464Y(2)(b)(i)
amended by
No. 27/2006
s. 17(21)(b).

- (i) if the giving of the information and the responses are recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and
- (ii) if the giving of the information and the responses are recorded in writing, a copy of the record forthwith.

S. 464Z
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464Z Procedure for taking samples etc.

- (1) The Chief Commissioner of Police may authorise a person to take non-intimate samples or to conduct physical examinations of a non-intimate part of the body for the purposes of this Subdivision.

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- (1A) The Chief Commissioner of Police may authorise a police officer, or a class of police officers, to supervise the taking of scrapings from the mouth for the purposes of subsection (3A).
- (2) The Chief Commissioner must give a copy of an authority under subsection (1) or (1A) to the Minister who must cause it to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Council or the Assembly, as the case may be, after it has been received by the Minister.
- (3) For the purposes of a forensic procedure under this Subdivision—
- (a) an intimate sample (other than a dental impression) or a physical examination of an intimate part of the body may only be taken or conducted by a medical practitioner or nurse or midwife of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined;
 - (b) a dental impression may only be taken by a dentist;
 - (c) a non-intimate sample or a physical examination of a non-intimate part of the body may be taken or conducted by a medical practitioner or nurse, or midwife or a person authorised in accordance with subsection (1).
- S. 464Z(1A)** inserted by No. 16/2002 s. 7(1), amended by No. 37/2014 s. 10(Sch. item 36.32(a)).
- S. 464Z(2)** amended by No. 16/2002 s. 7(2).
- S. 464Z(3)(a)** amended by Nos 81/1997 s. 19(2), 13/2010 s. 51(Sch. item 17.6(a)).
- S. 464Z(3)(c)** amended by Nos 81/1997 s. 19(2), 16/2002 s. 7(3), 13/2010 s. 51(Sch. item 17.6(b)).

s. 464Z

S. 464Z(3AA)
inserted by
No. 41/2004
s. 13(1),
amended by
No. 37/2014
s. 10(Sch.
item 36.32(b)).

- (3AA) Despite subsection (3), a person from whom a sample of hair, other than pubic hair, is to be taken in accordance with—
- (a) an authorisation given under section 464SA;
or
 - (b) an order made by a court under this Subdivision—
- may elect to provide instead a scraping taken by the person from his or her mouth if a police officer authorised in accordance with subsection (1A) considers that—
- (c) a scraping is appropriate in the circumstances; and
 - (d) it is appropriate for the person to take the scraping.

S. 464Z(3AB)
inserted by
No. 41/2004
s. 13(1),
amended by
No. 27/2006
s. 17(22).

- (3AB) An election made by a person under subsection (3AA) must be recorded by audio recording or audiovisual recording or in writing signed by the person.

S. 464Z(3A)
inserted by
No. 16/2002
s. 7(4),
amended by
No. 37/2014
s. 10(Sch.
item
36.32(c)(i)).

- (3A) Nothing in subsection (3) prevents a person from whom a scraping from the mouth is to be taken from taking the scraping himself or herself under the supervision of a police officer authorised in accordance with subsection (1A) if—

S. 464Z(3A)(a)
amended by
No. 37/2014
s. 10(Sch.
item
36.32(c)(ii)).

- (a) the police officer considers it appropriate for the person to do so; and

S. 464Z(3A)(b)
amended by
No. 27/2006
s. 17(23).

- (b) the person consents to taking the scraping and the consent is recorded by audio recording or audiovisual recording or in writing signed by the person.

-
- (3B) The police officer referred to in subsection (3AA) or (3A) must give or send by registered post to the person from whom a scraping is taken or his or her legal practitioner, without charge—
- (a) if the election or consent is recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the election is made or the consent is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and
- (b) if the election or consent is recorded in writing, a copy of the record forthwith.
- (4) A person from whom an intimate sample is to be taken (except a scraping from a person's mouth to be taken by that person) or who is to undergo a physical examination of an intimate part of the body may request that a medical practitioner or nurse or midwife or, if a dental impression is to be taken, a dentist of his or her choice take the sample or conduct the examination or be present during the forensic procedure.
- (5) If a medical practitioner, nurse, midwife or dentist is chosen by a person under subsection (4)—
- (a) if practicable, the forensic procedure is to be conducted by or in the presence of the chosen person; and
- (b) if the chosen person conducts the forensic procedure, a medical practitioner, nurse or dentist (as the case requires) nominated by the police must be present.
- S. 464Z(3B)** inserted by No. 16/2002 s. 7(4), amended by Nos 41/2004 s. 13(2)(a), 37/2014 s. 10(Sch. item 36.32(d)).
- S. 464Z(3B)(a)** amended by Nos 41/2004 s. 13(2)(b)(f)(ii), 27/2006 s. 17(24).
- S. 464Z(3B)(b)** amended by No. 41/2004 s. 13(2)(c).
- S. 464Z(4)** amended by Nos 81/1997 s. 19(3), 41/2004 s. 13(3), 13/2010 s. 51(Sch. item 17.6(c)).
- S. 464Z(5)** amended by Nos 81/1997 s. 19(4), 13/2010 s. 51(Sch. item 17.6(d)).
- S. 464Z(5)(b)** amended by No. 81/1997 s. 19(4).

s. 464Z

(6) A sample must be taken or a physical examination must be conducted—

S. 464Z(6)(a)
amended by
Nos 81/1997
s. 21(a),
13/2010
s. 51(Sch.
item 17.6(e)).

(a) if taken or conducted by a medical practitioner, nurse, midwife or dentist, in a manner consistent with the appropriate medical or dental standards; and

S. 464Z(6)(ab)
inserted by
No. 81/1997
s. 21(b),
amended by
Nos 16/2002
s. 7(5)(a),
37/2014
s. 10(Sch.
item 36.32(d)).

(ab) in the presence of a police officer who is present to witness the taking of the sample or the conduct of the physical examination, subject to subsection (9), and is of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined; and

(b) in circumstances affording reasonable privacy to the person from whom the sample is to be taken or who is to be examined; and

(c) in the presence only of—

S. 464Z(6)(c)(i)
amended by
Nos 81/1997
s. 21(c),
37/2014
s. 10(Sch.
item 36.32(d)).

(i) a police officer required by paragraph (ab) to be present; and

(ii) a person required by section 464ZA to be present; and

S. 464Z(6)
(c)(iii)
amended by
No. 16/2002
s. 7(5)(b).

(iii) a person referred to in subsection (5); and

S. 464Z(6)
(c)(iv)
inserted by
No. 16/2002
s. 7(5)(b).
amended by
No. 37/2014
s. 10(Sch.
item 36.32(d)).

(iv) a police officer referred to in subsection (3A).

(7) A blood sample for the purposes of this Subdivision must not exceed 10 millilitres.

(7A) For the purposes of this Subdivision, a person is authorised to take a sample of hair by removing the root of the hair only if—

S. 464Z(7A)
inserted by
No. 41/2004
s. 13(4).

(a) the person takes only so much hair as the person believes is necessary for analysis of the sample or other examination of the hair; and

(b) strands of hair are taken using the least painful technique known and available to the person.

(8) This Subdivision does not compel any medical practitioner, nurse, midwife or dentist to take a sample from a person nor to conduct a physical examination of a person nor to be present when a sample is taken or an examination is conducted.

S. 464Z(8)
amended by
Nos 81/1997
s. 19(5),
13/2010
s. 51(Sch.
item 17.6(f)).

(9) If a scraping is to be taken from a person's mouth and the person is to take it, the witness required by subsection (6)(ab) to be present need not be of the same sex as the person.

S. 464Z(9)
inserted by
No. 16/2002
s. 7(6).

s. 464ZA

464ZA Execution of authorisation or order

S. 464ZA
(Heading)
inserted by
No. 41/2004
s. 14(1).

S. 464ZA
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

S. 464ZA(1)
amended by
No. 81/1997
s. 22(1)(a)(b),
substituted by
No. 41/2004
s. 14(2),
amended by
Nos 13/2010
s. 51(Sch.
item 17.7),
37/2014
s. 10(Sch.
item 36.33(a)).

S. 464ZA(1)(c)
amended by
No. 27/2006
s. 6(a).

S. 464ZA(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.33(b)).

(1) If—

- (a) a senior police officer gives an authorisation under section 464SA for the conduct of a non-intimate compulsory procedure; or
- (b) a court makes an order under section 464T(3), 464U(7) or 464V(5) for the conduct of a compulsory procedure; or
- (c) a court makes an order under section 464ZF or 464ZFAAA for the conduct of a forensic procedure—

a police officer, with such assistance as he or she considers necessary, may use reasonable force to assist a medical practitioner, nurse, midwife, dentist or person authorised under section 464Z to conduct the procedure.

(2) If practicable, a police officer acting in accordance with subsection (1) and any person assisting the police officer—

- (a) must be of the same sex as the person on whom the procedure is to be conducted; and
- (b) must not be involved in investigating the offence for which the procedure is required.

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- (3) If the Children's Court makes an order under section 464U(7) or 464V(5), a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person of the same sex, if practicable, as the child must be present during the conduct of a compulsory procedure on the child.
- (4) The taking of an intimate sample (other than a blood sample or a scraping from a person's mouth taken by that person) or the examination of an intimate part of the body in accordance with the order of a court—
- (a) must be recorded by audiovisual recording, if practicable and if the person on whom the procedure is to be conducted consents; or
 - (b) must be witnessed by an independent medical practitioner or independent nurse or independent midwife or, if a dental impression is to be taken, an independent dentist or the medical practitioner, nurse, midwife or dentist chosen by the person to be present at the procedure.
- (5) All other compulsory or forensic procedures (except a scraping from a person's mouth taken by that person) conducted in accordance with the authorisation of a senior police officer or the order of a court must be recorded by audiovisual recording, if practicable, or witnessed by an independent person.
- (6) After an authorisation under section 464SA or an order under section 464T(3), 464U(7), 464V(5), 464ZF or 464ZFAAA is executed—
- S. 464ZA(4)**
amended by
No. 16/2002
s. 8(1).
- S. 464ZA(4)(a)**
amended by
No. 27/2006
s. 17(25).
- S. 464ZA(4)(b)**
amended by
Nos 81/1997
s. 19(6)(a)(b),
13/2010
s. 51(Sch.
item 17.8).
- S. 464ZA(5)**
amended by
Nos 81/1997
s. 22(2),
16/2002
s. 8(2),
41/2004
s. 14(3),
27/2006
s. 17(26).
- S. 464ZA(6)**
substituted by
No. 81/1997
s. 22(3),
amended by
Nos 41/2004
s. 14(4)(a),
27/2006
s. 6(b).

s. 464ZA

S. 464ZA(6)(a)
amended by
Nos 41/2004
s. 14(4)(b),
27/2006
s. 17(27),
37/2014
s. 10(Sch.
item 36.33(c)).

(a) if the procedure was recorded by audiovisual recording, the person who recorded the conduct of the procedure, or the police officer who witnessed the conduct of the procedure, must endorse on the authorisation or order his or her own name and sign the endorsement; or

S. 464ZA(6)(b)
amended by
Nos 41/2004
s. 14(4)(b),
13/2010
s. 51(Sch.
item 17.9).

(b) if an independent medical practitioner, nurse, midwife, dentist or other person witnessed the conduct of the procedure, the witness must endorse on the authorisation or order his or her own name and sign the endorsement.

S. 464ZA(6A)
inserted by
No. 81/1997
s. 22(3),
amended by
Nos 41/2004
s. 14(5),
37/2014
s. 10(Sch.
item 36.33(c)).

(6A) A police officer must give a copy of the authorisation or order so endorsed to the person on whom the procedure was conducted.

S. 464ZA(7)
amended by
Nos 81/1997
s. 22(4),
41/2004
s. 14(6)(a)(b),
27/2006
s. 17(28).

(7) If a compulsory or forensic procedure conducted in accordance with an authorisation of a senior police officer or an order of a court is recorded by audiovisual recording, the applicant for the authorisation or order must—

(a) without charge; and

(b) as soon as practicable but not more than 7 days after the procedure was conducted—

give or send by registered post a copy of the audiovisual recording to the person on whom the procedure was conducted or his or her legal practitioner.

464ZB Analysis of samples

- (1) If a sample taken in accordance with this Subdivision is analysed, it must be analysed—
 - (a) in accordance with the prescribed standards, if any; and
 - (b) by an analyst authorised under this section, if the regulations so require.
- (2) The Minister may authorise, by notice published in the Government Gazette, persons whom the Minister considers to be appropriately qualified to carry out analyses for the purposes of this Subdivision.
- (3) An authority given under subsection (1) may be in respect of a particular type of analysis specified in the authority.
- (4) The Minister must cause the name of a person authorised under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Council or the Assembly, as the case may be, after the date of publication of the notice in the Government Gazette.

S. 464ZB
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464ZC Analysis of material found at scene of offence etc.

- (1) If material reasonably believed to be from the body of a person who committed an indictable offence has been found—
 - (a) at the scene of the offence; or
 - (b) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

S. 464ZC
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

S. 464ZC(1)
amended by
No. 81/1997
s. 23 (ILA
s. 39B(1)).

s. 464ZC

(c) on an object or person reasonably believed to have been associated with the commission of the offence—

and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.

S. 464ZC(2)
inserted by
No. 81/1997
s. 23.

(2) If material, reasonably believed to be from the body of a victim of an indictable offence which has not been found, has been found on a person reasonably believed to have been associated with the commission of the offence, and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.

S. 464ZC(3)
inserted by
No. 81/1997
s. 23.

(3) If—
(a) a sample has been taken from a child in connection with an investigation into an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I; and
(b) that child was conceived allegedly as a result of that offence—

a person suspected of having committed that offence and from whom a sample has been taken in relation to that offence may request a part of the child's sample.

S. 464ZC(4)
inserted by
No. 81/1997
s. 23.

(4) A part of that child's sample requested by a person under subsection (3) must be delivered to that person provided that there is sufficient material to be analysed both in the investigation of the

offence and on behalf of the person suspected of having committed the offence.

464ZD Forensic reports to be made available

If a forensic procedure has been conducted on a person in accordance with section 464R, 464SA, 464T(3), 464U(7), 464V(5), 464ZF(2) or (3) or 464ZFAAA(2) or sections 464ZGB to 464ZGD or otherwise in accordance with this Subdivision, a copy of every forensic report must be given or sent by registered post as soon as practicable to that person (or, in the case of a forensic procedure conducted in accordance with section 464ZF or 464ZFAAA on a person who is a child within the meaning of that section, to that child and a parent or guardian of that child) or his or her legal practitioner.

S. 464ZD inserted by No. 84/1989 s. 5, amended by No. 84/1989 ss 7(l)(m), 8(d), substituted by No. 129/1993 s. 7, amended by Nos 80/1998 s. 3(a)(i)–(iii), 41/2004 s. 15, 27/2006 s. 7.

464ZE Evidence relating to forensic procedures⁴¹

S. 464ZE inserted by No. 84/1989 s. 5, substituted by No. 129/1993 s. 7.

(1) Subject to subsection (4) and section 464ZGO, evidence obtained as a result of a forensic procedure conducted on a person, or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, is inadmissible as part of the prosecution case in proceedings against that person for any offence if—

S. 464ZE(1) amended by Nos 81/1997 s. 24(1)(a), 16/2002 s. 9.

(a) the requirements of sections 464R to 464ZA, sections 464ZF to 464ZFB, sections 464ZGB to 464ZGD or section 464ZGF (as the case may be) have not been complied with; or

S. 464ZE(1)(a) amended by No. 81/1997 s. 24(1)(b).

s. 464ZE

**S. 464ZE
(1)(ab)
inserted by
No. 80/1998
s. 3(b).**

- (ab) a copy of a forensic report relating to the procedure required by section 464ZD to be given or sent by registered post to a person had not been given or sent to that person before the end of the period of 7 days after its receipt by the prosecution; or
- (b) the procedure was not conducted in accordance with the prescribed standards, if any; or
- (c) any sample taken was not analysed—
 - (i) in accordance with the prescribed standards, if any; or
 - (ii) if the regulations so require, by an analyst authorised under section 464ZB; or
- (d) any sample taken and any information which may identify the person contained in—
 - (i) any record of or report relating to the forensic procedure; or
 - (ii) any copy of such a record or report—
should have been but has not been destroyed as required by section 464ZF, 464ZFAAA, 464ZFC, 464ZG, 464ZGA or 464ZGE; or
- (e) the evidence was obtained as a result of a procedure conducted in accordance with an interim order which subsequently is not confirmed under section 464V(7).

**S. 464ZE(2)
amended by
Nos 81/1997
s. 24(2)(a),
80/1998
s. 3(c).**

- (2) A court may admit evidence obtained as a result of a forensic procedure, or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, otherwise inadmissible by reason of subsection (1)(a) or (1)(ab) if—

-
- (a) the prosecution satisfies the court on the balance of probabilities that the circumstances justify the reception of the evidence; or
- (b) the accused consents to the reception of the evidence.
- (2A) In determining whether the circumstances justify the reception of evidence otherwise inadmissible by reason of subsection (1)(a) or (1)(ab), the court may have regard to the following—
- (a) the probative value of the evidence, including whether equivalent evidence or evidence of equivalent probative value could have been obtained by other means;
- (b) the reasons given for the failure to comply with a provision referred to in subsection (1)(a) or (1)(ab);
- (c) the gravity of that failure and whether it deprived the person of a significant protection under this Subdivision;
- (d) whether that failure was intentional or reckless;
- (e) the nature of the requirement that was not complied with;
- (f) the nature of the offence alleged against the person and the subject-matter of the proceedings;
- (g) whether the reception of the evidence would seriously undermine the protection given to persons under this Subdivision;
- (h) any other matters the court considers relevant.

S. 464ZE(2)(a)
amended by
No. 81/1997
s. 24(2)(b).

S. 464ZE(2A)
inserted by
No. 81/1997
s. 24(3),
amended by
No. 80/1998
s. 3(c).

S. 464ZE
(2A)(b)
amended by
No. 80/1998
s. 3(c).

s. 464ZF

S. 464ZE(3)
substituted by
No. 81/1997
s. 24(3).

(3) The probative value of the evidence does not by itself justify the reception of the evidence.

S. 464ZE(4)
amended by
No. 27/2006
s. 17(29).

(4) If the conduct of a forensic procedure is recorded by audiovisual recording, the recording is inadmissible as evidence except—

(a) to establish or rebut an allegation that unreasonable force was used to enable the procedure to be conducted; or

(b) to determine the admissibility of a confession or admission or other evidence adverse to the accused where the accused alleges that the evidence was induced or obtained by the use of unreasonable force.

(5) If evidence obtained as a result of a forensic procedure conducted on a person would be admissible in proceedings against that person for an offence, that evidence is admissible in proceedings against that person for a relevant offence within the meaning of section 464ZG.

(6) Evidence obtained as a result of a physical examination conducted in good faith on a person for the purposes of medical or dental treatment is admissible in proceedings against that person for an offence.

S. 464ZF
inserted by
No. 84/1989
s. 5,
substituted by
Nos 129/1993
s. 7, 81/1997
s. 25.

464ZF Forensic procedure following the commission of forensic sample offence

(1) In this section—

child means a child aged 10 years or more but under 18 years;

S. 464ZF(1)
def. of
child
amended by
No. 72/2004
s. 31(1).

forensic sample offence means any indictable offence or any offence specified in Schedule 8.

S. 464ZF(1)
def. of
*forensic
sample
offence*
amended by
No. 72/2013
s. 9(1).

(2) If at any time on or after the commencement of section 25 of the **Crimes (Amendment) Act 1997** a court finds a person guilty of—

S. 464ZF(2)
amended by
Nos 14/2006
s. 13(1)(a),
37/2014
s. 10(Sch.
item 36.34).

(a) a forensic sample offence (within the meaning of that term as then in force); or

S. 464ZF(2)(a)
amended by
No. 72/2013
s. 9(2).

(b) an offence of conspiracy to commit, incitement to commit or attempting to commit a forensic sample offence—

a police officer, at any time following that finding but not later than 6 months after the final determination of an appeal against conviction or sentence or the expiration of any appeal period (whichever is the later), may apply to the court for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

(2AA) If the finding of guilt referred to in subsection (2)—

S. 464ZF(2AA)
inserted by
No. 35/2002
s. 28(Sch.
item 3.3),
amended by
No. 14/2006
s. 13(1)(b).

(a) occurs between 1 January 2002 and the commencement of item 3.4 in the Schedule to the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002**; and

s. 464ZF

(b) is in respect of an offence referred to in item 29, 30 or 31 of Schedule 8—

an application under subsection (2) may be made not later than 12 months after the final determination of an appeal against conviction or sentence or the expiration of any appeal period (whichever is the later).

S. 464ZF(2A) inserted by No. 16/2002 s. 10.

(2A) An order under subsection (2) in respect of a person who is not a detained or protected person must include a direction that the person attend—

(a) at a place; and

(b) within a period, commencing after the expiry of the period referred to in subsection (6) during which the order must not be executed—

specified in the order to undergo the forensic procedure.

S. 464ZF(3) amended by No. 37/2014 s. 10(Sch. item 36.34).

(3) If—

S. 464ZF(3)(a) amended by No. 72/2013 s. 9(3).

(a) at any time before the commencement of section 25 of the **Crimes (Amendment) Act 1997**, a person has been found guilty by a court of a forensic sample offence (within the meaning of that term as then in force); and

S. 464ZF(3)(b) amended by Nos 48/2006 s. 42(Sch. item 9.3), 26/2014 s. 455(Sch. item 7.4).

(b) at any time on or after that commencement, that person is serving a term of imprisonment or a period of detention in a prison, police gaol or youth justice centre or as a security patient in a designated mental health service for any offence, whether or not a forensic sample offence—

a police officer may apply to the Magistrates' Court or the Children's Court (as the case may be) for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

- (4) In any application to a court under subsection (2) or (3), the police officer must specify the type of sample (whether intimate or non-intimate) sought to be taken in the forensic procedure. **S. 464ZF(4) amended by No. 37/2014 s. 10(Sch. item 36.34).**
- (5) If, on or after the commencement of the **Crimes (Amendment) Act 2004**, an application under subsection (2) or (3) is made in respect of a person aged 18 years or more— **S. 464ZF(5) substituted by No. 41/2004 s. 16, amended by No. 72/2004 s. 31(2).**
- (a) the application may be made without notice to any person; and
 - (b) the person is not a party to the application; and
 - (c) the person may not call or cross-examine any witnesses; and
 - (d) the person may not address the court, other than in response to inquiries made by the court under subsection (8)(c).
- (5A) If, on or after the commencement of the **Crimes (Amendment) Act 2004**, an application under subsection (2) or (3) is made in respect of a child— **S. 464ZF(5A) inserted by No. 41/2004 s. 16.**
- (a) notice of the application must be served on the child and a parent or guardian of the child; and
 - (b) the child is not a party to the application; and
 - (c) the child may not call or cross-examine any witnesses; and

s. 464ZF

(d) the child may not address the court, other than in respect of any matter referred to in subsection (8)(a) or (b) or in response to inquiries made by the court under subsection (8)(c).

S. 464ZF(5B)
inserted by
No. 41/2004
s. 16.

(5B) In exercising the right of address under subsection (5A)(d), a child may be represented by a legal practitioner, or, with the leave of the court, a parent or guardian of the child.

S. 464ZF(6)
amended by
No. 14/2006
s. 13(1)(c)(i)(ii).

(6) An order made by a court under subsection (2) or (3) before the appeal period in relation to the conviction for the forensic sample offence has expired or an appeal against conviction (if any) has been finally determined (whichever is the later), must not be executed unless—

(a) that appeal period expires; or

(b) an appeal against conviction (if any) is finally determined and the conviction for the forensic sample offence is upheld—

whichever is the later.

S. 464ZF(6)(b)
amended by
No. 14/2006
s. 13(1)(c)(ii).

S. 464ZF(6A)
inserted by
No. 14/2006
s. 13(2).

(6A) If leave to appeal against a conviction for a forensic sample offence is sought after the expiry of the appeal period in relation to the conviction, an order made by a court under subsection (2) before leave to appeal is sought, if not executed before that leave is sought, must not be executed unless—

(a) leave to appeal against the conviction is refused; or

(b) leave to appeal against the conviction is granted and the appeal is finally determined and the conviction for the forensic sample offence is upheld.

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- (6B) If an order made by a court under subsection (2) has been executed after the expiration of the appeal period in relation to the conviction for the forensic sample offence and leave to appeal against the conviction is granted after the expiry of that period—
- (a) any sample and any related material and information taken may be retained by a police officer pending the final determination of the appeal against conviction; and
- (b) if, on appeal, the conviction for the forensic sample offence is set aside, the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.
- (7) If on appeal a conviction for the forensic sample offence is set aside, an order made by a court under subsection (2) or (3) ceases to have effect.
- (8) A court hearing an application under subsection (2) or (3)—
- (a) must take into account the seriousness of the circumstances of the forensic sample offence in determining whether to make the order under subsection (2) or (3); and
- (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
- (c) may make such inquiries on oath or otherwise as it considers desirable.

S. 464ZF(6B)
inserted by
No. 14/2006
s. 13(2).

S. 464ZF
(6B)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

S. 464ZF
(6B)(b)
amended by
No. 68/2009
s. 97(Sch.
item 40.36).

S. 464ZF(7)
amended by
No. 68/2009
s. 97(Sch.
item 40.36).

s. 464ZFAAA

- (9) If a court makes an order under subsection (2) or (3), it must—
- (a) give reasons for its decision and cause a copy of the order and reasons to be served—
 - (i) if the order directs a person (other than a child) to undergo the forensic procedure, on the person; or
 - (ii) if the order directs a child to undergo the forensic procedure, on the child and a parent or guardian of the child; and
 - (b) inform the person ordered to undergo the forensic procedure that a police officer may use reasonable force to enable the procedure to be conducted.
- (10) A failure of a court to comply with subsection (9) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

S. 464ZF(9)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

S. 464ZF(11)
repealed by
No. 80/1998
s. 3(d).

* * * * *

S. 464ZFAAA
inserted by
No. 27/2006
s. 9.

464ZFAAA Forensic procedure following finding of not guilty because of mental impairment

- (1) In this section—

child means a child aged 10 years or more but under 18 years;

forensic sample offence means any indictable offence or any offence specified in Schedule 8, other than an offence heard and determined summarily.

S. 464ZFAAA
(1) def. of
*forensic
sample
offence*
amended by
Nos 68/2009
s. 97(Sch.
item 40.37),
72/2013
s. 10(1).

(2) If a court finds a person not guilty because of mental impairment of—

S. 464ZFAAA
(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

(a) a forensic sample offence (within the meaning of that term as then in force); or

S. 464ZFAAA
(2)(a)
amended by
No. 72/2013
s. 10(2).

(b) an offence of conspiracy to commit, incitement to commit or attempting to commit a forensic sample offence—

a police officer, at any time following that finding but not later than 6 months after the final determination of an appeal or the expiration of any appeal period (whichever is the later), may apply to the court for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

(3) In an application under subsection (2), the police officer must specify the type of sample (whether intimate or non-intimate) sought to be taken in the forensic procedure.

S. 464ZFAAA
(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

(4) Notice of an application under subsection (2)—

(a) must be served on the person in respect of whom the order is sought and, if the person is a child, on a parent or guardian of the child; and

(b) must include a requirement that the person in respect of whom the order is sought attend the hearing of the application in person or by his or her legal practitioner.

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- (5) In determining whether to make an order under subsection (2), a court—
- (a) must take into account the seriousness of the circumstances of the forensic sample offence of which the person has been found not guilty because of mental impairment; and
 - (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
 - (c) may make such inquiries on oath or otherwise as it considers desirable.
- (6) An application made under subsection (2) must be heard in the presence of the person in respect of whom the order is sought or his or her legal practitioner.
- (7) A person in respect of whom an application under subsection (2) is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the court other than in response to inquiries made by the court under subsection (5)(c).
- (8) In exercising the right of address under subsection (7)(c), a person may be represented by a legal practitioner.
- (9) An order under subsection (2) in respect of a person who is not a forensic patient or a forensic resident within the meaning of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** must include a direction that the person attend—
- (a) at a place; and

- (b) within a period (commencing after the expiry of the period referred to in subsection (12) during which the order must not be executed)—
- specified in the order to undergo the forensic procedure.
- (10) If a court makes an order under subsection (2), it must—
- (a) give reasons for its decision and cause a copy of the order and reasons to be served on the person ordered to undergo the forensic procedure; and
- (b) inform the person ordered to undergo the forensic procedure that a police officer may use reasonable force to enable the procedure to be conducted.
- (11) A failure of a court to comply with subsection (10) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (12) An order made by a court under subsection (2) before the appeal period in relation to the verdict of not guilty because of mental impairment has expired or an appeal against the verdict (if any) has been finally determined (whichever is the later), must not be executed unless—
- (a) that appeal period expires; or
- (b) the appeal against the verdict is dismissed—
- whichever is the later.
- (13) If leave to appeal against a verdict of not guilty because of mental impairment in respect of a forensic sample offence is sought after the expiry of the appeal period in relation to the verdict, an order made by a court under subsection (2) before leave to appeal is sought, if not executed before

S. 464ZF AAA
(10)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

s. 464ZFAA

that leave is sought, must not be executed unless—

(a) leave to appeal against the verdict is refused;
or

(b) leave to appeal against the verdict is granted but the appeal is dismissed.

(14) If an order made by a court under subsection (2) has been executed after the expiry of the appeal period in relation to the verdict of not guilty because of mental impairment in respect of a forensic sample offence and leave to appeal against the verdict is granted after the expiry of that period—

(a) any sample and any related material and information taken may be retained by a police officer but may not be used for any purpose pending the final determination of the appeal against the verdict; and

(b) if, on appeal, the verdict is set aside, the Chief Commissioner of Police must, without delay, destroy or cause to be destroyed any sample taken and any related material and information.

(15) If on appeal a verdict of not guilty because of mental impairment is set aside, an order made by a court under subsection (2) ceases to have effect.

S. 464ZFAAA
(14)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

464ZFAA Notice to attend for forensic procedure

S. 464ZFAA
inserted by
No. 16/2002
s. 11.

(1) If a senior police officer is satisfied that—

(a) an order under section 464ZF(2) in respect of a person was made—

(i) before the commencement of section 11 of the **Crimes (DNA Database) Act 2002**; or

S. 464ZFAA(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(a)).

(ii) when the person was a detained or protected person and within the period of 6 months immediately preceding the serving of the notice the person ceased to be a detained or protected person; and

(b) the order has not been executed; and

(c) the period referred to in section 464ZF(6) during which the order must not be executed has expired—

the senior police officer may serve on the person a notice in accordance with subsections (2) and (3).

(2) A notice must direct the person to attend at a police station specified in the notice within 28 days after service of the notice to undergo the forensic procedure ordered by the court and must state—

(a) the date on which the order under section 464ZF(2) was made;

(b) the court which made the order;

(c) that the person has not undergone the forensic procedure;

(d) that if the person fails to comply with the notice, application for a warrant to arrest the person may be made without further notice to the person;

(e) that the person may wish to seek legal advice as to the effect of the notice;

(f) the name, rank and telephone number of the senior police officer serving the notice.

S. 464ZFAA
(2)(f)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(b)).

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- (3) A copy of the order under section 464ZF(2) must be attached to and served with the notice.
- (4) A notice may be served on a person by—
- (a) delivering a true copy of the notice to the person personally; or
 - (b) leaving a true copy of the notice for the person at the person's last or most usual place of residence or business with a person who apparently resides or works there and who is apparently not less than 16 years of age; or
 - (c) posting the notice to the person at their last known place of residence or business.
- (5) If a notice is served by post in accordance with subsection (4)(c), evidence of service must state the manner of ascertainment of the address to which the notice was posted and the time and place of posting.
- (6) If a person does not comply with a notice served under this section, a police officer may apply to a magistrate or a registrar of the Magistrates' Court for a warrant under subsection (7).
- (7) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affidavit that—
- (a) a notice was served on a person in accordance with this section; and
 - (b) the person has not undergone the forensic procedure—
- the magistrate or registrar may issue a warrant authorising the person to whom it is directed, if necessary—

S. 464ZFAA(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(c)).

- (c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
 - (d) to arrest the person; and
 - (e) to detain the person for as long as reasonably permits the conduct of the forensic procedure.
- (8) Section 464ZFA(2), (3), (4), (5), (6) and (7) apply to a warrant issued under subsection (7) as if it were a warrant issued under section 464ZFA(1B).

464ZFA Warrants issued for forensic procedures under section 464ZF or 464ZFAAA

S. 464ZFA
(Heading)
inserted by
No. 27/2006
s. 10(1).

S. 464ZFA
inserted by
No. 81/1997
s. 25.

(1) If—

S. 464ZFA(1)
substituted by
No. 27/2006
s. 10(2),
amended by
No. 48/2006
s. 42(Sch.
item 9.3).

- (a) before a court makes an order under section 464ZF(3) directing a person to undergo a forensic procedure, that person has been released from the prison, police gaol, youth justice centre or designated mental health service where he or she was serving a term of imprisonment or a period of detention at the time the application for the order was made; or
- (b) a person fails to attend the hearing of an application under section 464ZF(3) for an order directing the person to undergo a forensic procedure—

S. 464ZFA
(1)(a)
amended by
No. 26/2014
s. 455(Sch.
item 7.5).

s. 464ZFA

the court may issue a warrant authorising the person to whom it is directed, if necessary—

- (c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
- (d) to arrest the person; and
- (e) to bring the person before the court for the hearing of the application; and
- (f) if that application is granted, to detain the person for as long as reasonably permits the conduct of the forensic procedure.

S. 464ZFA(1A)
inserted by
No. 16/2002
s. 12(1),
amended by
Nos 27/2006
s. 10(3),
20/2011
s. 5(1),
37/2014
s. 10(Sch.
item 36.36(a)).

(1A) If a court makes an order under section 464ZF(2) or 464ZFAAA(2) directing a person to undergo a forensic procedure and the person does not comply with a direction referred to in section 464ZF(2A) or 464ZFAAA(9), as the case may be, a police officer may apply to a magistrate or a registrar of the Magistrates' Court for a warrant under subsection (1B).

S. 464ZFA(1B)
inserted by
No. 16/2002
s. 12(1),
amended by
No. 27/2006
s. 10(4).

(1B) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affidavit that the person has not complied with a direction referred to in section 464ZF(2A) or 464ZFAAA(9), the magistrate or registrar may issue a warrant authorising the person to whom it is directed, if necessary—

- (a) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
- (b) to arrest the person; and
- (c) to detain the person for as long as reasonably permits the conduct of the forensic procedure.

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| (2) A warrant issued under subsection (1) or (1B) may be directed to— | S. 464ZFA(2) amended by No. 16/2002 s. 12(2)(a). |
| (a) a named police officer; or | S. 464ZFA (2)(a) amended by No. 37/2014 s. 10(Sch. item 36.36 (b)(i)). |
| (b) generally all police officers. | S. 464ZFA (2)(b) amended by No. 37/2014 s. 10(Sch. item 36.36(b)(ii)). |
| (3) A warrant issued under subsection (1) or (1B) directed to a named police officer may be executed by any police officer. | S. 464FA(3) amended by Nos 16/2002 s. 12(2)(b), 37/2014 s. 10(Sch. item 36.36(c)). |
| (4) If a court issues a warrant under subsection (1) or a magistrate or registrar issues a warrant under subsection (1B), the court, magistrate or registrar must— | S. 464ZFA(4) amended by No. 16/2002 s. 12(2)(c)(i). |
| (a) give reasons for the decision; and | S. 464ZFA (4)(a) amended by No. 16/2002 s. 12(2)(c)(ii). |
| (b) cause a note of the reasons to be entered in the records of the court. | |
| (5) A failure of a court, magistrate or registrar to comply with subsection (4) does not invalidate any order made by the court, magistrate or registrar but constitutes non-compliance for the purposes of section 464ZE(1)(a). | S. 464ZFA(5) amended by No. 16/2002 s. 12(2)(d)(i)(ii). |
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s. 464ZFA

S. 464ZFA(6)
amended by
No. 16/2002
s. 12(2)(e).

(6) If a person is arrested under a warrant issued under subsection (1) or (1B), the warrant ceases to have effect immediately after the procedure is completed or on the expiration of a reasonable time (whichever is the earlier).

S. 464ZFA(7)
inserted by
No. 16/2002
s. 12(3),
amended by
No. 37/2014
s. 10(Sch.
item
36.36(d)(i)).

(7) A police officer who executes a warrant issued under subsection (1B) must, as soon as practicable after executing the warrant—

(a) endorse the warrant to that effect; and

(b) cause to be lodged with a registrar of the Magistrates' Court a report signed by the police officer and containing particulars of—

(i) the date and time at which the person was arrested;

(ii) the date and time at which the person was released from custody;

(iii) the date, time and place at which the forensic procedure was conducted;

(iv) the name and position of the person who conducted the forensic procedure and every other person present;

(v) the type of sample taken;

(vi) whether reasonable force was used to enable the forensic procedure to be conducted.

S. 464ZFA
(7)(b)
amended by
No. 37/2014
s. 10(Sch.
item
36.36(d)(ii)).

**464ZFB Retention of information following finding of
guilt etc.**

S. 464ZFB
(Heading)
inserted by
No. 27/2006
s. 11(1).

S. 464ZFB
inserted by
No. 81/1997
s. 26.

(1AA) If—

S. 464ZFB
(1AA)
inserted by
No. 72/2013
s. 11(1).

- (a) a forensic procedure is conducted on a person of or above the age of 18 years in accordance with section 464R, 464SA, 464T(3) or 464V(5); and
- (b) a court finds the person guilty, or not guilty because of mental impairment, of—
 - (i) the indictable offence in respect of which the forensic procedure was conducted; or
 - (ii) any other indictable offence arising out of the same circumstances; or
 - (iii) any other indictable offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

the sample taken and any related material and information may be retained indefinitely.

(1AB) Subsection (1AA) does not apply if—

S. 464ZFB
(1AB)
inserted by
No. 72/2013
s. 11(1).

- (a) on appeal against conviction, the finding of guilt or conviction referred to in subsection (1AA) is set aside; or
- (b) on appeal against the verdict of not guilty because of mental impairment, the verdict referred to in subsection (1AA) is set aside.

s. 464ZFB

S. 464ZFB(1)
amended by
Nos 16/2002
s. 13(1)(a)(b),
14/2006
s. 14(a),
72/2013
s. 11(2)(c),
37/2014
s. 10(Sch.
item 36.37).

S. 464ZFB
(1)(a)
amended by
No. 41/2004
s. 17,
substituted by
No. 72/2013
s. 11(2)(a).

S. 464ZFB
(1)(b)
amended by
No. 72/2013
s. 11(2)(b).

(1) If at any time on or after the commencement of section 26 of the **Crimes (Amendment) Act 1997**—

(a) a forensic procedure is conducted on a child in accordance with section 464U(7) or 464V(5); and

(b) a court finds the child guilty of—

- (i) the offence in respect of which the forensic procedure was conducted; or
- (ii) any other offence arising out of the same circumstances; or
- (iii) any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

a police officer, at any time after the finding of guilt but not later than 6 months after the final determination of an appeal against conviction or sentence or the expiry of any appeal period in respect of the offence (whichever is the later), may apply to the court referred to in paragraph (b) or to the Children's Court for an order permitting the retention of any sample taken and any related material and information and the court may make an order accordingly.

(1A) If—

S. 464ZFB(1A)
inserted by
No. 27/2006
s. 11(2),
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(a) a forensic procedure is conducted on a child in accordance with section 464U(7) or 464V(5); and

S. 464ZFB
(1A)(a)
substituted by
No. 72/2013
s. 11(3)(a).

(b) a court finds the child not guilty because of mental impairment of—

S. 464ZFB
(1A)(b)
amended by
No. 72/2013
s. 11(3)(b).

(i) the offence in respect of which the forensic procedure was conducted; or

(ii) any other offence arising out of the same circumstances; or

(iii) any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

a police officer, at any time after the verdict of not guilty because of mental impairment, but not later than 6 months after the final determination of an appeal against the verdict or the expiry of any appeal period in respect of the verdict (whichever is the later), may apply to the court referred to in paragraph (b) for an order permitting the retention of any sample taken and any related material and information and the court may make an order accordingly.

s. 464ZFB

S. 464ZFB(1B)
inserted by
No. 27/2006
s. 11(2),
amended by
No. 68/2009
s. 97(Sch.
item 40.38).

(1B) Subsection (1A) does not apply to an offence heard and determined summarily.

S. 464ZFB(2)
amended by
No. 27/2006
s. 11(3)(a).

(2) A court hearing an application under subsection (1) or (1A)—

**S. 464ZFB
(2)(a)**
amended by
No. 27/2006
s. 11(3)(b).

- (a) must take into account the seriousness of the circumstances of the offence in determining whether to make the order under subsection (1) or (1A), as the case requires; and
- (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
- (c) may make such inquiries on oath or otherwise as it considers desirable.

S. 464ZFB(2A)
inserted by
No. 16/2002
s. 13(2),
amended by
No. 14/2006
s. 14(b)(i)(ii).

(2A) An order made under subsection (1) before the expiry of the appeal period in respect of the conviction for the offence or the final determination of an appeal against conviction (whichever is the later)—

**S. 464ZFB
(2A)(b)**
amended by
Nos 14/2006
s. 14(b)(ii),
68/2009
s. 97(Sch.
item 40.39) (as
amended by
No. 29/2011
s. 3(Sch. 1
item 25.1)).

- (a) takes effect on that expiry or final determination; and
- (b) has no effect if, on appeal against conviction, the finding of guilt or conviction is set aside.

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- (2B) An order made under subsection (1A) before the expiry of the appeal period in respect of the verdict of not guilty because of mental impairment or the final determination of an appeal against the verdict (whichever is later)—
- (a) takes effect on that expiry or final determination; and
 - (b) has no effect if, on appeal, the verdict of not guilty because of mental impairment is set aside.
- (3) If a court makes an order under subsection (1) or (1A), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person on whom the forensic procedure was conducted.
- (4) A failure of a court to comply with subsection (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- 464ZFC Destruction of information following finding of guilt etc.**
- (1) Subject to section 464ZFD(2), if—
- (aa) a finding of guilt, a conviction or a verdict of not guilty because of mental impairment referred to in section 464ZFB(1AA) is set aside on appeal; or
 - (a) a police officer does not make an application under section 464ZFB(1) or (1A) within the period specified by that subsection; or

S. 464ZFB(2B)
inserted by
No. 27/2006
s. 11(4).

S. 464ZFB(3)
amended by
No. 27/2006
s. 11(5).

S. 464ZFC
(Heading)
inserted by
No. 27/2006
s. 12(1).

S. 464ZFC
inserted by
No. 81/1997
s. 26.

S. 464ZFC
(1)(aa)
inserted by
No. 72/2013
s. 12(a).

S. 464ZFC
(1)(a)
amended by
Nos 27/2006
s. 12(2),
37/2014
s. 10(Sch.
item 36.37).

s. 464ZFC

**S. 464ZFC
(1)(b)
amended by
No. 72/2013
s. 12(b).**

(b) a court refuses to make an order under section 464ZFB(1) or (1A)—

the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.

- (2) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred.
- (3) A person who knowingly—
 - (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—

a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (4) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from, any sample or related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

464ZFD Victorian DNA database

S. 464ZFD
(Heading)
substituted by
No. 32/2007
s. 5(1).

S. 464ZFD
inserted by
No. 81/1997
s. 26.

(1AA) The Chief Commissioner of Police may keep a DNA database system.

S. 464ZFD
(1AA)
inserted by
No. 32/2007
s. 5(2).

(1) Information (including information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with sections 464R to 464ZA, section 464ZF or 464ZFAAA or sections 464ZGB to 464ZGD (as the case may be), and which in accordance with this Subdivision may be retained, may be included in the DNA database system kept under subsection (1AA).

S. 464ZFD(1)
amended by
Nos 27/2006
s. 13, 32/2007
s. 5(3).

(2) Information (other than information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with this Subdivision may be retained and included in the DNA database system kept under subsection (1AA) for statistical purposes.

S. 464ZFD(2)
amended by
Nos 16/2002
s. 14, 32/2007
s. 5(4).

464ZFE Report to Attorney-General

S. 464ZFE
inserted by
No. 81/1997
s. 26.

The Chief Commissioner of Police, on or as soon as practicable after 1 January, 1 April, 1 July and 1 October of each year, must submit to the Attorney-General a report that contains—

- (a) a list that identifies by a unique identifying number every sample taken in accordance with this Subdivision within the period to which the report relates; and

s. 464ZG

- (b) the date on which every sample listed in the report was taken; and
- (c) information on whether any of the samples listed in the report or in any previous report submitted under this section have been destroyed within the period to which the report relates; and
- (d) if a sample has been destroyed, the date of destruction and the name of the person who has destroyed it; and
- (e) the number of authorisations given under section 464SA within the period to which the report relates; and
- (f) the number of authorisations refused to be given under section 464SA within the period to which the report relates.

S. 464ZFE(d)
amended by
No. 41/2004
s. 18(a).

S. 464ZFE(e)
inserted by
No. 41/2004
s. 18(b).

S. 464ZFE(f)
inserted by
No. 41/2004
s. 18(b).

S. 464ZG
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464ZG Destruction of identifying information

- (1) In this section, *relevant offence* means—

S. 464ZG(1)(a)
amended by
No. 72/2013
s. 13.

- (a) the indictable offence in respect of which the forensic procedure was conducted; or

S. 464ZG(1)(b)
amended by
No. 72/2013
s. 13.

- (b) any other indictable offence arising out of the same circumstances; or

S. 464ZG(1)(c)
amended by
No. 72/2013
s. 13.

- (c) any other indictable offence in respect of which the evidence obtained as a result of the forensic procedure has probative value.

S. 464ZG(2)
repealed by
No. 81/1997
s. 27(1).

* * * * *

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- (3) Subject to section 464ZFD(2), if a forensic procedure has been conducted on a person and—
- (a) the person has not been charged with a relevant offence at the end of the period of 12 months after the conduct of the procedure; or
- (b) the person has been so charged but the charge is not proceeded with or the person is not found guilty (except because of mental impairment) of the offence or any other relevant offence, whether on appeal or otherwise, before the end of that period—
- the Chief Commissioner of Police, subject to subsection (5), must destroy, or cause to be destroyed, at the time specified in subsection (4) any sample taken and any related material and information.
- (4) A sample and any related material and information referred to in subsection (3) must be destroyed—
- (a) in a case to which subsection (3)(a) applies, immediately after that period of 12 months; or
- (b) in a case to which subsection (3)(b) applies—
- (i) within 1 month after the conclusion of the proceedings and the end of any appeal period; or
- (ii) if the proceedings have been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month of dismissal under that section.
- S. 464ZG(3) amended by No. 81/1997 s. 27(2)(a)(c).
- S. 464ZG(3)(a) amended by No. 81/1997 s. 27(2)(b).
- S. 464ZG(3)(b) amended by No. 27/2006 s. 14.
- S. 464ZG(4) amended by No. 81/1997 s. 27(3)(a).
- S. 464ZG(4)(a) amended by No. 81/1997 s. 27(3)(b).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 464ZG

S. 464ZG(5)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(5) A police officer may, before the end of a period referred to in subsection (4), apply, without notice to any other person, to the Magistrates' Court or the Children's Court (as the case requires) for an order extending that period and, if the court makes such an order, the reference to the period in subsection (4) is a reference to that period as so extended.

(6) If the Magistrates' Court or the Children's Court makes an order under subsection (5), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the forensic procedure was conducted.

S. 464ZG(7)
substituted by
No. 81/1997
s. 27(4).

(7) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred.

S. 464ZG(8)
amended by
Nos 69/1997
s. 22(15),
81/1997
s. 27(5)(a)(c).

(8) A person who knowingly—

(a) fails to destroy; or

S. 464ZG(8)(b)
amended by
No. 81/1997
s. 27(5)(b).

(b) uses, or causes or permits to be used—

a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZG(9)
amended by
Nos 69/1997
s. 22(15),
81/1997
s. 27(6)(a)–(c).

(9) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from, any sample or related material and information required by this section

to be destroyed except in good faith for the purposes of a relevant offence or for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

464ZGA Forensic information from juveniles

S. 464ZGA
inserted by
No. 81/1997
s. 28.

- (1) Subject to section 464ZFD(2), if—
- (a) a person undergoes a forensic procedure as a child in accordance with this Subdivision, whether before or after the commencement of section 28 of the **Crimes (Amendment) Act 1997**; and
 - (b) any sample taken is not required to be destroyed under this Subdivision, other than under this subsection; and
 - (c) the person is not found guilty of any further offence before attaining the age of 26 years—

the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.

- (2) Subsection (1) does not apply if the offence in relation to which the forensic procedure was conducted was any of the following—
- (a) murder, attempted murder, manslaughter, child homicide or defensive homicide;
 - (b) an offence or attempt to commit an offence against section 16, 17, 18, 25, 26, 29 or 31;

S. 464ZGA
(2)(a)
amended by
Nos 77/2005
s. 8(3)(d),
7/2008
s. 7(3)(f).

s. 464ZGB

- (c) an offence or attempt to commit an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I;
- (d) an offence or attempt to commit an offence against section 75 or 75A;
- (e) an offence or attempt to commit an offence against section 197 (in circumstances where the offence is charged as arson);
- (f) an offence or attempt to commit an offence against section 197A—

and the person has been found guilty of that offence.

S. 464ZGB
inserted by
No. 81/1997
s. 28.

464ZGB Samples given voluntarily

S. 464ZGB(1)
amended by
Nos 72/2004
s. 32, 37/2014
s. 10(Sch.
item 36.37).

- (1) A person of or above the age of 18 years may volunteer to give a sample (whether an intimate or non-intimate sample) to a police officer.
- (2) A sample may only be given under this section if the person volunteering to give it consents in accordance with this section and that consent is not withdrawn prior to the giving of the sample.

S. 464ZGB(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

- (3) A person consents in accordance with this section only if, in the presence of an independent person, he or she consents after a police officer has informed the person in language likely to be understood by the person—

S. 464ZGB
(3)(b)
substituted by
No. 16/2002
s. 15.

- (a) that any sample that is given will be analysed;
- (b) that information obtained from the analysis will be placed on a DNA database and may be used for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this

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- Subdivision or under a corresponding law of a participating jurisdiction;
- (ba) that the person may choose whether the information obtained from analysis of the sample may be used—
- (i) only for a limited purpose to be specified by the volunteer; or
- (ii) for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this Subdivision or under a corresponding law of a participating jurisdiction;
- (bb) that information obtained from the analysis could produce evidence to be used in a court;
- (c) that the person is under no obligation to give a sample;
- (d) that if the person consents to give a sample, he or she may at any time before the sample is taken, withdraw that consent;
- (e) that the person may consult a legal practitioner (whether the term legal practitioner or lawyer is used) before deciding whether or not to consent to give a sample;
- (f) that the person may at any time (including after he or she has been charged with an offence) withdraw his or her consent to the retention of the sample;
- (g) that where the person withdraws his or her consent to the retention of the sample, a police officer may nevertheless apply to a court for an order to retain the sample and any related material and information;
- S. 464ZGB
(3)(ba)
inserted by
No. 16/2002
s. 15.
- S. 464ZGB
(3)(bb)
inserted by
No. 16/2002
s. 15.
- S. 464ZGB
(3)(e)
amended by
No. 72/2013
s. 14.
- S. 464ZGB
(3)(g)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

s. 464ZGC

S. 464ZGB
(3)(h)
amended by
No. 13/2010
s. 51(Sch.
item 17.10).

(h) that the person may request that the sample be taken by or in the presence of a medical practitioner, nurse, midwife or dentist of his or her choice.

S. 464ZGB(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(4) A police officer who informs a person of the matters in subsection (3) must—

(a) record the giving of the information and the person's responses, if any—

(i) in writing signed by both the person and the independent person witnessing the giving of the consent; and

(ii) by audiovisual recording, if practicable, or otherwise by audio recording; and

S. 464ZGB
(4)(a)(ii)
substituted by
No. 27/2006
s. 17(30)(a).

(b) give or send by registered post to the person or his or her legal practitioner, without charge—

(i) a copy of the audiovisual recording or audio recording as soon as practicable, but not more than 7 days after the information is given; and

(ii) a copy of the written record, signed by both the person and the independent person, forthwith.

S. 464ZGB
(4)(b)(i)
amended by
No. 27/2006
s. 17(30)(b).

S. 464ZGC
inserted by
No. 81/1997
s. 28.

464ZGC Withdrawal of consent prior to giving sample

S. 464ZGC(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(1) A person, at any time prior to giving a sample, may withdraw the consent that was given by him or her in accordance with section 464ZGB either—

(a) orally; or

(b) in writing—

to a police officer or to the person authorised to take the sample.

- (2) If, prior to giving a sample, a person withdraws his or her consent orally, a police officer or the person authorised to take the sample must, as soon as practicable, record in writing the withdrawal of consent.

S. 464ZGC(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

464ZGD Procedure to take sample

S. 464ZGD
inserted by
No. 81/1997
s. 28.

- (1) The procedure to be conducted to take a sample from a person following the giving of consent in accordance with section 464ZGB must—

(a) be in accordance with the procedure set out in section 464Z; and

(b) be recorded by audiovisual recording, if practicable, and if the person consents.

S. 464ZGD
(1)(b)
amended by
No. 27/2006
s. 17(31)(a).

- (2) If the taking of a sample voluntarily given by a person is recorded by audiovisual recording, a police officer must—

(a) without charge; and

(b) as soon as practicable but not more than 7 days after the sample was taken—

give or send by registered post a copy of the audiovisual recording to the person who voluntarily gave the sample.

S. 464ZGD(2)
amended by
Nos 27/2006
s. 17(31)(b),
37/2014
s. 10(Sch.
item 36.37).

464ZGE Safeguards after giving sample

S. 464ZGE
inserted by
No. 81/1997
s. 28.

- (1) If a person has given his or her consent in accordance with section 464ZGB, and a sample has been taken, that person may at any time after the sample has been taken, by notice in writing to the Chief Commissioner of Police, withdraw his or her consent to the retention of that sample.

s. 464ZGE

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- (2) Subject to subsection (5) and section 464ZFD(2), if a person has voluntarily given a sample in accordance with sections 464ZGB to 464ZGD and either—
- (a) that person in accordance with subsection (1) has withdrawn his or her consent to the retention of that sample; or
 - (b) a court has made an order under section 464ZGF for the retention of that sample and any related material and information, and—
 - (i) the person has not been charged with an indictable offence at the end of the period of 12 months after the order of the court; or
 - (ii) the person has been so charged but the charge is not proceeded with, or the person is not found guilty of the indictable offence or any other indictable offence for which the sample and any related material and information had probative value, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police, at the time specified in subsection (3), must destroy, or cause to be destroyed, any sample given and any related material and information.

- (3) A sample and any related material and information referred to in subsection (2) must be destroyed—
- (a) within 28 days after the receipt of the person's notice of withdrawal of consent under subsection (1); or
 - (b) in a case to which subsection (2)(b)(i) applies, immediately after that period of 12 months; or

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- (c) in a case to which subsection (2)(b)(ii) applies—
- (i) within 1 month after the conclusion of the proceedings and the end of any appeal period; or
 - (ii) if the proceedings have been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.
- (4) The Chief Commissioner of Police is not required to comply with the requirements in subsections (2) and (3) to destroy or cause to be destroyed a sample and any related material and information by reason of the person's withdrawal of consent if the Magistrates' Court makes an order under section 464ZGF for the retention of that sample and any related material and information.
- (5) If the Magistrates' Court refuses to make an order under section 464ZGF for the retention of a sample and any related material and information, and a person in accordance with subsection (1) has withdrawn his or her consent to the retention of that sample, the Chief Commissioner of Police must immediately destroy, or cause to be immediately destroyed, the sample given and any related material and information.
- (6) A police officer may, before the end of a period referred to in subsection (3)(b) or (3)(c), apply, without notice to any other person, to the Magistrates' Court for an order extending that period and, if the court makes such an order, the reference to the period in subsection (3)(b) or (3)(c) is a reference to that period as so extended.

S. 464ZGE(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

s. 464ZGE

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- (7) If the Magistrates' Court makes an order under subsection (6), it must give reasons for its decision and cause a copy of the order to be served on the person who voluntarily gave the sample.
- (8) If a sample or related material and information is destroyed in accordance with this section, the Chief Commissioner of Police must, within 14 days, give notice of the destruction to the person who voluntarily gave the sample.
- (9) A person who knowingly—
- (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
- a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (10) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any sample or related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (11) This section does not prevent a police officer, in respect of a person who has voluntarily given a sample under sections 464ZGB to 464ZGD—
- (a) requesting, under section 464R, the person to undergo a forensic procedure; or
 - (b) making an application under section 464T or 464V for a court order directing the person to undergo a compulsory procedure.

S. 464ZGE(11)
amended by
No. 37/2014
s. 10(Sch.
item 1 36.37).

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S. 464ZGE(12)
repealed by
No. 80/1998
s. 3(e).

464ZGF Application to court where consent to retention of sample withdrawn

S. 464ZGF
inserted by
No. 81/1997
s. 28.

(1) A police officer may apply to the Magistrates' Court for an order to retain a sample that has been voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, and any related material and information, and the court may make an order accordingly, if during an investigation into the commission of an indictable offence—

S. 464ZGF(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(a) either—

(i) material reasonably believed to be from the body of a person who committed the indictable offence has been found—

(A) at the scene of the offence; or

(B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

(C) on an object or person reasonably believed to have been associated with the commission of the offence; or

(ii) if the offence is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I, and a police officer reasonably believes that a child has been conceived as a result of the commission of the offence and a

S. 464ZGF(1)
(a)(ii)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

s. 464ZGF

sample has been taken from that child;
and

**S. 464ZGF
(1)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).**

- (b) a police officer reasonably believes that information obtained from the analysis of the sample voluntarily given by the person, and from any related material and information, has probative value in relation to the indictable offence being investigated; and
 - (c) the person who voluntarily gave that sample has withdrawn his or her consent to the retention of that sample; and
 - (d) the information obtained from the analysis of the voluntary sample, and from any related material and information, has not been destroyed in accordance with section 464ZGE(2)(a) and (3)(a).
- (2) A court hearing an application under subsection (1) must—
- (a) be satisfied on the balance of probabilities that there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and
 - (b) be satisfied that, in all the circumstances, the making of the order is justified.
- (3) If the court makes an order under subsection (1), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person who voluntarily gave the sample.
- (4) A failure of a court to comply with subsection (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

464ZGFA Voluntary samples given by police or VIFM personnel

S. 464ZGFA
inserted by
No. 72/2013
s. 15.

(1) In this section—

Institute means the Victorian Institute of Forensic Medicine established under the **Victorian Institute of Forensic Medicine Act 1985**;

relevant agency means—

- (a) Victoria Police; or
 - (b) the Institute.
- (2) Any of the following persons may volunteer to give to a relevant agency a sample of material from which a DNA profile may be derived—
- (a) a member of Victoria Police personnel;
 - (b) the Director of the Institute or an employee of the Institute (whether employed under the **Victorian Institute of Forensic Medicine Act 1985** or the **Public Administration Act 2004**);
 - (c) a visitor to—
 - (i) any premises at which the Victoria Police Forensic Services Department performs functions; or
 - (ii) any premises at which the Institute performs any of its functions.
- (3) A sample may only be given under this section if the relevant agency has provided to the person volunteering to give the sample—
- (a) a written statement that the sample is to be provided for the purpose of comparing a DNA profile obtained from the sample

S. 464ZGFA
(2)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 36.38(a)).

against any other DNA profile held by the relevant agency to eliminate the person as a possible source of DNA in—

- (i) the investigation of a crime; or
 - (ii) the investigation of a reportable death within the meaning of the **Coroners Act 2008**; or
 - (iii) in the case of the Institute, testing conducted by the Institute in the performance of its objects and functions; and
- (b) a written statement of the requirements of section 464ZGFB(3) and (5).
- (4) A sample given under this section may be used only for the purpose referred to in subsection (3)(a).
- (5) Evidence of a sample given by a person under this section and any DNA profile obtained from the sample is inadmissible as evidence against the person, unless the person consents to the admission of the evidence, in—
- (a) any proceeding, whether civil or criminal; or
 - (b) a proceeding arising out of, or connected with, an investigation under Division 6 of Part 4, Part 5, Part 7, Part 9 or Part 10 of the **Victoria Police Act 2013** in respect of the person; or
 - (c) a proceeding arising out of, or connected with, a critical incident (within the meaning of section 82 of the **Victoria Police Act 2013**).

S. 464ZGFA
(5)(b)
amended by
No. 37/2014
s. 10(Sch.
item
36.38(b)(i)).

S. 464ZGFA
(5)(c)
amended by
No. 37/2014
s. 10(Sch.
item
36.38(b)(ii)).

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- (6) In subsection (5) a *proceeding* includes a coronial inquest or inquiry.
- (7) A sample given under this section and any DNA profile obtained from the sample may not be released to any person outside the relevant agency unless the person who gave the sample consents to the release.
- (8) A person must not knowingly use, or cause or permit to be used, or otherwise disseminate information derived from, a sample given under this section, any DNA profile obtained from the sample or any related information, other than in accordance with this section.
- Penalty: level 8 imprisonment (1 year maximum).
- (9) An offence against subsection (8) is a summary offence.
- (10) This section does not affect any other power to require a person referred to in subsection (2) to provide a sample or to undergo a forensic procedure.

464ZGFB Destruction of samples given by police and VIFM personnel and storage of DNA information

S. 464ZGFB
inserted by
No. 72/2013
s. 15.

- (1) The Chief Commissioner of Police is responsible for ensuring the destruction under this section of samples and DNA profiles that are held or managed by Victoria Police.
- (2) The Director of the Institute is responsible for ensuring the destruction under this section of samples and DNA profiles that are held or managed by the Institute.

- (3) A DNA profile derived from a sample given under section 464ZGFA must be stored on a database that—
- (a) is not a DNA database; and
 - (b) is not connected to any other database on which matching of DNA profiles occurs.

Notes

- 1 *DNA database* is defined in section 464(2).
- 2 A sample given under section 464ZGFA must not be entered in NCIDD.

- (4) A DNA sample given under section 464ZGFA and a DNA profile derived from the sample must be destroyed if—

S. 464ZGFB
(4)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(a)).

- (a) in the case of a sample given by the Chief Commissioner of Police, the Chief Commissioner requests the destruction of the sample by notice in writing to the Minister administering the **Victoria Police Act 2013**; or

S. 464ZGFB
(4)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(b)).

- (b) in the case of a sample given by any other member of Victoria Police personnel or a visitor to any premises at which the Victoria Police Forensic Services Department performs functions, the member or visitor requests the destruction of the sample by notice in writing to the Chief Commissioner of Police; or
- (c) in the case of a sample given by the Director of the Institute, the Director requests the destruction of the sample by notice in writing to the Attorney-General; or
- (d) in the case of a sample given by an employee of the Institute or a visitor to any premises at which the Institute performs any of its functions, the employee or visitor requests

the destruction of the sample by notice in writing to the Director of the Institute; or

- (e) 12 months have elapsed since the person who gave the sample ceased to be a member of Victoria Police personnel, the Director of the Institute or an employee of the Institute, as the case may be.

S. 464ZGFB
(4)(e)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(b)).

- (5) Without affecting any other arrangements for destruction of samples, this section also applies, on and from its commencement, to a sample given voluntarily by a person referred to in section 464ZGFA(2) before the commencement of this section.

- (6) A person must not knowingly—

- (a) fail to destroy; or
(b) use, or cause or permit to be used, or otherwise disseminate information derived from—

a sample, or a DNA profile derived from a sample, that is required by this section to be destroyed.

Penalty: level 8 imprisonment (1 year maximum).

- (7) An offence against subsection (6) is a summary offence.

s. 464ZGG

Heading
preceding
s. 464ZGG
inserted by
No. 16/2002
s. 16,
amended by
No. 32/2007
s. 6.

DNA database systems

S. 464ZGG
inserted by
No. 16/2002
s. 16.

464ZGG Supply of forensic material for purposes of DNA database

(1) In this section—

S. 464ZGG(1)
def. of
excluded forensic material
amended by
No. 27/2006
s. 15.

excluded forensic material means forensic material—

- (a) found at a crime scene; or
- (b) taken from a suspect in accordance with this Subdivision or under a corresponding law of a participating jurisdiction; or
- (c) taken from an offender under section 464ZF or 464ZGB or under a corresponding law of a participating jurisdiction; or
- (ca) taken from a person under section 464ZFAAA following a finding of not guilty because of mental impairment; or
- (d) taken from the body of a deceased person; or
- (e) from the body of a missing person; or
- (f) taken from a volunteer who is a relative by blood of a deceased or missing person;

prohibited analysis means analysis for the purpose of deriving a DNA profile for inclusion on a DNA database when the forensic material is required to be destroyed

by this Subdivision or under a corresponding law of a participating jurisdiction.

(2) A person—

- (a) whose conduct causes the supply of forensic material taken from a person under this Subdivision (or under a corresponding law of a participating jurisdiction) to a person for prohibited analysis; and
- (b) who intends or is reckless as to the supply of material of that kind—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

(3) A person—

- (a) whose conduct causes the supply of forensic material (other than excluded forensic material) to a person for analysis for the purpose of deriving a DNA profile for inclusion on a DNA database; and
- (b) who intends or is reckless as to the supply of material of that kind—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

464ZGH Use of information on Victorian DNA database

S. 464ZGH
(Heading)
amended by
No. 32/2007
s. 7(1).
S. 464ZGH
inserted by
No. 16/2002
s. 16.

- (1) A person who accesses information stored on the Victorian DNA database except in accordance with this section is guilty of a summary offence and liable to level 8 imprisonment (1 year

S. 464ZGH(1)
amended by
No. 32/2007
s. 7(1).

s. 464ZGH

maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGH(2)
amended by
No. 32/2007
s. 7(1).

(2) A person may access information stored on the Victorian DNA database for one or more of the following purposes—

- (a) forensic comparison permitted under section 464ZGI (permissible matching);
- (b) making the information available, in accordance with the regulations, to the person to whom the information relates;
- (c) administering the Victorian DNA database;

S. 464ZGH
(2)(c)
amended by
No. 32/2007
s. 7(1).

(d) in accordance with an arrangement entered into under section 464ZGN;

S. 464ZGH
(2)(d)
substituted by
No. 32/2007
s. 7(2).

(e) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;

(f) a coronial investigation or inquest;

(g) an investigation of a complaint by—

- (i) the Privacy Commissioner appointed under the **Information Privacy Act 2000**; or
- (ii) the Health Services Commissioner within the meaning of the **Health Records Act 2001** for the purposes of that Act; or

S. 464ZGH(2)
(g)(iii)
substituted by
No. 32/2007
s. 7(3).

(iii) the Ombudsman appointed under the **Ombudsman Act 1973**; or

(iv) the IBAC within the meaning of the
**Independent Broad-based Anti-
corruption Commission Act 2011.**

S. 464ZGH(2)
(g)(iv)
inserted by
No. 32/2007
s. 7(3),
amended by
Nos 34/2008
s. 143(Sch. 2
item 3.1),
82/2012
s. 159(2).

(3) This section does not apply to information that
cannot be used to discover the identity of any
person.

464ZGI Permissible matching of DNA profiles

S. 464ZGI
inserted by
No. 16/2002
s. 16.

(1) A matching of a DNA profile on an index of the
Victorian DNA database specified in column 1 of
the following Table with a DNA profile on
another index of the database specified in
column 2, 3, 4, 5, 6, 7 or 8 of the Table is not
permitted by this Subdivision if—

S. 464ZGI(1)
substituted by
No. 32/2007
s. 8(1).

- (a) "only if within purpose" is shown in relation
to the index specified in column 2, 3, 4, 5, 6,
7 or 8 opposite the volunteers (limited
purposes) index specified in column 1; and
- (b) the matching is carried out for a purpose
other than a purpose for which the DNA
profile placed on the volunteers (limited
purposes) index specified in column 1 was so
placed.

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and Punishment

s. 464ZGI

TABLE

S. 464ZGI(1)
Table
substituted by
No. 32/2007
s. 8(1).

<i>Profile to be matched</i>	<i>Is matching permitted?</i>						
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>	<i>Column 7</i>	<i>Column 8</i>
	<i>Crime Scene</i>	<i>Suspects</i>	<i>Volunteers (limited purposes)</i>	<i>(Volunteers (unlimited purposes))</i>	<i>Serious offenders</i>	<i>Missing persons</i>	<i>Unknown deceased persons</i>
1. crime scene	yes	yes	only if within purpose	yes	yes	yes	yes
2. suspects	yes	yes	only if within purpose	yes	yes	yes	yes
3. volunteers (limited purposes)	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose
4. volunteers (unlimited purposes)	yes	yes	only if within purpose	yes	yes	yes	yes
5. serious offenders	yes	yes	only if within purpose	yes	yes	yes	yes
6. missing persons	yes	yes	only if within purpose	yes	yes	yes	yes
7. unknown deceased persons	yes	yes	only if within purpose	yes	yes	yes	yes

(2) A person—

S. 464ZGI
(2)(a)
amended by
No. 32/2007
s. 8(2).

(a) whose conduct causes the matching that is not permitted by this Subdivision of a DNA profile on an index of the Victorian DNA database with a DNA profile on the same or another index of the Victorian DNA database; and

(b) who intends or is reckless as to any such matching of profiles—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

- (3) A person is not guilty of an offence against subsection (2) if the person's conduct causes a matching that is not permitted by this Subdivision but the matching is solely for the purpose of administering the Victorian DNA database.

S. 464ZGJ(3)
amended by
No. 32/2007
s. 8(2).

464ZGJ Recording, retention and removal of identifying information on DNA database

S. 464ZGJ
(Heading)
amended by
No. 32/2007
s. 9(1).

- (1) In this section—

S. 464ZGJ
inserted by
No. 16/2002
s. 16.

identifying information means information referred to in section 464ZFD(1), whether or not kept on the Victorian DNA database;

S. 464ZGJ(1)
def. of
*identifying
information*
substituted by
No. 32/2007
s. 9(2).

identifying period for identifying information means—

S. 464ZGJ(1)
def. of
*identifying
period*
amended by
No. 32/2007
s. 9(1)(3)-(5).

- (a) except as provided by paragraphs (b) and (c), the period of 12 months after the information is placed on the DNA database;
- (b) if the information is derived from forensic material taken from a volunteer—the period after the information is placed on the DNA database that is agreed by the Chief Commissioner of Police and the volunteer;
- (c) if the information is derived from forensic material taken from a deceased person (not being a person who was a volunteer) whose identity is known—the period for which the Chief Commissioner of Police orders the

s. 464ZGJ

responsible person to retain the
information;

S. 464ZGJ(1)
def. of
responsible
person
repealed by
No. 32/2007
s. 9(6).

* * * * *

S. 464ZGJ(2)
amended by
No. 32/2007
s. 9(1)(7).

- (2) A person who intentionally or recklessly causes any identifying information to be recorded or retained in a DNA database at any time after this Subdivision requires the forensic material to be destroyed is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGJ(3)
amended by
No. 32/2007
s. 9(1)(8)-(10).

- (3) A responsible person who does not ensure that any identifying information on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the DNA database is removed from the database as soon as practicable after the end of the identifying period for the information is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGJ(4)
amended by
Nos 32/2007
s. 9(1)(9)(11),
68/2009
s. 97(Sch.
item 40.40).

- (4) A responsible person who does not ensure that any identifying information relating to an offender on the serious offenders index of the DNA database is removed from the database as soon as practicable after becoming aware that the offender has been pardoned or acquitted of the offence concerned or if the conviction has been set aside is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

464ZGK Disclosure of Victorian information

(1) A person who—

S. 464ZGK
(Heading)
amended by
No. 32/2007
s. 10(1).

S. 464ZGK
inserted by
No. 16/2002
s. 16.

(a) has access to Victorian information; and

S. 464ZGK
(1)(a)
substituted by
No. 32/2007
s. 10(2).

(b) intentionally or recklessly causes the disclosure of the Victorian information other than as provided by this section—

S. 464ZGK
(1)(b)
amended by
No. 32/2007
s. 10(3).

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

(2) A person may only disclose Victorian information stored on a DNA database for one or more of the following purposes—

S. 464ZGK(2)
amended by
No. 32/2007
s. 10(4).

(a) forensic comparison in the course of a criminal investigation by a police officer or any other person authorised in writing by the Chief Commissioner of Police;

S. 464ZGK
(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.40).

(b) making the information available, in accordance with the regulations, to the person to whom the information relates;

(c) administering the DNA database;

S. 464ZGK
(2)(c)
substituted by
No. 32/2007
s. 10(5).

(d) in accordance with an agreement entered into under section 464ZGN;

S. 464ZGK
(2)(d)
substituted by
No. 32/2007
s. 10(5).

s. 464ZGK

- (e) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;
 - (f) a coronial investigation or inquest;
 - (g) an investigation of a complaint by—
 - (i) the Privacy Commissioner appointed under the **Information Privacy Act 2000**; or
 - (ii) the Health Services Commissioner within the meaning of the **Health Records Act 2001** for the purposes of that Act; or
 - (iii) the Ombudsman appointed under the **Ombudsman Act 1973**; or
 - (iv) the IBAC within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (v) an authority of a participating jurisdiction, but only if the authority would be entitled to the information if it were held on the participating jurisdiction's DNA database.
- (3) A person may only disclose Victorian information revealed by the carrying out of a forensic procedure as follows—
- (a) if the person is the suspect, offender or volunteer to whom the information relates;

S. 464ZGK(2)
(g)(iii)
substituted by
No. 32/2007
s. 10(6).

S. 464ZGK(2)
(g)(iv)
inserted by
No. 32/2007
s. 10(6),
amended by
Nos 34/2008
s. 143(Sch. 2
item 3.2),
82/2012
s. 159(3).

S. 464ZGK(2)
(g)(v)
inserted by
No. 32/2007
s. 10(6).

S. 464ZGK(3)
amended by
No. 32/2007
s. 10(7).

-
- (b) if the information is already publicly available;
 - (c) in accordance with any other provision of this Subdivision;
 - (d) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;
 - (e) for the purposes of the investigation of an offence or offences generally;
 - (f) for the purpose of a decision whether to institute proceedings for an offence;
 - (g) for the purpose of proceedings for an offence;
 - (h) for the purpose of a coronial investigation or inquest;
 - (i) for the purpose of civil proceedings (including disciplinary proceedings) that relate to the way in which the procedure is carried out;
 - (j) for the purpose of the suspect's, offender's or volunteer's medical treatment;
 - (k) for the purpose of the medical treatment of a person if necessary to prevent or lessen a serious threat to that person's life or health;
 - (l) if necessary to prevent or lessen a serious threat to public health;
 - (m) if the suspect, offender or volunteer consents in writing to the disclosure.
- (4) This section does not apply to Victorian information that cannot be used to discover the identity of any person.

S. 464ZGK(4)
amended by
No. 32/2007
s. 10(8).

s. 464ZGL

S. 464ZGK(5)
inserted by
No. 32/2007
s. 10(9).

(5) In this section—

Victorian information means information referred to in section 464ZFD(1), whether or not kept on the Victorian DNA database.

Heading
inserted by
No. 16/2002
s. 16.

Inter-jurisdictional enforcement

S. 464ZGL
inserted by
No. 16/2002
s. 16.

464ZGL Registration of orders

- (1) The Minister may enter into arrangements with the responsible Ministers of the participating jurisdictions for the establishment and maintenance, in one or more of those jurisdictions, of a register of orders for the carrying out of forensic procedures made under this Subdivision or corresponding laws of participating jurisdictions.
- (2) An order is registered when a copy of the order (being a copy certified by the person who made it) is registered in accordance with the law of the participating jurisdiction in which the register is kept.
- (3) An application for registration of an order, or for cancellation of registration of an order, may be made by an appropriate authority.

S. 464ZGM
inserted by
No. 16/2002
s. 16.

464ZGM Carrying out of registered orders

- (1) A person is authorised to carry out the forensic procedure authorised by an order that is registered in accordance with an arrangement referred to in section 464ZGL(1) anywhere in Victoria. The person is authorised to carry out the procedure in accordance with sections 464Y, 464Z and 464ZA and not otherwise.

- (2) A police officer, or other person assisting a police officer in accordance with this Subdivision or a corresponding law of a participating jurisdiction, is not compelled by this Subdivision, or an arrangement referred to in section 464ZGL(1), to execute an order registered under such an arrangement.

S. 464ZGM(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.41).

464ZGN Arrangements for transmission of information on DNA database

S. 464ZGN
inserted by
No. 16/2002
s. 16,
substituted by
No. 32/2007
s. 11.

- (1) The Minister may enter into an arrangement with the responsible Minister for a participating jurisdiction, under which—
- (a) information from the Victorian DNA database is to be transmitted to the responsible person for the DNA database of the participating jurisdiction for the purposes of—
 - (i) the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of the participating jurisdiction; or
 - (ii) the identification of missing or deceased persons; and
 - (b) information from the DNA database of the participating jurisdiction is to be transmitted to the Chief Commissioner of Police for the purposes of—
 - (i) the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of the participating jurisdiction; or
 - (ii) the identification of missing or deceased persons.

-
- (2) The Minister may enter into an arrangement with CrimTrac, under which—
- (a) information from the Victorian DNA database is to be transmitted to CrimTrac for the purposes of—
 - (i) the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of a participating jurisdiction; or
 - (ii) the identification of missing or deceased persons; and
 - (b) information from CrimTrac is to be transmitted to the Chief Commissioner of Police for the purposes of—
 - (i) the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of a participating jurisdiction; or
 - (ii) the identification of missing or deceased persons.
- (3) Without limiting subsection (2), an arrangement made under that subsection may provide for CrimTrac—
- (a) to compare information from the Victorian DNA database with information supplied to it from the DNA database of another participating jurisdiction; and
 - (b) to identify to the Chief Commissioner of Police and the responsible person for the DNA database of the participating jurisdiction any matches that are found as a result of the comparison.
- (4) An arrangement entered into under this section may not authorise the comparison of information so as to match DNA profiles in a way that would
-

contravene section 464ZGI were the information contained wholly within the Victorian DNA database.

Notes

- 1 Information that is transmitted under this section must not be recorded or maintained in any database of information that may be used to discover the identity of a person or to obtain information about an identifiable person at any time after the time for destruction of the forensic material that is required by this Subdivision or a corresponding law of a participating jurisdiction. See section 464ZGJ.
- 2 A person who has access to information from the Victorian DNA database must not disclose the information other than in limited, specified circumstances. See section 464ZGK.

464ZGO Taking, retention and use of forensic material authorised by laws of other jurisdictions

S. 464ZGO
inserted by
No. 16/2002
s. 16.

- (1) Subject to section 464ZGM and this section, nothing in this Subdivision affects the taking, retention or use of forensic material, or information obtained from forensic material, if the taking, retention or use of the material is authorised by or under a corresponding law of the Commonwealth, another State or a Territory.
- (2) Forensic material taken, or information obtained from it, in accordance with a corresponding law of the Commonwealth, another State or a Territory may be retained or used for investigative, evidentiary or statistical purposes even if its retention or use would, but for this subsection, constitute a contravention of a provision of this Subdivision relating to the carrying out of forensic procedures.
- (3) Forensic material taken, or information obtained from it, in accordance with a law of the Commonwealth, another State or a Territory as in force immediately before the commencement of

s. 464ZH

section 16 of the **Crimes (DNA Database) Act 2002**, may be retained or used for investigative, evidentiary or statistical purposes even if its retention or use would, but for this subsection, constitute a contravention of a provision of this Subdivision relating to the carrying out of forensic procedures.

Heading
inserted by
No. 16/2002
s. 4(c).

General

**464ZH Immunity of medical practitioners, nurses,
midwives, dentists and other persons**

S. 464ZH
(Heading)
inserted by
No. 13/2010
s. 51(Sch.
item 17.11).

No action lies against a medical practitioner or nurse or midwife or dentist or a person authorised under section 464Z or a person assisting the medical practitioner, nurse, midwife, dentist or person in respect of anything properly and necessarily done by the medical practitioner, nurse, midwife, dentist or person in the course of conducting any forensic procedure which the medical practitioner, nurse, midwife, dentist or person believes on reasonable grounds—

S. 464ZH
inserted by
No. 129/1993
s. 7,
amended by
Nos 81/1997
s. 29(1)(a)–(d),
13/2010
s. 51(Sch.
item 17.12).

(a) was requested to be conducted on another person under this Subdivision in accordance with—

S. 464ZH(a)
inserted by
No. 81/1997
s. 29(1)(d),
substituted by
No. 41/2004
s. 19.

(i) a request of a police officer given under section 464R; or

S. 464ZH(a)(i)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

(ii) an authorisation given by a senior police officer under section 464SA; or

(iii) an order made by a court under this Subdivision; or

- (b) was consented to by a person in accordance with sections 464ZGB to 464ZGD.

S. 464ZH(b)
inserted by
No. 81/1997
s. 29(1)(d).

464ZI Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary—

S. 464ZI
inserted by
No. 129/1993
s. 7,
amended by
No. 41/2004
s. 20 (ILA
s. 39B(1)).

- (a) to prevent the bringing before the Supreme Court of an action seeking to permit an application under section 464M(1), 464T(1), 464U(3) or 464V(2) being conducted otherwise than in accordance with the procedure expressed to be required by this Act; and
- (b) to prevent the bringing before the Supreme Court of an action of a kind referred to in section 464ZH.

- (2) It is the intention of section 464ZH as amended by section 19 of the **Crimes (Amendment) Act 2004** to alter or vary section 85 of the **Constitution Act 1975**.

S. 464ZI(2)
inserted by
No. 41/2004
s. 20.

464ZJ Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) accreditation of experts giving forensic evidence in a court; and
- (b) testing of the proficiency of experts in conducting procedures about which an expert gives forensic evidence; and
- (c) the application and use of statistical analysis to data the subject of forensic evidence; and
- (d) standards for conducting forensic procedures in accordance with this Subdivision and the analysis of any samples taken; and

S. 464ZJ
inserted by
No. 129/1993
s. 7.

s. 464ZJ

(e) generally prescribing any other matter or thing required or permitted by this Subdivision to be prescribed or necessary to be prescribed to give effect to this Subdivision.

(2) The regulations—

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstance; and
- (c) may confer a discretionary authority or impose a duty on a specified person or class of persons.

S. 464ZJ(3)(4)
repealed by
No. 10/1999
s. 31(5)(c).

* * * * *

S. 464ZJ(5)
substituted by
No. 10/1999
s. 31(5)(d).

(5) If a regulation made under subsection (1) is disallowed by the Parliament or a House of the Parliament, no regulation which is the same in substance as the disallowed regulation may be made within 6 months after the date of the disallowance, unless—

- (a) if the regulation was disallowed by one House of the Parliament, that House approves the making of a regulation the same in substance as the disallowed regulation; or
- (b) if the regulation was disallowed by both Houses of the Parliament, each House approves the making of a regulation the same in substance as the disallowed regulation.

(6) Any regulation made in contravention of subsection (5) is void.

464ZK Operation of other Acts

Nothing in this Subdivision affects the operation of any other Act or enactment with respect to the taking of samples or the conduct of forensic procedures.

S. 464ZK
inserted by
No. 129/1993
s. 7.

464ZL Validation of certain orders

(1) If, on or before 22 December 2000, an order under section 464ZF(3) is purported to have been made by—

S. 464ZL
inserted by
No. 58/2001
s. 3.

(a) the Magistrates' Court not sitting in open court; or

(b) a magistrate not constituting the Magistrates' Court—

the order is deemed to have, and always to have had, the same force and effect as it would have had if the order had been made by the Magistrates' Court sitting in open court.

(2) Subsection (1) does not affect the rights of the parties in the proceeding known as *Lednar, O'Brien and Hill v. The Magistrates' Court and The Chief Commissioner of Police (Victoria)* (No. 6292 of 2000) in the Supreme Court of Victoria.

(3) An order purporting to have been made under section 464ZF(2) before the commencement of the **Crimes (Amendment) Act 2004** in respect of a person is not invalid only because the person was not given—

S. 464ZL(3)
inserted by
No. 41/2004
s. 21.

(a) notice of the application for the order; or

(b) an opportunity to be heard on the application.

(4) An order purporting to have been made under section 464ZF(3) before the commencement of the **Crimes (Amendment) Act 2004** in respect of

S. 464ZL(4)
inserted by
No. 41/2004
s. 21.

s. 464ZL

a person aged 17 years or more is not invalid only because the person was not given—

- (a) notice of the application for the order; or
- (b) an opportunity to be heard on the application.

S. 464ZL(5)
inserted by
No. 41/2004
s. 21.

- (5) Subsection (4) does not affect the rights of the parties in the proceeding known as *Pavic v. Magistrates' Court of Victoria and Chief Commissioner of Police* (No. 1001 of 2002) in the Supreme Court of Victoria.

S. 464ZL(6)
inserted by
No. 72/2013
s. 16.

- (6) If, before the commencement of section 4(1) and (2) of the **Crimes Amendment (Investigation Powers) Act 2013**, an order is purported to have been made under section 464B(5) in respect of an offence committed outside Victoria against a law of the Commonwealth or another State or a Territory, the order is taken to have, and always to have had, the same force and effect as it would have had if the order had been made after that commencement.

S. 464ZL(7)
inserted by
No. 72/2013
s. 16.

- (7) Any questioning or investigation conducted pursuant to an order referred to in subsection (6) by a member of the Australian Federal Police or a member of the police force of another State or a Territory before the commencement of section 4(1) and (2) of the **Crimes Amendment (Investigation Powers) Act 2013** is taken to have, and always to have had, the same force and effect as it would have had if conducted after that commencement.

S. 464ZL(8)
inserted by
No. 72/2013
s. 16.

- (8) Subsections (6) and (7) do not affect the rights of the parties in the proceeding known as *Detective Jason Wallace v Bandali Debs and the Magistrates' Court of Victoria* (No. 10194 of 2008) in the Supreme Court of Victoria.

(31) Search warrants for and seizure of things

465 Issue of search warrant by magistrate

No. 6103
s. 465.

- (1) Any magistrate who is satisfied by the evidence on oath or by affidavit of any police officer of or above the rank of senior sergeant that there is reasonable ground for believing that there is, or will be within the next 72 hours, in any building (including any vehicle in that building), receptacle or place (including any vehicle on or in that place) or on or in a particular vehicle located in a public place—

S. 465(1) amended by Nos 7184 s. 7, 8179 s. 4, 16/1986 s. 30, 57/1989 s. 3(Sch. item 42.56(a)-(d)), 22/1996 s. 6(1)(a), 25/2009 s. 5(1), 37/2014 s. 10(Sch. item 36.42).

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed or is being or is likely to be committed within the next 72 hours; or
- (b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any indictable offence against the person for which the offender may be arrested without warrant—

S. 465(1)(a) amended by No. 22/1996 s. 6(1)(b).

may at any time issue a warrant authorizing some police officer or other person named therein to search such building receptacle, place or vehicle for any such thing and to seize and carry it before the Magistrates' Court to be dealt with according to law.

- (1A) This section applies to and in respect of an offence against section 68 or 70 as if it were an indictable offence.

S. 465(1A) inserted by No. 22/1996 s. 6(2).

s. 465

S. 465(1B)
inserted by
No. 63/2003
s. 43.

(1B) A magistrate who issues a warrant under subsection (1), if satisfied on reasonable grounds by the evidence given under that subsection that the thing to which the warrant relates is also tainted property within the meaning of the **Confiscation Act 1997**, may, in that warrant, direct that the applicant hold or retain that thing as if it were tainted property seized under a warrant under section 79 of that Act as and from the date when that thing is no longer required for evidentiary purposes under this Act.

S. 465(2)
amended by
Nos 9427
s. 6(1)(Sch. 5
item 40),
57/1989
s. 3(Sch. item
42.57(a)(b)).

- (2) Subject to this section the rules to be observed with regard to search warrants mentioned in the **Magistrates' Court Act 1989** shall extend and apply to warrants under this section.
- (3) The provisions of this section shall be read and construed as in aid of and not in derogation of the provisions with regard to warrants to search contained in this or any other Act.
- (4) The Governor in Council may make regulations prescribing the form of any warrant to be issued under this section and any such regulations shall be published in the Government Gazette and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if not then within fourteen days after the next meeting of Parliament.

S. 465(5)
inserted by
No. 22/1996
s. 6(3),
repealed by
No. 48/1997
s. 61, new
s. 465(5)
inserted by
No. 25/2009
s. 5(2).

- (5) In this section—
public place has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;
vehicle includes motor vehicle, aircraft and vessel.

465A Notice that seized thing is being held for purposes of Confiscation Act 1997

S. 465A
inserted by
No. 63/2003
s. 44.

- (1) If a thing seized under a warrant issued under section 465 to which a direction under section 465(1B) applies is no longer required for evidentiary purposes under this Act, the person to whom that warrant was issued must give notice to all persons known to have an interest in that thing that the thing is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997**.
- (2) A notice under subsection (1) must be—
 - (a) given within 7 days after the thing is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

465B Application for tainted property to be held or retained—return of warrant to court

S. 465B
inserted by
No. 63/2003
s. 44.

- (1) When a thing is brought before the Magistrates' Court to be dealt with according to law in accordance with the warrant issued under section 465 under which that thing was seized, the police officer named in the warrant or another police officer may apply to the Court for a direction that the thing so seized be held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997**.
- (2) An application may only be made under subsection (1) if a direction under section 465(1B) was not made in relation to the warrant when it was issued.

S. 465B(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

s. 465C

S. 465C
inserted by
No. 63/2003
s. 44.

465C Court may make direction

S. 465C(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

- (1) On an application under section 465B, if the Court is satisfied on reasonable grounds that the thing seized under the warrant issued under section 465 is tainted property within the meaning of the **Confiscation Act 1997**, the Court may direct that the thing be held or retained by the police officer or other person named in the warrant as if it were tainted property seized under a warrant under section 79 of that Act.
- (2) A direction under this section takes effect on and from the date that the thing is no longer required for evidentiary purposes under this Act.
- (3) In determining whether the thing which is the subject of the application is in fact tainted property within the meaning of the **Confiscation Act 1997**, the Court may require the applicant to provide any information that the Court considers necessary.
- (4) The power of the Court under this section is in addition to its powers under section 78 of the **Magistrates' Court Act 1989** in relation to seized property.

S. 465D
inserted by
No. 63/2003
s. 44.

465D Notice of direction under section 465C

- (1) If the Magistrates' Court makes a direction under section 465C, the applicant for the direction must give notice to all persons known to have an interest in the thing to which the direction applies that the thing is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997** by virtue of a direction made under section 465C.

- (2) A notice under subsection (1) must be—
- (a) given within 7 days after the thing is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

465E Effect of directions under sections 465(1B) and 465C

S. 465E
inserted by
No. 63/2003
s. 44.

If a direction has been made under section 465(1B) or 465C, the thing to which the direction applies—

- (a) is deemed, on and from the date on which the thing is no longer required for evidentiary purposes under this Act, to have been seized as tainted property under a warrant under section 79 of the **Confiscation Act 1997**; and
- (b) is to be dealt with under that Act accordingly.

466 Justice may issue warrant to search for gunpowder⁴²

No. 6103
s. 466.
S. 466
amended by
Nos 25/1989
s. 15(a)(b),
57/1989
s. 3(Sch. item
42.58(a)(b)).

Where any credible person on oath before a magistrate shows reasonable cause to suspect that a person named or described has in his possession or on his premises any machine or implement or gunpowder or other explosive dangerous or noxious substance or things suspected to be made or kept or carried for the purpose of committing any of the felonies in Division one or three of Part I, the magistrate may grant a warrant to search for the same by day or by night.

* * * * *

S. 467
repealed by
No. 25/1989
s. 16.

s. 469AA

Ss 468, 469
repealed by
No. 25/1989
s. 9.

* * * * *

cf. [1819] 60
George III,
and 1 George
IV, c. VIII ss 1,
2, 4, 8.
(Criminal Libel
Act 1819.)
S. 469AA
inserted by
No. 9407
s. 2(f).

469AA Seizure and destruction of documents containing libel

- (1) Upon the conviction of any person for—
 - (a) publishing a blasphemous libel; or
 - (b) publishing a seditious libel—

the Court by which such conviction is recorded may order the seizure and destruction of any documents proved to exist and to contain any such libel or to have been written, printed or published in breach of the said section.

- (2) Any such order shall be carried into execution not earlier than thirty days from the making thereof or at such time as a court of competent jurisdiction may order.
- (3) If the conviction is set aside on appeal, the order for seizure and destruction shall be ipso facto vacated.

S. 469AA(3)
amended by
No. 68/2009
s. 97(Sch.
item 40.41).

469A Power of persons to search aircraft

- (1) If, the person in command of the aircraft or any person authorized in writing in a particular case by a magistrate reasonably suspects that an offence involving the safety of an aircraft has been, is being or may be committed on board or in relation to an aircraft, he may, with such assistance as is necessary, search or cause to be searched—
 - (a) the aircraft and any person, luggage or freight on board the aircraft; and

S. 469A
inserted by
No. 7088
s. 2(f),
amended by
No. 57/1989
s. 3(Sch.
item 42.62).

(b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft.

(2) A female shall not be searched under the last preceding subsection except by a female.

(32) Search warrants for women and girls

470 Power of search when female unlawfully detained for immoral purposes

No. 6103
s. 470.

(1) If it appears to a magistrate, on the evidence on oath or by affidavit of any parent relative or guardian of any woman or girl or by any other person who in the opinion of the magistrate is bona fide acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place, he may issue a warrant authorizing any person named therein to search for and when found to take to and detain in a place of safety such woman or girl until she can be brought before the Magistrates' Court.

S. 470(1)
amended by
No. 57/1989
s. 3(Sch. item
42.63(a)-(d)).

(2) The Magistrates' Court on the woman or girl being brought before it may cause her to be delivered up to her parent or guardian or otherwise dealt with as circumstances may permit and require.

S. 470(2)
amended by
No. 57/1989
s. 3(Sch.
item 42.64).

(3) The magistrate at the time of or after issuing such warrant may issue another warrant for the arrest of any person accused of so unlawfully detaining such woman or girl and may order proceedings to be taken for prosecuting such person according to law.

S. 470(3)
amended by
No. 57/1989
s. 3(Sch.
item 42.65).

(4) A woman or girl shall be deemed to be unlawfully detained for an immoral purpose if she is so detained for the purpose of being unlawfully and carnally known by any man whether any particular man or generally, and—

s. 470

- (a) is under the age of sixteen years; or
- (b) if of or above the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or of any other person having the lawful care or charge of her; or
- (c) if of or above the age of eighteen years is so detained against her will.

(5) Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house building or other place specified in such warrant, and may remove such woman or girl therefrom.

(6) Every warrant issued under this section shall be addressed to and executed by a police officer of or above the rank of sergeant, who shall be accompanied by the parent relative or guardian or other person referred to in subsection (1) if such person so desire unless the magistrate otherwise directs.

S. 470(6)
amended by
Nos 8179 s. 4,
57/1989
s. 3(Sch. item
42.66(a)(b)),
37/2014
s. 10(Sch.
item 36.42).

Pt 3 Div. 1
Subdiv. (33)
(Heading)
repealed by
No. 23/1991
s. 8(2).

S. 471
amended by
Nos 9427
s. 6(1)(Sch. 5
item 41),
110/1986
s. 140(2),
repealed by
No. 124/1986
s. 74(e).

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Division 2—Punishment

(1) Sentences for offences

Pt 3 Div. 2
Subdiv. (1)
(Heading)
amended by
No. 10084
s. 15(b).

* * * * *

Ss 472–476A
repealed.⁴³

476B Young person sentenced to life imprisonment

Where a person under the age of 21 years is sentenced to be imprisoned for the term of his natural life he shall be kept in safe custody in such place as is directed by the Minister administering the **Children, Youth and Families Act 2005** from time to time upon the recommendation of the Secretary within the meaning of that Act and if the place at which he is at any time being so kept is a youth justice centre, remand centre, or other institution which is not a prison established under the **Corrections Act 1986**, shall be deemed to be serving that sentence of imprisonment by way of detention in such centre or institution.

S. 476B
inserted by
No. 9242 s. 3,
amended by
Nos 16/1987
ss 4(3)(Sch. 1
item 8(b)),
12(Sch. 2
item 6(b)),
46/1998
s. 7(Sch. 1),
48/2006
s. 42(Sch.
item 9.4).

* * * * *

Ss 477–479
repealed.⁴⁴

s. 479A

cf. [1742–3]
16 George II,
c. XXXI
ss 3, 4.
[1751–2] 25
George II,
c. XXXVII s. 9.
S. 479A
inserted by
No. 9407
s. 2(g),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 100).

479A Rescuing of prisoner from lawful custody

Any person who, by force, rescues or attempts to rescue from lawful custody any prisoner shall be guilty of an indictable offence and shall be liable to level 5 imprisonment (10 years maximum).

S. 479B
inserted by
No. 9407
s. 2(g),
amended by
Nos 117/1986
s. 6(Sch. 1
item 1(8)(c)),
129/1993
s. 9(1),
48/1997
s. 60(1)(Sch. 1
item 101).

479B Aiding a prisoner in escaping

Any person who—

S. 479B(a)
substituted by
No. 117/1986
s. 6(Sch. 1
item 1(8)(b)),
amended by
No. 25/1989
s. 20(k).

(a) aids or abets the commission of an offence under section 479C; or

(b) conveys anything or causes anything to be conveyed into a prison or to a prisoner with intent to facilitate the escape of any prisoner—

shall be guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

479C Escape and related offences

- (1) A person who, whether by force or not, escapes or attempts to escape—
- (a) from a prison or police gaol; or
 - (b) if the person is in the legal custody of the Secretary to the Department of Justice or the Chief Commissioner of Police, from the physical custody of—
 - (i) an officer within the meaning of Part 5 of the **Corrections Act 1986** or an escort officer under that Act; or
 - (ii) a police officer; or
 - (iii) a person acting on lawful authority on behalf of the Secretary or the Chief Commissioner—
- is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C inserted by No. 117/1986 s. 6(Sch. 1 item 1(8)(d)).

S. 479C(1) amended by Nos 129/1993 s. 9(2), 45/1996 s. 18(Sch. 2 item 6.1), 26/1997 s. 52(1), 48/1997 s. 60(1)(Sch. 1 item 101), substituted by No. 45/2001 s. 40(3).

S. 479C(1) (b)(ii) amended by No. 37/2014 s. 10(Sch. item 36.42).

- (2) A prisoner who is authorized to be absent from a prison under the **Corrections Act 1986** and who—
- (a) does not return to prison when the instrument of authority expires or when otherwise required by the instrument to do so; or
 - (b) is required by the instrument authorizing the absence to be under the supervision of another person and wilfully ceases to be under that supervision; or

S. 479C(2) amended by Nos 129/1993 s. 9(2), 48/1997 s. 60(1)(Sch. 1 item 101).

s. 479C

S. 479C
(2)(c)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

(c) does not return to prison upon being informed by an officer of the Office of Corrections or a police officer that the instrument authorizing the absence has been revoked—

is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C(3)
amended by
Nos 129/1993
s. 9(2),
48/1997
s. 60(1)(Sch. 1
item 101).

(3) A prisoner who is outside a prison or a police gaol but in custody and who wilfully ceases to be in custody is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C(4)
amended by
Nos 45/1996
s. 18(Sch. 2
item 6.2),
26/1997
s. 52(2),
substituted by
No. 45/2001
s. 40(4).

(4) For the purposes of subsection (3), *prisoner* includes a person who is in the custody of a court.

(5) Evidence that a prisoner has, without reasonable excuse, left a cell, or attempted to avoid detection by officers at a prison or police gaol is evidence that the prisoner is attempting to escape from the prison or police gaol.

(6) Sections 325, 459 and 459A apply to offences under this section and section 479B as if the offences were serious indictable offences.

Pt 3 Div. 2
Subdiv. (2)
(Heading)
repealed by
No. 25/1989
s. 20(l)(i).

* * * * *

Ss 480–484
repealed.⁴⁵

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(3) Execution of sentences

Pt 3 Div. 2
Subdiv. (3)
(Heading)
amended by
No. 8679
s. 3(1)(c).

* * * * *

Ss 485–492
repealed⁴⁶.

493 Sentences of imprisonment etc. to be carried out according to law relating to prisons

No. 6103
s. 493.
S. 493
amended by
Nos 8338
s. 7(b), 8426
s. 9(2)(a)(b)
(as amended
by No. 8701
s. 7(f)), 8870
s. 7(b), 8998
s. 4, 9554
s. 2(1)(Sch. 1
item 9), 9945
s. 3(3)(Sch. 2
item 12),
10087
s. 3(1)(Sch. 1
item 28),
16/1987
s. 4(3)(Sch. 1
item 8(c)),
48/2006
s. 42(Sch.
item 9.5).

Every sentence of imprisonment which is passed for any indictable offence every sentence of attendance at an attendance centre, every award of imprisonment or attendance at an attendance centre, and every direction for detention in a youth justice centre within the meaning of the **Children, Youth and Families Act 2005** for any offence punishable on summary conviction, shall be carried out in the manner for the time being provided by any Acts in force relating to prisons or penal establishments in that behalf according to the tenor of every such sentence.

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S. 494
repealed by
No. 9554
s. 2(1)(Sch. 1
item 7).

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Pt 3 Div. 2
Subdiv. (4)
(Heading)
repealed by
No. 65/1997
s. 82(2)(c).

* * * * *

Ss 495–497
repealed.⁴⁷

Crimes Act 1958
 No. 6231 of 1958
 Part III—Procedure and Punishment

s. 498

S. 498 substituted by No. 6884 s. 3, amended by No. 117/1986 s. 6(Sch. 1 item 2(5)), repealed by No. 65/1997 s. 82(2)(c). ⁴⁸	*	*	*	*	*
Ss 499–502 repealed. ⁴⁹	*	*	*	*	*
S. 503 amended by No. 7332 s. 2(Sch. 1 item 20), repealed by No. 65/1997 s. 82(2)(c).	*	*	*	*	*
Pt 3 Div. 2 Subdiv. (5) (Heading and s. 504) amended by No. 7705 s. 10, repealed by No. 10084 s. 9.	*	*	*	*	*
Pt 3 Div. 2 Subdiv. (6) (Heading) repealed by No. 25/1989 s. 20(1)(ii).	*	*	*	*	*
S. 505 repealed by No. 10260 s. 114(Sch. 4 item 4).	*	*	*	*	*

Division 3—Regulations

Pt 3 Div. 3
(Heading and
s. 505A)
inserted by
No. 10026 s. 7.

505A Regulations

S. 505A
inserted by
No. 10026 s. 7.

The Governor in Council may make regulations for or with respect to any matter or thing which by this Part is authorized or required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Part.

s. 506

PART IV—PROBATION AND PAROLE PROVISIONS

506 Definitions

No. 6103
s. 506.
S. 506
amended by
No. 6651
s. 57(b).

S. 506(1)
amended by
No. 46/1998
s. 7(Sch. 1)
(LA s. 39B(1)).

S. 506(1)
def. of
child
inserted by
No. 9966
s. 21(1)(a),
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.16),
48/2006
s. 42(Sch.
item 9.6).

- (1) In this Part unless inconsistent with the context or subject-matter—

Board means the Parole Board under this Part;

child has the same meaning that it has in the **Children, Youth and Families Act 2005**;

S. 506(1)
def. of
Director-General
amended by
No. 9902
s. 2(1)(Sch.
item 55),
substituted by
No. 9966
s. 21(1)(b),
repealed by
No. 45/1996
s. 18(Sch. 2
item 6.4).

* * * * *

Crimes Act 1958
No. 6231 of 1958
Part IV—Probation and Parole Provisions

s. 506

* * * * *

S. 506(1)
def. of
*Director-
General of
Community
Welfare
Services*
inserted by
No. 9966
s. 21(1)(b),
repealed by
No. 46/1998
s. 7(Sch. 1).

prescribed means prescribed by this Part or the regulations thereunder;

Secretary means the Secretary to the Department of Justice;

S. 506(1)
def. of
Secretary
inserted by
No. 46/1998
s. 7(Sch. 1).

term, in relation to imprisonment, includes the aggregate of two or more terms, whether cumulative or concurrent.

- (2) If under the **Public Administration Act 2004** the name of the Department of Justice is changed, a reference in the definition of *Secretary* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 506(2)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 48).

s. 507

Division 1—Probation

(1) Probation officers

507 Probation officers

No. 6103
s. 507.

S. 507(1)
amended by
Nos 6651
s. 57(c), 9427
s. 3(Sch. 2
item 6), 9966
s. 21(2)(a),
10260
s. 114(Sch. 4
item 5),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 48).

S. 507(2)
amended by
No. 10260
s. 114(Sch. 4
item 5).

S. 507(4)
amended by
No. 9966
s. 21(2)(b)(i)(ii),
repealed by
No. 10260
s. 114(Sch. 4
item 5).

- (1) Subject to the **Public Administration Act 2004** there may from time to time be appointed such stipendiary probation officers as the Governor in Council thinks necessary for the purposes of Part 5 of the **Penalties and Sentences Act 1985**.
- (2) The Governor in Council may from time to time appoint fit persons to be honorary probation officers for the purposes of Part 5 of the **Penalties and Sentences Act 1985** and may at any time remove any person so appointed.
- (3) All persons who immediately before the commencement of the **Penal Reform Act 1956** were probation officers by virtue of appointment pursuant to section five hundred and thirty-six of the **Crimes Act 1928** are declared to have been as on and from the said commencement honorary probation officers as if appointed under the last preceding subsection.

* * * * *

Crimes Act 1958
 No. 6231 of 1958
 Part IV—Probation and Parole Provisions

s. 507

<p>(4A) All stipendiary and honorary probation officers appointed under this section shall be under the control of the Secretary to the Department of Justice.</p>					<p>S. 507(4A) inserted by No. 9966 s. 21(2)(c), amended by No. 45/1996 s. 18(Sch. 2 item 6.5).</p>
*	*	*	*	*	<p>S. 507(5) amended by No. 9966 s. 21(2)(d), repealed by No. 10260 s. 114(Sch. 4 item 5).</p>
<p>(6) The Secretary to the Department of Justice or, in the case of a convicted person who is a child, the Secretary to the Department of Human Services shall when so required by any court cause to be prepared and submitted to that court such reports upon and information with respect to the convicted person as the court requires.</p>					<p>S. 507(6) amended by Nos 9966 s. 21(2)(e)(i)(ii), 45/1996 s. 18(Sch. 2 item 6.6), 46/1998 s. 7(Sch. 1).</p>
*	*	*	*	*	<p>S. 507(7) amended by No. 9966 s. 21(2)(f), repealed by No. 10260 s. 114(Sch. 4 item 5).</p>
*	*	*	*	*	<p>Pt 4 Div. 1 Subdiv. (2) (Heading) repealed by No. 25/1989 s. 20(m)(i).</p>
*	*	*	*	*	<p>Ss 508, 509 repealed.⁵⁰</p>

Crimes Act 1958
 No. 6231 of 1958
 Part IV—Probation and Parole Provisions

s. 510

Pt 4 Div. 1 Subdiv. (3) (Heading) repealed by No. 25/1989 s. 20(m)(ii).	*	*	*	*	*
Ss 510–515A repealed. ⁵¹	*	*	*	*	*
Pt 4 Div. 1 Subdiv. (4) (Heading) repealed by No. 25/1989 s. 20(m)(iii).	*	*	*	*	*
Ss 516–519A repealed. ⁵²	*	*	*	*	*
Pt 4 Div. 1 Subdiv. (5) (Heading) repealed by No. 25/1989 s. 20(m)(iv).	*	*	*	*	*
S. 520 amended by Nos 7876 s. 8(3), 10084 s. 10(a)–(c), repealed by No. 10260 s. 114(Sch. 4 item 5).	*	*	*	*	*

* * * * *

Pt 4 Div. 2
(Heading and
ss 521–541)
amended by
Nos 6572
ss 2–4, 6651
s. 57(d)(e),
6884 s. 4, 6994
s. 2, 7184
ss 10, 11, 7269
ss 2–4, 7332
s. 2(Sch. 1
item 21), 7705
s. 10, 7876
s. 2(3), 8338
s. 7(a)(b)(i),
repealed by
No. 8493
s. 33(e).

Division 3—Regulations

542 Regulations

No. 6103
s. 538.

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing by this Part authorized or directed to be prescribed or necessary or expedient to be prescribed for the purposes of this Part.

* * * * *

S. 542(2)
repealed by
No. 6888 s. 3.

s. 545

Pt 5 (Heading)
amended by
No. 9576
s. 11(1).

Ss 543–544
repealed.⁵³

No. 6103
s. 541.
S. 545
amended by
Nos 9576
s. 11(1),
19/1989
s. 16(Sch.
item 16.11),
25/1989
s. 20(n).

**PART V—PROPERTY OF PERSONS CONVICTED OF
TREASON OR AN INDICTABLE OFFENCE. ORDERS AS TO
COSTS**

* * * * *

**545 Persons convicted of treason or indictable offence
may pay costs**

The court by which judgment is pronounced or recorded upon the conviction of any person for treason or an indictable offence in addition to such sentence as may otherwise by law be passed may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, and the payments of such costs and expenses or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner (subject to the provisions of this Part) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil proceeding may for the time being be enforced:

Provided that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid or from his estate the same shall be paid and provided for in the same manner as if this Part of this Act had not been passed, and any money which may be recovered in respect thereof from the person so convicted or from his estate shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

* * * * *

S. 546
amended by
No. 7705 s. 10,
substituted by
No. 7994 s. 4,
amended by
No. 8280
s. 18(a)(i)(ii)(b),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

547 Definition of *forfeiture* and *convict*

No. 6103
s. 543.

The word *forfeiture* in the construction of this Part shall not include any fine or penalty imposed on any convict by virtue of his sentence, and the expression *convict*⁵⁴ shall be deemed to mean any person against whom after the passing of this Act judgment of imprisonment has been pronounced or recorded by any court of competent jurisdiction in Victoria upon any charge of treason or indictable offence.

S. 547
amended by
Nos 8679
s. 3(1)(e), 9576
s. 11(1), 9945
s. 3(3)(Sch. 2
item 14).

548 When convict shall cease to be subject to operation of this Part

No. 6103
s. 544.

When any convict dies or is adjudicated bankrupt, or has undergone the full term of imprisonment for which judgment has been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or has received a pardon for the treason or indictable offence of which he has been convicted, he shall thenceforth so far as relates to the provisions hereinafter contained cease to be subject to the operation of this Part.

S. 548
amended by
Nos 8679
s. 3(1)(f), 9576
s. 11(1), 9945
s. 3(3)(Sch. 2
item 15).

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Ss 549–561
repealed by
No. 8410
s. 5(1).

s. 562

No. 6103
s. 558.
S. 562
amended by
No. 8410
s. 5(2).

562 Execution of judgments against convict provided for

All judgments or orders for the payment of money of any court of law or equity against such convict which have been duly recovered or made either before or after his conviction may be executed against any property of such convict in the hands of any person who may have taken upon himself the possession or management thereof without legal authority in the same manner as if such property were in the possession or power of such convict.

No. 6103
s. 559.
S. 563
amended by
Nos 8410
s. 5(3)(a)(b),
19/1989
s. 16(Sch.
item
16.12(a)(b)).

563 Proceedings to recover property of convict from third person

The Attorney-General or any person who (if such convict were dead intestate) would be entitled to his real or personal estate or any share thereof or any person authorized by the Attorney-General in that behalf may apply in a summary way to any court which (if such convict were dead) would have jurisdiction to entertain a proceeding for the administration of his real or personal estate to issue a writ calling upon any person who without legal authority has possessed himself of any part of the property of such convict to account for his receipts and payments in respect of the property of such convict in such manner as such court directs, and such court thereupon may issue such writ rule or other process and may enforce obedience thereto and to all orders and proceedings of such court consequent thereon in the same manner as in any other case of process lawfully issuing out of such court, and such court shall thereupon have full power jurisdiction and authority to take all such accounts and to make and give all such orders and directions as to it seems proper or necessary for the purpose of securing the due and proper care administration and management of the property of such convict and the due and proper

application of the same and of the income thereof and the accumulation and investment of such balances (if any) as may from time to time remain in the hands of any such other person as aforesaid in respect of such property.

564 Third person etc. accountable to convict when property reverts

Subject to the provisions of this Part every such person as aforesaid shall from and after the time when such convict shall cease to be subject to the operation of this Part be accountable to such convict for all property of such convict which has been by him possessed or received and not duly administered in the same manner in which any guardian or trustee is so accountable to his ward or cestui que trust.

No. 6103
s. 560.
S. 564
amended by
No. 8410
s. 5(4)(a)(b).

565 Saving of general law as to indictable offence

Nothing in this Part shall be deemed to alter or in anywise affect the law relating to indictable offences in Victoria except as in this Part is expressly enacted.

No. 6103
s. 561.
S. 565
amended by
No. 9576
s. 11(1).

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Pt 6
(Headings
and
ss 566–584)
repealed.⁵⁵

s. 585

PART 7—GENERAL

Pt 7 (Heading
and s. 585)
inserted by
No. 26/1997
s. 53.

585 Supreme Court—limitation of jurisdiction

S. 585
inserted by
No. 26/1997
s. 53,
amended by
No. 65/1997
s. 82(4)(e).

(1) It is the intention of section 361 as amended by the **Police and Corrections (Amendment) Act 1997** and the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** to alter or vary section 85 of the **Constitution Act 1975**.

S. 585(1)
amended by
No. 81/1997
s. 29(2) (ILA
s. 39B(1)).

(2) It is the intention of section 464ZH, as amended by section 29(1) of the **Crimes (Amendment) Act 1997**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 585(2)
inserted by
No. 81/1997
s. 29(2).

585AA Transitional provisions—(Crimes (Theft) Act 1973)

(1) Section 3(1) of the **Crimes (Theft) Act 1973** continues in effect despite its repeal.

S. 585AA
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

Note

Section 3(1) of the **Crimes (Theft) Act 1973** abolished the common law offences of larceny, robbery, burglary, receiving stolen property, obtaining property by threats, extortion by colour of office or franchise, false accounting by public officers, concealment of treasure trove, and except in regard to offences relating to public revenue, cheating, for all purposes not related to offences committed before the commencement of the 1973 Act.

(2) Except as regards offences committed before the commencement of the **Crimes (Theft) Act 1973** and except insofar as the context otherwise requires—

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- (a) references in any enactment passed before the commencement of the **Crimes (Theft) Act 1973** to an offence abolished by that 1973 Act shall, subject to any express amendment or repeal made by that 1973 Act, have effect as references to the corresponding offence under Division 2 of Part I of this Act and in any such enactment the expression "receive" (when it relates to an offence of receiving) shall mean handle, and "receiver" shall be construed accordingly; and
- (b) without prejudice to paragraph (a), references in any enactment, whenever passed, to theft or stealing (including references to stolen goods), and references to robbery, blackmail, burglary, aggravated burglary or handling stolen goods shall be construed in accordance with the provisions of Division 2 of Part I of this Act.
- (3) Division 2 of Part I of this Act as re-enacted by the **Crimes (Theft) Act 1973**, shall, save as otherwise provided by that 1973 Act, have effect only in relation to offences wholly or partly committed on or after the commencement of that 1973 Act.
- (4) The re-enactment by this section of sections 3(2) and 4 of the **Crimes (Theft) Act 1973** does not affect the operation of any Act enacted after that 1973 Act.

585AB Transitional provisions—(Crimes (Criminal Damage) Act 1978)

- (1) The provisions of this Act as in force immediately before the commencement of the **Crimes (Criminal Damage) Act 1978** shall apply to and with respect to offences against this Act as so in force committed or alleged to have been

S. 585AB
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

committed before the commencement of that 1978 Act.

- (2) The provisions of this Act as amended by the **Crimes (Criminal Damage) Act 1978** shall apply to and with respect to offences against this Act as so amended committed or alleged to have been committed on or after the commencement of that 1978 Act.
- (3) Section 3 of the **Crimes (Criminal Damage) Act 1978** continues in effect despite its repeal.

Note

Section 3 of the **Crimes (Criminal Damage) Act 1978** abolished the common law offence of arson for all purposes not related to offences committed before the commencement of that 1978 Act.

- (4) The re-enactment by this section of section 1(4) and (5) of the **Crimes (Criminal Damage) Act 1978** does not affect the operation of any Act enacted after that 1978 Act.

S. 585AC
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

585AC Transitional provisions—(Crimes (Classification of Offences) Act 1981)

- (1) Notwithstanding section 3A(1) of this Act as amended by the **Crimes (Classification of Offences) Act 1981**, the provisions of that subsection shall apply only in relation to acts of violence occurring after the commencement of the **Crimes (Classification of Offences) Act 1981**.
- (2) Notwithstanding sections 3A(2) and 322D of this Act as amended by the **Crimes (Classification of Offences) Act 1981**, the felony-murder rule referred to in section 3A(2) shall continue to have full force and effect in relation to acts of violence which occurred before the commencement of the **Crimes (Classification of Offences) Act 1981**.

- (3) Section 9 of the **Crimes (Classification of Offences) Act 1981** continues in effect despite its repeal.

Note

Section 9 of the **Crimes (Classification of Offences) Act 1981** abolished any power to bring proceedings for an indictable offence by criminal information in the Supreme Court or in the County Court.

- (4) The re-enactment by this section of section 3(2) and (3) of the **Crimes (Classification of Offences) Act 1981** does not affect the operation of any Act enacted after that 1981 Act.

585AD Transitional provisions—(Crimes (Conspiracy and Incitement) Act 1984)

S. 585AD
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

- (1) The abolition of the offence of conspiracy at common law effected by section 321F of this Act as amended by the **Crimes (Conspiracy and Incitement) Act 1984** shall not affect—
- (a) any proceedings commenced before the commencement of the **Crimes (Conspiracy and Incitement) Act 1984**; or
 - (b) any proceedings commenced after the commencement of the **Crimes (Conspiracy and Incitement) Act 1984** in respect of an agreement which is alleged to have been made at a time prior to the commencement of that 1984 Act.
- (2) The abolition of the offence of incitement at common law effected by section 321L of this Act as amended by the **Crimes (Conspiracy and Incitement) Act 1984** shall not affect—
- (a) any proceedings commenced before the commencement of the **Crimes (Conspiracy and Incitement) Act 1984**; or

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- (b) any proceedings commenced after the commencement of the **Crimes (Conspiracy and Incitement) Act 1984** in respect of an offence of incitement alleged to have been committed at a time prior to the commencement of that 1984 Act.
- (3) Subject to subsections (1) and (2), this Act as amended by the **Crimes (Conspiracy and Incitement) Act 1984** shall apply to acts done before as well as to acts done after the commencement of that 1984 Act.
- (4) The re-enactment by this section of sections 4, 5 and 6 of the **Crimes (Conspiracy and Incitement) Act 1984** does not affect the operation of any Act enacted after that 1984 Act.

S. 585AE
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

585AE Transitional provisions—(Crimes (Custody and Investigation) Act 1988)

- (1) This Act as amended by sections 4 and 5 of the **Crimes (Custody and Investigation) Act 1988** applies to—
- (a) persons taken into custody; or
 - (b) persons questioned; or
 - (c) persons in respect of whom an application is made under section 464B(1) to a court—
- in a proclaimed region after the commencement of the **Crimes (Custody and Investigation) Act 1988**.

Note

The whole of Victoria was proclaimed to be a proclaimed region on the same day that the **Crimes (Custody and Investigation) Act 1988** commenced.

- (2) The re-enactment by this section of section 6(2) of the **Crimes (Custody and Investigation) Act 1988** does not affect the operation of any Act enacted after that 1988 Act.

585AF Transitional provisions—(Crimes (Fingerprinting) Act 1988)

S. 585AF
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

- (1) This Act as amended by a section of the **Crimes (Fingerprinting) Act 1988** or section 11, 12, 13 or 14 of the **Crimes Legislation (Miscellaneous Amendments) Act 1989** applies only with respect to fingerprints taken after the commencement of section 9 of the **Crimes (Fingerprinting) Act 1988**.
- (2) The re-enactment by this section of section 9 of the **Crimes (Fingerprinting) Act 1988** does not affect the operation of any Act enacted after that 1988 Act.

585A Transitional provisions—(Crimes (Sexual Offences) Act 1991)

S. 585A
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) The amendments made by the following provisions of the **Crimes (Sexual Offences) Act 1991** apply to a proceeding that occurs on or after the commencement of the provision, irrespective of when the offence to which the proceeding relates is alleged to have been committed—
 - (a) section 3 to the extent that it—
 - (i) abolishes the requirement of corroboration in sections 51(5), 54(2) and 55(2) of this Act by repealing those sections;
 - (ii) inserts a new section 61 in this Act;
 - (b) section 6(c);
 - (c) any provision of Part 3;
 - (d) any provision of section 13, 15, 16(1)(a), (b), (c), (d) or (e) or 19.
- (2) Subject to subsection (1)(a), the amendments made by section 3, 6(a), 6(b), 6(d) or 6(e) of the **Crimes (Sexual Offences) Act 1991** apply only

to offences alleged to have been committed after the commencement of that section.

- (3) The amendments made by any provision of section 4, 5, 14, 16(1)(f) or 16(2) of the **Crimes (Sexual Offences) Act 1991** apply only to proceedings relating to offences alleged to have been committed after the commencement of the provision.
- (4) For the purposes of this section an offence is not alleged to have been committed after the commencement of a provision if it is alleged to have been committed between two dates, one before and one after that commencement.
- (5) This section adds to, and does not take away from, the provisions of the **Interpretation of Legislation Act 1984**.
- (6) The re-enactment by this section of section 21(2) of, and the Schedule to, the **Crimes (Sexual Offences) Act 1991** does not affect the operation of any Act enacted after the **Crimes (Sexual Offences) Act 1991**.

585B Transitional provisions—(Crimes (Amendment) Act 1993)

- (1) This Act, as amended by section 7 of the **Crimes (Amendment) Act 1993**, does not apply to an application to a court for fingerprints or a blood sample—
 - (a) made before the commencement of section 7 of that Act; or
 - (b) made after that commencement arising from a refusal to give fingerprints or a blood sample before the commencement.
- (2) Subject to section 464P of this Act (as inserted by the **Crimes (Amendment) Act 1993**) this Act as in force immediately before the commencement of

section 7 of the **Crimes (Amendment) Act 1993** continues to apply to fingerprints and blood samples taken before that commencement.

- (3) The re-enactment by this section of section 11 of the **Crimes (Amendment) Act 1993** does not affect the operation of any Act enacted after the **Crimes (Amendment) Act 1993**.

585C Transitional provisions—(Miscellaneous Acts (Omnibus Amendments) Act 1996)

S. 585C
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) This Act as amended by sections 6(1) and 6(3) of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies only with respect to applications for warrants made on or after the commencement of section 6 of that 1996 Act under section 465 of this Act or section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**.
- (2) This Act as amended by section 8 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies to any child pornography, film, photograph, publication or computer game seized, whether before or after the commencement of section 8 of that 1996 Act.
- (3) The expressions used in subsection (2) have the same meaning as in section 67A of this Act.
- (4) The re-enactment by this section of sections 6(4) and 9 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** does not affect the operation of any Act enacted after the **Miscellaneous Acts (Omnibus Amendments) Act 1996**.

585D Transitional provisions—(Sentencing and Other Acts (Amendment) Act 1997)

S. 585D
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) The amendment of this Act made by section 54 or 56 of the **Sentencing and Other Acts (Amendment) Act 1997** applies only to offences

alleged to have been committed after the commencement of that amendment.

- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates and an amendment of this Act by section 54 or 56 of the **Sentencing and Other Acts (Amendment) Act 1997** commenced on a date between those two dates, the offence is alleged to have been committed before the commencement of that amendment.
- (3) The amendments of section 568 of this Act made by section 59 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to appeals heard and determined by the Court of Appeal after the commencement of section 59 of the **Sentencing and Other Acts (Amendment) Act 1997**, irrespective of when the notice of appeal or notice of application for leave to appeal was given.
- (4) The re-enactment by this section of section 63 of the **Sentencing and Other Acts (Amendment) Act 1997** does not affect the operation of any Act enacted after the **Sentencing and Other Acts (Amendment) Act 1997**.

S. 586
inserted by
No. 69/1997
s. 25.

586 Transitional provisions (Sentencing (Amendment) Act 1997)

- (1) The amendment of section 443A(3) made by section 22(12) of the **Sentencing (Amendment) Act 1997** effecting a change from indictable to summary in the nature of an offence against that section applies to a proceeding for an offence that is commenced after the commencement of section 22(12) of that Act, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

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- (2) The amendments of section 567A made by section 24 of the **Sentencing (Amendment) Act 1997** apply to appeals against sentences passed after the commencement of section 24 of that Act, irrespective of when the offence was committed.
 - (3) For the purposes of subsection (2) a sentence passed by an appellate court on setting aside a sentencing order must be taken to have been passed at the time the original sentencing order was made.

587 Transitional provisions (Crimes (Amendment) Act 1997—Part 2)

S. 587
inserted by
No. 81/1997
s. 8.

- (1) The amendments of this Act made by sections 4, 6 and 7 of the **Crimes (Amendment) Act 1997** apply to any trial that commences on or after 1 January 1998, irrespective of when the offence to which the trial relates is alleged to have been committed.
- (2) For the purposes of subsection (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (3) The amendments of section 47A of this Act made by section 5(1) of the **Crimes (Amendment) Act 1997** apply only to offences against section 47A(1) alleged to have been committed on or after 1 January 1998.
- (4) For the purposes of subsection (3), if an offence is alleged to have been committed between two dates of which one is before and one is on or after 1 January 1998, the offence is alleged to have been committed before 1 January 1998.
- (5) The amendments of section 47A of this Act made by section 5(2), (3), (4) and (5) of the **Crimes (Amendment) Act 1997** apply to offences against section 47A(1) for which a charge is filed on or

after 1 January 1998, irrespective of when the offence is alleged to have been committed.

S. 588
inserted by
No. 81/1997
s. 15.

588 Transitional provisions (Crimes (Amendment) Act 1997—Part 3)

- (1) Section 398A applies to any trial, committal proceeding or hearing of a charge for an offence that commences on or after 1 January 1998, irrespective of when the offence to which the trial, committal proceeding or hearing relates is alleged to have been committed.
- (2) For the purposes of subsection (1)—
 - (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
 - (b) a committal proceeding commences on the committal mention date; and
 - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

S. 589
inserted by
No. 81/1997
s. 30.

589 Transitional provisions (Crimes (Amendment) Act 1997—Part 4)

- (1) The amendment of this Act made by section 16(f), 17 or 18 of the **Crimes (Amendment) Act 1997** applies to applications made under section 464T(1), 464U(3) or 464V (as the case requires) irrespective of when the offence in respect of which the application is made is alleged to have been committed.
- (2) The amendment of this Act made by section 22 of the **Crimes (Amendment) Act 1997** only applies with respect to orders made by a court on or after the commencement of that section.
- (3) The amendments of this Act made by section 24 of the **Crimes (Amendment) Act 1997** apply to any proceedings that commence on or after the

commencement of that section of that Act, irrespective of when the offence to which the proceedings relate is alleged to have been committed.

- (4) For the purposes of subsection (3)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
 - (b) a committal proceeding commences on the committal mention date; and
 - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.
- (5) The first report submitted to the Attorney-General in accordance with section 464ZFE must relate to the period beginning with the day on which section 26 of the **Crimes (Amendment) Act 1997** comes into operation.
- (6) The amendments of section 464ZG(3)(a) and (4)(a) made by section 27(2)(b) and (3)(b) of the **Crimes (Amendment) Act 1997** apply only to samples taken in forensic procedures conducted on or after the commencement of section 27 of that Act and any related material and information within the meaning of Subdivision (30A) of Division 1 of Part III in relation to such samples.
- (7) The amendments of section 464ZG(8) and (9) made by section 27(5) and (6) of the **Crimes (Amendment) Act 1997** apply only to offences alleged to have been committed after the commencement of section 27 of that Act.
- (8) For the purposes of subsection (7), if an offence is alleged to have been committed between two dates and section 27 of the **Crimes (Amendment) Act 1997** commences on a date between those two dates, the offence is alleged to have been

committed before the commencement of that section.

S. 590
inserted by
No. 80/1998
s. 4.

590 Transitional provision—Crimes, Confiscation and Evidence Acts (Amendment) Act 1998

The amendments to this Act made by section 3 of the **Crimes, Confiscation and Evidence Acts (Amendment) Act 1998** apply only with respect to forensic procedures within the meaning of Subdivision (30A) of Division 1 of Part III conducted after the commencement of that section.

S. 590
inserted by
No. 65/1998
s. 4,
re-numbered
as s. 591 by
No. 10/1999
s. 31(5)(e).

591 Transitional provision—Crimes (Amendment) Act 1998

- (1) The amendments of section 60B of this Act made by section 3 of the **Crimes (Amendment) Act 1998** apply only to offences alleged to have been committed after the commencement of section 3.
- (2) If an offence is alleged to have been committed between two dates and section 3 of the **Crimes (Amendment) Act 1998** commences on a date between those two dates, for the purposes of subsection (1) the offence must be taken to have been alleged to have been committed before the commencement of that section.

S. 592
inserted by
No. 10/1999
s. 20.

592 Transitional provisions—Magistrates' Court (Amendment) Act 1999

The amendments of this Act made by section 18(4) of the **Magistrates' Court (Amendment) Act 1999** apply only in relation to appeals to the Court of Appeal for which the notice of appeal or notice of application for leave to appeal is given on or after 1 July 1999.

593 Transitional provisions—Crimes (Amendment) Act 2000

S. 593
inserted by
No. 67/2000
s. 8.

- (1) In this section *commencement day* means the day on which the **Crimes (Amendment) Act 2000** comes into operation.
- (2) The amendment of section 38 of this Act made by section 4 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.
- (3) The amendment of section 70 of this Act made by section 6 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.
- (4) For the purposes of subsections (2) and (3), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement day, the offence is alleged to have been committed before the commencement day.
- (5) From any time on or after the commencement day a charge or presentment may be filed against a person for an offence against section 45 of this Act, as substituted by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the offence is alleged to have been committed before, on or after the commencement day provided it is not alleged to have been committed before 5 August 1991.
- (6) For the purposes of subsection (5), if an offence is alleged to have been committed between two dates, one before and one on or after 5 August 1991, the offence is alleged to have been committed before 5 August 1991.
- (7) Section 359A(1) of this Act, as in force before the commencement day, continues to apply to an alleged offence against section 45 or 46 (as in

force before the commencement day) or an attempt to commit any such offence or an assault with intent to commit any such offence for which a person is directed to be tried, or with which a person is charged on indictment or presentment, before the commencement day.

- (8) The amendments of section 425(1) of this Act made by section 7 of the **Crimes (Amendment) Act 2000** apply to any trial that commences on or after the commencement day and an accused may be found guilty in such a trial of an offence against section 45 of this Act, as substituted by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the conduct constituting the offence is alleged to have occurred before, on or after the commencement day provided it is not alleged to have occurred before 5 August 1991.
- (9) For the purposes of subsection (8)—
- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of this Act; and
 - (b) if conduct constituting an offence is alleged to have occurred between two dates, one before and one on or after 5 August 1991, the conduct is alleged to have occurred before 5 August 1991.
- (10) Section 425(3) of this Act, as in force before the commencement day, continues to apply to any trial of an offence against section 45(1) or 46(1) (as in force before the commencement day) that occurs on or after the commencement day, irrespective of whether that trial commenced before, on or after the commencement day.

593A Transitional provision—Crimes (Questioning of Suspects) Act 2000

S. 593A
inserted by
No. 86/2000
s. 7.

The amendments of this Act made by the **Crimes (Questioning of Suspects) Act 2000** applies to any person who is, at any time on or after the commencement of that Act, a person of a kind referred to in section 464B(1)(a), irrespective of when the offence to which the questioning or investigation relates was committed or alleged to have been committed.

594 Transitional provision—Magistrates' Court (Committal Proceedings) Act 2000

S. 594
inserted by
No. 92/2000
s. 12.

The amendments of section 359AA of this Act made by section 11 of the **Magistrates' Court (Committal Proceedings) Act 2000** apply to applications made under that section on or after the commencement of that section of that Act irrespective of when the charge for the summary offence was filed under section 26 of the **Magistrates' Court Act 1989**.

596 Transitional provisions—Crimes (DNA Database) Act 2002

S. 596
inserted by
No. 16/2002
s. 19.

- (1) The amendments of section 464Z of this Act made by section 7 of the **Crimes (DNA Database) Act 2002** apply to the taking of a scraping of the mouth on or after the commencement of section 7 of that Act.
- (2) The amendment of section 464ZFB of this Act made by section 13 of the **Crimes (DNA Database) Act 2002** applies to a person found guilty of an offence on or after the commencement of section 13 of that Act.
- (3) The amendment of this Act made by section 16 of the **Crimes (DNA Database) Act 2002** applies to any offence or suspected offence, irrespective of

when the offence is alleged to have been committed.

- (4) The amendments of this Act made by section 17 of the **Crimes (DNA Database) Act 2002** only apply to offences alleged to have been committed on or after the commencement of section 17 of that Act.
- (5) The amendments of this Act made by section 18(1) of the **Crimes (DNA Database) Act 2002** only apply to offences alleged to have been committed on or after the commencement of section 18(1) of that Act.
- (6) For the purposes of subsections (4) and (5), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 17 or 18(1) (as the case requires) of the **Crimes (DNA Database) Act 2002**, the offence is alleged to have been committed before that commencement.

S. 597
inserted by
No. 10/2003
s. 9.

597 Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003

- (1) The amendments of this Act made by the **Crimes (Property Damage and Computer Offences) Act 2003** apply only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Property Damage and Computer Offences) Act 2003**, the offence is alleged to have been committed before that commencement.

598 Transitional provision—Crimes (Stalking) Act 2003

S. 598
inserted by
No. 105/2003
s. 6.

- (1) The amendments of section 21A of this Act made by Part 2 of the **Crimes (Stalking) Act 2003** apply to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Stalking) Act 2003**, the offence is alleged to have been committed before that commencement.
- (3) The amendments of section 21A of this Act made by Part 2 of the **Crimes (Stalking) Act 2003** do not affect the rights of the parties in the proceeding known as *DPP v Sutcliffe* (No. 6562 of 2000) in the Supreme Court.

599 Transitional provision—Crimes (Money Laundering) Act 2003

S. 599
inserted by
No. 104/2003
s. 4.

- (1) The amendments of this Act made by the **Crimes (Money Laundering) Act 2003** apply only to offences alleged to have been committed on or after the commencement of section 3 of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 3 of the **Crimes (Money Laundering) Act 2003**, the offence is alleged to have been committed before that commencement.

600 Transitional provisions—Crimes (Dangerous Driving) Act 2004

S. 600
inserted by
No. 59/2004
s. 8.

- (1) Section 88 (as amended by section 3 of the **Crimes (Dangerous Driving) Act 2004**) applies only to offences alleged to have been committed on or after the commencement of that Act.

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- (2) Section 88A (as inserted by section 4 of the **Crimes (Dangerous Driving) Act 2004**) applies to any trial that commences on or after the commencement of that Act regardless of when the offences are alleged to have been committed.
 - (3) Section 319 (as inserted by section 6 of the **Crimes (Dangerous Driving) Act 2004**) applies only to offences alleged to have been committed on or after the commencement of that Act.
 - (4) For the purposes of this section—
 - (a) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Dangerous Driving) Act 2004**, the offence is alleged to have been committed before that commencement; and
 - (b) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of this Act.

S. 601
inserted by
No. 72/2004
s. 33.

601 Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004

- (1) An amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** applies to all persons on and after the commencement of that provision regardless of whether or not immediately before that commencement—
 - (a) the person was in custody within the meaning of Subdivision (30A) of Division 1 of Part III; or
 - (b) the person had consented to undergo a forensic procedure under section 464R but the procedure had not yet been conducted; or

- (c) the conduct of a non-intimate compulsory procedure was authorised under section 464SA but the procedure had not yet been conducted; or
 - (d) the person had consented to give a sample in accordance with section 464ZGB but the sample had not yet been taken.
- (2) Without limiting subsection (1) or section 14(2) of the **Interpretation of Legislation Act 1984**, an amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** does not affect any order made by a court under Subdivision (30A) of Division 1 of Part III before the commencement of that provision and any such order may be executed or enforced, and any period of custody specified in it may be extended, as if this Act had not been amended by that provision.

602 Transitional provision—Crimes (Contamination of Goods) Act 2005

S. 602
inserted by
No. 66/2005
s. 7.

- (1) The amendments of this Act made by the **Crimes (Contamination of Goods) Act 2005** apply only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Contamination of Goods) Act 2005**, the offence is alleged to have been committed before that commencement.

603 Transitional provision—Crimes (Homicide) Act 2005

S. 603
inserted by
No. 77/2005
s. 7.

- (1) An amendment of this Act made by section 3, 4, 5 or 6 of the **Crimes (Homicide) Act 2005** applies only to offences alleged to have been committed on or after the commencement of that Act.

s. 604

- (2) For the purposes of subsection (1) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Homicide) Act 2005**, the offence is alleged to have been committed before that commencement.

S. 604
inserted by
No. 14/2006
s. 15.

604 Transitional provision—Justice Legislation (Miscellaneous Amendments) Act 2006

The amendments made to this Act by sections 13 and 14 of the **Justice Legislation (Miscellaneous Amendments) Act 2006** only apply to appeals for which the notice of appeal or notice of application for leave to appeal is given after the commencement of those sections.

S. 605
inserted by
No. 27/2006
s. 18.

605 Transitional provision—Justice Legislation (Further Miscellaneous Amendments) Act 2006

- (1) The amendments made to this Act by sections 3(b), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the **Justice Legislation (Further Miscellaneous Amendments) Act 2006** only apply with respect to findings of not guilty because of mental impairment on or after the commencement of that Act.
- (2) The amendments made to this Act by sections 3(c) and 17 of the **Justice Legislation (Further Miscellaneous Amendments) Act 2006** only apply to recordings made on or after the commencement of that Act.

S. 606
inserted by
No. 50/2006
s. 11.

606 Transitional provision—Courts Legislation (Jurisdiction) Act 2006

- (1) Section 353(2B) applies with respect to an offence for which a presentment is served on or after the commencement of section 6 of the **Courts Legislation (Jurisdiction) Act 2006**, irrespective of when the offence is alleged to have been committed.

- (2) The amendments made to this Act by section 7 of the **Courts Legislation (Jurisdiction) Act 2006** apply to a proceeding that occurs on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (3) Section 359B applies to any trial or summary hearing that commences on or after the commencement of section 8 of the **Courts Legislation (Jurisdiction) Act 2006**, irrespective of when the offence to which the trial or summary hearing relates is alleged to have been committed.
- (4) For the purposes of subsection (3) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (5) The amendments made to this Act by section 10 of the **Courts Legislation (Jurisdiction) Act 2006** apply in relation to appeals heard by the Court of Appeal on or after the commencement of that section irrespective of when—
 - (a) the notice of appeal or notice of application for leave to appeal was given; or
 - (b) the offence is alleged to have been committed.

606A Transitional provision—Crimes (Sexual Offences) Act 2006

- (1) An amendment made to this Act by a provision of section 4 or 5 of the **Crimes (Sexual Offences) Act 2006** applies to any trial that commences on or after the commencement of that provision, irrespective of when the offence to which the trial relates is alleged to have been committed.
- (2) An amendment made to this Act by a provision of section 6, 8, 9, 10, 11, 12 or 17(4) or (5) of the **Crimes (Sexual Offences) Act 2006** applies only

S. 606A
inserted by
No. 2/2006
s. 19A (as
amended by
No. 76/2006
s. 10).

s. 607

to offences alleged to have been committed on or after the commencement of that provision.

- (3) For the purposes of subsection (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (4) For the purposes of subsection (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of a provision of the **Crimes (Sexual Offences) Act 2006**, the offence is alleged to have been committed before the commencement of that provision.

S. 607
inserted by
No. 76/2006
s. 4.

607 Transitional provision—Crimes (Sexual Offences) (Further Amendment) Act 2006

The amendments made to this Act by section 3 of the **Crimes (Sexual Offences) (Further Amendment) Act 2006** apply to any proceeding that commences on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

S. 608
inserted by
No. 32/2007
s. 12.

608 Transitional provisions—Crimes Amendment (DNA Database) Act 2007

- (1) An amendment made to this Act by the Amendment Act applies only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of the Amendment Act, the offence is alleged to have been committed before the commencement of that Act.

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- (3) On the commencement of the Amendment Act, a computerised database or DNA database kept under section 464ZFD before that commencement is taken to be the DNA database system kept under section 464ZFD(1AA) by the Chief Commissioner of Police.
 - (4) A matching of a DNA profile made in accordance with the Table to section 464ZGI before the commencement of the Amendment Act continues on and after that commencement as if the matching had occurred in accordance with the Table as in force after that commencement.
 - (5) An arrangement under section 464ZGN in force immediately before the commencement of the Amendment Act continues in force on the same terms and conditions and for the same period after that commencement as if it had been entered into under section 464ZGN as in force after that commencement.
 - (6) In this section—

Amendment Act means the **Crimes Amendment (DNA Database) Act 2007**.

609 Transitional provision—Crimes Amendment (Rape) Act 2007

S. 609
inserted by
No. 57/2007
s. 9.

- (1) An amendment made to this Act by section 3, 4 or 8 of the **Crimes Amendment (Rape) Act 2007** applies to any trial that commences on or after the commencement of that section of that Act, irrespective of when the offence to which the trial relates is alleged to have been committed.
- (2) An amendment made to this Act by section 5, 6 or 7 of the **Crimes Amendment (Rape) Act 2007** applies only to offences alleged to have been committed on or after the commencement of those sections of that Act.

s. 610

- (3) For the purposes of subsection (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (4) For the purposes of subsection (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of sections 5, 6 and 7 of the **Crimes Amendment (Rape) Act 2007**, the offence is alleged to have been committed before the commencement of those sections of that Act.

S. 610
inserted by
No. 7/2008
s. 6.

610 Transitional provision—Crimes Amendment (Child Homicide) Act 2008

- (1) The amendments of this Act made by the **Crimes Amendment (Child Homicide) Act 2008** apply only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes Amendment (Child Homicide) Act 2008**, the offence is alleged to have been committed before that commencement.

S. 612
inserted by
No. 18/2008
s. 4.

612 Transitional provision—Justice Legislation Amendment (Sex Offences Procedure) Act 2008

The amendments made to this Act by section 3 of the **Justice Legislation Amendment (Sex Offences Procedure) Act 2008**—

- (a) apply to any legal proceeding that commences before or after the commencement of section 3, irrespective of when the offence to which the proceeding relates is alleged to have been committed; but

- (b) do not apply to any legal proceeding that commenced before the commencement of section 3 if, before the commencement of section 3, the accused had been committed for trial or charged on indictment or presentment with the offence to which the proceeding relates.

613 Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

S. 613
inserted by
No. 69/2009
s. 51.

- (1) This Act, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, applies to any proceeding commenced on or after the day that Act commences.
- (2) In the case of any proceeding that commenced before the day the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** commenced, this Act, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, applies to that part of the proceeding that takes place on or after that day, other than a hearing in the proceeding to which subsection (3) applies.
- (3) This Act as in force immediately before the commencement of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** continues to apply to any hearing in a proceeding that commenced before the day that Act commenced and that—
- (a) continues on or after that day; or
- (b) was adjourned until that day or a day after that day.

s. 614

S. 614
inserted by
No. 87/2009
s. 5 (as
amended by
No. 30/2010
s. 84(1)).

**614 Transitional provision—Justice Legislation
Miscellaneous Amendments Act 2009**

Section 464H as amended by section 3 of the
**Justice Legislation Miscellaneous Amendments
Act 2009** applies to an audio recording or an
audiovisual recording made on or after the
commencement of section 3 of that Act.

S. 615
inserted by
No. 87/2009
s. 46.

**615 Transitional provision—Transport Legislation
Amendment (Hoon Boating and Other
Amendments) Act 2009**

- (1) Division 9 of Part I as amended by sections 44
and 45 of the **Transport Legislation
Amendment (Hoon Boating and Other
Amendments) Act 2009** applies only to offences
alleged to have been committed on or after the
commencement of sections 44 and 45 of that Act.
- (2) For the purposes of this section, if an offence is
alleged to have been committed between two
dates, one before and one after the
commencement of sections 44 and 45 of the
**Transport Legislation Amendment (Hoon
Boating and Other Amendments) Act 2009**, the
offence is alleged to have been committed before
that commencement.

S. 616
inserted by
No. 64/2010
s. 6.

**616 Transitional provision—Justice Legislation Further
Amendment Act 2010**

The amendments made to sections 464JA, 464JC
and 464JD by Part 2 of the **Justice Legislation
Further Amendment Act 2010** apply to an audio
recording or an audiovisual recording made on or
after the commencement of that Part.

S. 617
inserted by
No. 20/2011
s. 4.

**617 Transitional provision—Crimes Amendment
(Bullying) Act 2011**

- (1) Section 21A as amended by section 3 of the
Crimes Amendment (Bullying) Act 2011 applies
only to offences alleged to have been committed

on or after the commencement of section 3 of that Act.

- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 3 of the **Crimes Amendment (Bullying) Act 2011**, the offence is alleged to have been committed before that commencement.

618 Transitional provision—Crimes Amendment (Gross Violence Offences) Act 2013

S. 618
inserted by
No. 6/2013
s. 6.

- (1) This Act as amended by Part 2 of the **Crimes Amendment (Gross Violence Offences) Act 2013** applies to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of the **Crimes Amendment (Gross Violence Offences) Act 2013**, the offence is alleged to have been committed before that commencement.

619 Transitional provision—Crimes Amendment (Integrity in Sports) Act 2013

S. 619
inserted by
No. 20/2013
s. 4.

- (1) This Act as amended by the **Crimes Amendment (Integrity in Sports) Act 2013** applies to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of the **Crimes Amendment (Integrity in Sports) Act 2013**, the offence is alleged to have been committed before that commencement.

s. 620

S. 620
inserted by
No. 72/2013
s. 17.

**620 Transitional provision—Crimes Amendment
(Investigation Powers) Act 2013**

- (1) This Act as amended by sections 4, 5(2), 6, 7 and 8 of the **Crimes Amendment (Investigation Powers) Act 2013** applies to questioning for or investigation of any offence that occurs on or after the commencement of sections 4, 5(2), 6, 7 and 8 of that Act, irrespective of when the offence under investigation is alleged to have been committed.
- (2) This Act as amended by sections 11 and 12 of the **Crimes Amendment (Investigation Powers) Act 2013** applies to persons found guilty, or not guilty because of mental impairment, on or after the commencement of sections 11 and 12 of that Act, irrespective of when the offence is alleged to have been committed.

S. 621
inserted by
No. 7/2014
s. 4.

**621 Transitional provision—Crimes Amendment
(Grooming) Act 2014**

Section 49B as inserted by the **Crimes Amendment (Grooming) Act 2014** applies to an offence alleged to have been committed on or after the commencement of that Act.

SCHEDULES

FIRST SCHEDULE

S. 2.

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
6103	Crimes Act 1957	The whole
6166	Crimes (Amendment) Act 1957	The whole
6167	Crimes (Parole Board) Act 1957	The whole

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Sch. 2
repealed by
No. 6958
s. 8(4)(d).

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Sch. 3
substituted by
No. 9848
s. 18(1),
amended by
No. 43/1994
s. 56(Sch.
item 1.8),
repealed by
No. 7/2009
s. 422(5) (as
amended by
No. 68/2009
s. 54(h)).

Crimes Act 1958
No. 6231 of 1958

Sch. 4

Sch. 4
amended by
Nos 8338
s. 7(m), 9576
s. 11(1), 9848
s. 18(1),
110/1986
s. 140(2),
repealed by
No. 25/1989
s. 18(1),
new Sch. 4
inserted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.4),
repealed by
No. 7/2009
s. 422(6) (as
amended by
No. 68/2009
s. 54(h)).

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Sch. 5
amended by
Nos 8338
s. 7(n), 9576
s. 11(1), 9848
s. 18(1),
110/1986
s. 140(2),
repealed by
No. 25/1989
s. 18(1),
new Sch. 5
inserted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.4),
repealed by
No. 68/2009
s. 97(Sch.
item 40.42).

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Sch. 6
repealed.⁵⁶

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SCHEDULE 7

Sections 464K, 464L, 464M

**SUMMARY OFFENCES FOR WHICH A PERSON MAY BE
FINGERPRINTED**

- 1 A summary offence where the maximum penalty (whether for a first or subsequent offence) is or includes a period of imprisonment.
- 2 An offence under section 3(2) or 3(4) of the **Court Security Act 1980**.
- 3 An offence under section 6(2) of the **Control of Weapons Act 1990**.
- 4 An offence under section 36A of the **Drugs, Poisons and Controlled Substances Act 1981**.
- * * * * *
- 6 An offence under section 20, 24ZQ(3), 24ZR(1), 24ZR(2), 24ZR(3), 24ZS(1), 24ZS(2) or 35(6) of the **Prevention of Cruelty to Animals Act 1986**.

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Sch. 7
repealed by
No. 8143 s. 11,
new Sch. 7
inserted by
No. 129/1993
s. 8,
amended by
Nos 20/2011
s. 5(2),
37/2014
s. 10(Sch.
item 36.43).

Sch. 7A
inserted by
No. 7546 s. 13,
substituted by
No. 7782 s. 14,
repealed by
No. 8143 s. 11.

Sch. 8

Sch. 8
repealed by
No. 8143 s. 11,
new Sch. 8
inserted by
No. 8870
s. 6(2),
amended by
Nos 9848
s. 18(1),
16/1986 s. 30,
repealed by
No. 25/1989
s. 18(1),
new Sch. 8
inserted by
No. 81/1997
s. 31,
amended by
Nos 67/2000
s. 7(7)–(9),
61/2001
s. 16(1)(c),
16/2002
s. 18(1)(2),
35/2002
s. 28(Sch.
item 3.4),
10/2003
s. 8(a)(b),
77/2005
s. 8(3)(e),
27/2006 s. 16,
2/2006 ss 19B
(as amended
by No.
76/2006 s. 10),
42(a)(b),
7/2008
s. 7(3)(g),
18/2008 s. 5,
6/2013 s. 7,
72/2013 s. 18.

SCHEDULE 8

Sections 464ZF, 464ZF AAA

FORENSIC SAMPLE OFFENCES

A forensic sample offence is:

Offences against the person—non-sexual offences

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- 2 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 4 (conspiracy to murder) (as amended) of the **Crimes Act 1958** repealed on 1 June 1984 by section 8(b) of the **Crimes (Conspiracy and Incitement) Act 1984**.

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- 5 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:

- (a) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);
(b) section 19 (inflicting bodily injury);
(c) section 19A (inflicting grievous bodily harm);
(d) section 20 (attempting to choke, etc. in order to commit an indictable offence).

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Offences against the person—sexual offences

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- 7A An offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act**

1991 and repealed by section 5 of the **Crimes (Amendment) Act 2000**.

- 7B An offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.
- 8 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**:
- (a) section 40 (rape);
 - (b) section 41 (rape with aggravating circumstances);
 - (c) section 43 (indecent assault with aggravating circumstances).
- 9 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**:
- (a) section 44(1) (indecent assault);
 - (b) section 44(2) (indecent assault with aggravating circumstances);
 - (c) section 45(1) (rape);
 - (d) section 45(2) (attempted rape);
 - (e) section 45(2) (assault with intent to commit rape);
 - (f) section 45(3) (rape with aggravating circumstances);

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- (g) section 45(4) (attempted rape with aggravating circumstances);
 - (h) section 45(4) (assault with intent to commit rape with aggravating circumstances);
 - (i) section 47(1) (sexual penetration of child under the age of 10);
 - (j) section 47(2) (attempted sexual penetration of child under the age of 10);
 - (k) section 47(2) (assault with intent to take part in act of sexual penetration with child under the age of 10);
 - (l) section 48(1) (sexual penetration of child aged between 10 and 16);
 - (m) section 48(2) (attempted sexual penetration of child aged between 10 and 16);
 - (n) section 48(2) (assault with intent to take part in act of sexual penetration with child aged between 10 and 16);
 - (o) section 50(1) (gross indecency with child under the age of 16);
 - (p) section 51 (sexual penetration of mentally ill or intellectually defective person);
 - (q) section 51 (attempted sexual penetration of mentally ill or intellectually defective person);
 - (r) section 51 (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);
 - (s) section 52 (incest) but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration;
 - (t) section 54 (procuring persons by threats or fraud);
 - (u) section 55 (administration of drugs, etc.);
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- (v) section 56 (abduction and detention);
- (w) section 61 (unlawful detention for purposes of sexual penetration).
- 10 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**:
- (a) section 44(1) (rape);
- (b) section 44(2) (rape with mitigating circumstances);
- (c) section 45 (attempted rape);
- (d) section 45 (assault with intent to rape);
- (e) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);
- (f) section 47 (attempting to unlawfully and carnally know and abuse girl under the age of 10);
- (g) section 47 (assault with intent to unlawfully and carnally know and abuse girl under the age of 10);
- (h) section 48(1) (unlawfully and carnally knowing and abusing girl aged between 10 and 16);
- (i) section 48(2) (attempting to unlawfully and carnally know and abuse girl aged between 10 and 16);
- (j) section 48(2) (assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16);
- (k) section 52 (incest) but not section 52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister;
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- (l) section 54 (carnal knowledge of female mentally ill or intellectually defective person);
 - (m) section 54 (attempted carnal knowledge of female mentally ill or intellectually defective person);
 - (n) section 54 (assault with intent to carnally know female mentally ill or intellectually defective person);
 - (o) section 55(1) (indecent assault);
 - (p) section 55(3) (felonious indecent assault);
 - (q) section 57(1) or (2) (procuring defilement of woman by threats or fraud or administering drugs);
 - (r) section 59 (abduction of girl under eighteen with intent to have carnal knowledge);
 - (s) section 60 (unlawful detention with intent to have carnal knowledge);
 - (t) section 62 (forcible abduction of woman);
 - (u) section 68(1) (buggery);
 - (v) section 68(3A) or (3B) (indecent assault on male person);
 - (w) section 69(1) (act of gross indecency with girl under the age of 16).
- 11 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 61 (abduction of woman from motives of lucre) of the **Crimes Act 1958** repealed on 1 March 1980 by section 5 of the **Crimes (Sexual Offences) Act 1980**.
- * * * * *
- 12A An offence that, at the time it was committed, was a forensic sample offence.

Property offences

* * * * *

- 14 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed on 1 October 1974 by section 2(1)(b) of the **Crimes (Theft) Act 1973**:
- (a) section 117 (robbery; larceny from the person);
 - (b) section 118 (assault with intent to rob);
 - (c) section 119 (robbery with wounding);
 - (d) section 120 (robbery under arms or company);
 - (e) section 128 (burglary by breaking out);
 - (f) section 130 (burglary with wounding);
 - (g) section 132 (entering house at night with intent to commit a felony);
 - (h) section 133 (breaking into etc., building within curtilage);
 - (i) section 134 (house-breaking);
 - (j) section 135 (house-breaking etc., with intent etc.);
 - (k) section 138 (larceny in the house);
 - (l) section 139 (larceny with menaces).
- 15 The common law offence of robbery abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.
- 16 The common law offence of burglary abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.

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- 18 An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed

on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**:

- (a) section 196 (setting fire to church etc.);
 - (b) section 197 (setting fire to house anyone being in it);
 - (c) section 199 (setting fire to railway buildings etc.);
 - (d) section 200 (setting fire to public buildings);
 - (e) section 201 (setting fire to other buildings);
 - (f) section 202 (setting fire to goods in buildings);
 - (g) section 203 (attempting to set fire to buildings).
- 19 An offence against section 203A (placing inflammable substance with intent to destroy, damage, etc.) (as amended) of the **Crimes Act 1958** repealed on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**.

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Explosive substances

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Parties to offence

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Drug offences

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- 29 An offence against section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** (trafficking in a drug of dependence).
- 30 An offence against section 72(1)(ab) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the

Drugs, Poisons and Controlled Substances

(Amendment) Act 2001 (cultivation of a narcotic plant in circumstances where the offence is committed in relation to a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant).

- 31 An offence against section 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** (cultivation of a narcotic plant for a purpose related to trafficking in that narcotic plant).

* * * * *

Schs 8A–11
repealed.⁵⁷

ENDNOTES

1. General Information

The **Crimes Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

2. Table of Amendments

This Version incorporates amendments made to the **Crimes Act 1958** by Acts and subordinate instruments.

Companies Act 1958, No. 6455/1958

Assent Date: 2.12.58
Commencement Date: 1.4.59: Government Gazette 4.3.59 p. 496
Current State: All of Act in operation

Statute Law Revision Act 1959, No. 6505/1959

Assent Date: 5.5.59
Commencement Date: 1.4.59: s. 1(2)
Current State: All of Act in operation

Crimes (Penalties) Act 1959, No. 6561/1959

Assent Date: 17.11.59
Commencement Date: 17.11.59
Current State: All of Act in operation

Crimes (Sentences and Parole) Act 1959, No. 6572/1959

Assent Date: 1.12.59
Commencement Date: 1.1.60: Government Gazette 16.12.59 p. 3638
Current State: All of Act in operation

Social Welfare Act 1960, No. 6651/1960

Assent Date: 15.6.60
Commencement Date: S. 57(b)–(e) on 11.7.60: Government Gazette 6.7.60 p. 2210; s. 57(a) on 1.7.65: Government Gazette 30.6.65 p. 2016
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Motor Car (Driving) Act 1960, No. 6658/1960

Assent Date: 15.6.60
Commencement Date: 15.8.60: Government Gazette 27.7.60 p. 2565
Current State: All of Act in operation

Statute Law Revision Act 1960, No. 6716/1960

Assent Date: 21.12.60
Commencement Date: Sch. 1 on 1.4.59: s. 3
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Kidnapping) Act 1960, No. 6731/1960

Assent Date: 21.12.60
Commencement Date: 21.12.60
Current State: All of Act in operation

Evidence (Children) Act 1961, No. 6758/1961

Assent Date: 26.4.61
Commencement Date: 26.4.61
Current State: All of Act in operation

Endnotes

Prostitution Act 1961, No. 6761/1961

Assent Date: 26.4.61
Commencement Date: 26.4.61
Current State: All of Act in operation

Motor Car (Amendment) Act 1961, No. 6762/1961

Assent Date: 26.4.61
Commencement Date: S. 13 on 5.6.61: Government Gazette 31.5.61 p. 1850
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Breath Test Evidence) Act 1961, No. 6806/1961

Assent Date: 5.12.61
Commencement Date: 20.12.61: Government Gazette 20.12.61 p. 4335
Current State: All of Act in operation

Companies Act 1961, No. 6839/1961

Assent Date: 19.12.61
Commencement Date: 1.7.62: Government Gazette 21.2.62 p. 392
Current State: All of Act in operation

Crimes (Detention) Act 1962, No. 6884/1962

Assent Date: 2.5.62
Commencement Date: 17.9.62: Government Gazette 12.9.62 p. 3228
Current State: All of Act in operation

Subordinate Legislation Act 1962, No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Justices (Amendment) Act 1962, No. 6958/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62
Current State: All of Act in operation

Parole Board Membership Act 1963, No. 6994/1963

Assent Date: 7.5.63
Commencement Date: 7.5.63
Current State: All of Act in operation

Crimes (Aircraft) Act 1963, No. 7088/1963 (as amended by No. 7142/1964)

Assent Date: 10.12.63
Commencement Date: 10.12.63
Current State: All of Act in operation

Crimes (Amendment) Act 1964, No. 7184/1964

Assent Date: 2.12.64
Commencement Date: 15.2.65: Government Gazette 10.2.65 p. 279
Current State: All of Act in operation

Crimes (Illegal Use of Motor Cars) Act 1965, No. 7263/1965

Assent Date: 18.5.65
Commencement Date: 18.5.65
Current State: All of Act in operation

Crimes (Parole) Act 1965, No. 7269/1965

Assent Date: 25.5.65
Commencement Date: 25.5.65
Current State: All of Act in operation

Motor Car (Driving Offences) Act 1965, No. 7327/1965

Assent Date: 7.12.65
Commencement Date: 1.2.66: Government Gazette 19.1.66 p. 209
Current State: All of Act in operation

Statute Law Revision Act 1965, No. 7332/1965

Assent Date: 14.12.65
Commencement Date: 14.12.65: subject to s. 3
Current State: All of Act in operation

Crimes (Dangerous Driving) Act 1966, No. 7407/1966

Assent Date: 17.5.66
Commencement Date: 1.7.66: Government Gazette 22.6.66 p. 2205
Current State: All of Act in operation

Crimes Act 1967, No. 7546/1967

Assent Date: 17.3.67
Commencement Date: 17.3.67
Current State: All of Act in operation

Crimes (Amendment) Act 1967, No. 7577/1967

Assent Date: 8.11.67
Commencement Date: 8.11.67
Current State: All of Act in operation

Crimes (Driving Offences) Act 1967, No. 7645/1967 (as amended by No. 7696/1968)

Assent Date: 19.12.67
Commencement Date: 1.3.68: Government Gazette 1.3.68 p. 577
Current State: All of Act in operation

Juries Act 1967, No. 7651/1967 (as amended by No. 7725/1968)

Assent Date: 19.12.67
Commencement Date: S. 2(1)(Sch. 1 Pt 2 item 3) on 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1968, No. 7696/1968

Assent Date: 7.5.68
Commencement Date: 7.5.68
Current State: All of Act in operation

Abolition of Bailiwicks Act 1968, No. 7703/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3930
Current State: All of Act in operation

Endnotes

County Court (Jurisdiction) Act 1968, No. 7705/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: All of Act in operation

Crimes (Evidence) Act 1968, No. 7782/1968

Assent Date: 18.12.68
Commencement Date: 18.12.68
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: All of Act (*except* ss 3, 5–7(k)(m)–(o)) on 1.4.70;
ss 3, 5–7(k)(m)–(o) on 1.7.70: Government Gazette
25.2.70 p. 463
Current State: All of Act in operation

Abolition of Obsolete Offences Act 1969, No. 7884/1969

Assent Date: 2.12.69
Commencement Date: 2.12.69
Current State: All of Act in operation

Legal Aid Act 1969, No. 7919/1969

Assent Date: 16.12.69
Commencement Date: All of Act (*except* Pt 1) on 1.6.70: Government
Gazette 6.5.70 p. 1210; Pt 1 on 1.10.70:
Government Gazette 16.9.70 p. 3073
Current State: All of Act in operation

Crimes (Amendment) Act 1970, No. 7994/1970

Assent Date: 4.11.70
Commencement Date: 4.11.70
Current State: All of Act in operation

Criminal Appeals Act 1970, No. 8063/1970

Assent Date: 22.12.70
Commencement Date: 15.4.71: Government Gazette 7.4.71 p. 830
Current State: All of Act in operation

Motor Car (Driving Offences) Act 1971, No. 8143/1971

Assent Date: 4.5.71
Commencement Date: 1.8.71: Government Gazette 28.7.71 p. 2502
Current State: All of Act in operation

Police Regulation (Amendment) (No. 2) Act 1971, No. 8179/1971

Assent Date: 23.11.71
Commencement Date: 15.12.71: Government Gazette 15.12.71 p. 3845
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71: subject to s. 2(2)
Current State: All of Act in operation

Crimes (Powers of Arrest) Act 1972, No. 8247/1972

Assent Date: 6.4.72
Commencement Date: 1.7.72: Government Gazette 28.6.72 p. 2360
Current State: All of Act in operation

Justices Act 1972, No. 8275/1972

Assent Date: 13.5.72
Commencement Date: 15.1.73: Government Gazette 10.1.73 p. 45
Current State: All of Act in operation

Crimes (Amendment) Act 1972, No. 8280/1972

Assent Date: 13.5.72
Commencement Date: 13.5.72
Current State: All of Act in operation

Crimes Act 1972, No. 8338/1972

Assent Date: 5.12.72
Commencement Date: 29.1.73: Government Gazette 24.1.73 p. 164
Current State: All of Act in operation

Crimes (Amendment) Act 1973, No. 8410/1973

Assent Date: 17.4.73
Commencement Date: Ss 1–4 on 9.5.73: Government Gazette 9.5.73 p. 1014; s. 5 on 1.7.73: Government Gazette 20.6.73 p. 2064
Current State: All of Act in operation

Crimes (Theft) Act 1973, No. 8425/1973 (as amended by No. 9019/1977)

Assent Date: 17.4.73
Commencement Date: 1.10.74: Government Gazette 3.4.74 p. 790
Current State: All of Act in operation

Social Welfare (Amendment) Act 1973, No. 8426/1973 (as amended by No. 8701/1975)

Assent Date: 17.4.73
Commencement Date: S. 9 on 7.6.76: Government Gazette 19.5.76 p. 1388
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Courts (Jurisdiction) Act 1973, No. 8427/1973

Assent Date: 17.4.73
Commencement Date: Ss 3, 6, 8(b), 10(1) (*except* (k)), 11 on 3.2.75: Government Gazette 22.1.75 p. 122; rest of Act on 1.9.75: Government Gazette 30.7.75 p. 2705
Current State: All of Act in operation

Social Welfare Act 1973, No. 8493/1973

Assent Date: 4.12.73
Commencement Date: S. 33 on 2.7.74: Government Gazette 22.5.74 p. 1712
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Crimes (Capital Offences) Act 1975, No. 8679/1975

Assent Date: 29.4.75
Commencement Date: 29.4.75
Current State: All of Act in operation

Magistrates (Summary Proceedings) Act 1975, No. 8731/1975

Assent Date: 16.5.75
Commencement Date: S. 173(Sch. 3) on 1.7.76: Government Gazette 24.3.76 p. 848
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Constitution Act 1975, No. 8750/1975

Assent Date: 19.11.75
Commencement Date: 1.12.75: Government Gazette 26.11.75 p. 3888
Current State: All of Act in operation

Crimes Act 1976, No. 8870/1976

Assent Date: 16.6.76
Commencement Date: Ss 1–3, 5, 7, 8 on 1.3.77: Government Gazette 26.1.77 p. 177; s. 4 on 1.7.76: s. 4(5); s. 6 on 1.7.77: Government Gazette 22.6.77 p. 1712
Current State: All of Act in operation

Rape Offences (Proceedings) Act 1976, No. 8950/1976

Assent Date: 14.12.76
Commencement Date: 1.7.77: Government Gazette 22.6.77 p. 1712
Current State: All of Act in operation

Magistrates' Courts (Commitment) Act 1977, No. 8998/1977

Assent Date: 10.5.77
Commencement Date: 10.5.77
Current State: All of Act in operation

Bail Act 1977, No. 9008/1977

Assent Date: 10.5.77
Commencement Date: 1.9.77: Government Gazette 17.8.77 p. 2654
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2
Current State: All of Act in operation

Crimes (Armed Robbery) Act 1977, No. 9048/1977

Assent Date: 22.11.77
Commencement Date: 22.11.77
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77: subject to s. 2(2)
Current State: All of Act in operation

Crimes (Married Persons' Liability) Act 1977, No. 9073/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 25.1.78 p. 201
Current State: All of Act in operation

Crimes (Hijackings and Other Offences) Act 1978, No. 9155/1978

Assent Date: 30.5.78
Commencement Date: 1.10.78: Government Gazette 6.9.78 p. 2869
Current State: All of Act in operation

Crimes (Criminal Damage) Act 1978, No. 9228/1978 (as amended by
No. 9427/1980)

Assent Date: 19.12.78
Commencement Date: 1.7.79: Government Gazette 4.4.79 p. 901
Current State: All of Act in operation

**Crimes (Competence and Compellability of Spouse Witnesses) Act 1978,
No. 9230/1978**

Assent Date: 19.12.78
Commencement Date: 1.7.79: Government Gazette 4.4.79 p. 901
Current State: All of Act in operation

Crimes (Amendment) Act 1978, No. 9242/1978

Assent Date: 19.12.78
Commencement Date: Ss 1, 3 on 19.12.78: s. 1(3); ss 2, 4 on 1.4.79:
Government Gazette 21.3.79 p. 729
Current State: All of Act in operation

Crimes (Amendment) Act 1979, No. 9323/1979

Assent Date: 18.12.79
Commencement Date: 1.7.80: Government Gazette 25.6.80 p. 2121
Current State: All of Act in operation

Imperial Law Re-enactment Act 1980, No. 9407/1980

Assent Date: 20.5.80
Commencement Date: 2.7.80: Government Gazette 2.7.80 p. 2257
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80 (*except* as otherwise provided in s. 6(2)):
s. 1(2)
Current State: All of Act in operation

Community Welfare Services (Extradition) Act 1980, No. 9498/1980

Assent Date: 23.12.80
Commencement Date: 23.12.80
Current State: All of Act in operation

Crimes (Sexual Offences) Act 1980, No. 9509/1980

Assent Date: 23.12.80
Commencement Date: 1.3.81: Government Gazette 4.2.81 p. 338
Current State: All of Act in operation

Endnotes

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 44 on 26.9.80: s. 1(3); ss 36–46 on 3.6.81: Government Gazette 3.6.81 p. 1778; rest of Act on 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Crimes (Classification of Offences) Act 1981, No. 9576/1981 (as amended by No. 9902/1983)

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances Act 1981, No. 9719/1981

Assent Date: 12.1.82
Commencement Date: 18.12.83: Government Gazette 14.12.83 p. 3955
Current State: All of Act in operation

Director of Public Prosecutions Act 1982, No. 9848/1982

Assent Date: 21.12.82
Commencement Date: Ss 1–8, 17 on 12.1.83: Government Gazette 12.1.83 p. 80; rest of Act on 1.6.83: Government Gazette 11.5.83 p. 1146
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

Transport Act 1983, No. 9921/1983

Assent Date: 23.6.83
Commencement Date: S. 255(Sch. 12) on 1.7.83: s. 1(2)(c)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 3(3)(Sch. 2 items 9–15) on 20.12.83: Government Gazette 14.12.83 p. 4035
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Community Welfare Services (Director-General of Corrections) Act 1983, No. 9966/1983

Assent Date: 22.11.83
Commencement Date: S. 21 on 1.2.84: Government Gazette 25.1.84 p. 162
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Procedure) Act 1983, No. 10026/1983

Assent Date: 20.12.83
Commencement Date: 7.2.84: Government Gazette 7.2.84 p. 381
Current State: All of Act in operation

Crimes (Criminal Investigations) Act 1984, No. 10076/1984

Assent Date: 15.5.84
Commencement Date: 5.6.84: Government Gazette 5.6.84 p. 1777
Current State: All of Act in operation

Crimes (Conspiracy and Incitement) Act 1984, No. 10079/1984

Assent Date: 15.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Crimes (General Amendment) Act 1984, No. 10084/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Planning (Brothels) Act 1984, No. 10094/1984 (as amended by No. 124/1986)

Assent Date: 22.5.84
Commencement Date: S. 14 on 2.7.84: Government Gazette 30.5.84 p. 1674
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Penalties and Sentences (Amendment) Act 1984, No. 10152/1984

Assent Date: 20.11.84
Commencement Date: S. 9 on 1.6.85: Government Gazette 22.5.85 p. 1667
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1985, No. 10233/1985

Assent Date: 10.12.85
Commencement Date: Ss 1–3, 10 on 22.1.86: Government Gazette 22.1.86 p. 144; rest of Act on 24.3.86: Government Gazette 12.2.86 p. 382
Current State: All of Act in operation

Registration of Births Deaths and Marriages (Amendment) Act 1985, No. 10244/1985

Assent Date: 10.12.85
Commencement Date: 31.10.86: Government Gazette 29.10.86 p. 4114
Current State: All of Act in operation

Endnotes

Magistrates (Summary Proceedings) (Amendment) Act 1985, No. 10249/1985

Assent Date: 10.12.85
Commencement Date: S. 13 on 5.3.86: Government Gazette 5.3.86 p. 581
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Penalties and Sentences Act 1985, No. 10260/1985

Assent Date: 10.12.85
Commencement Date: S. 114(Sch. 4 items 4, 5) on 1.6.86: Government Gazette 30.4.86 p. 1116; Sch. 4 item 6 was never proclaimed, repealed by No. 49/1991 s. 118(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30 on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1986, No. 37/1986 (as amended by No. 35/1990)

Assent Date: 20.5.86
Commencement Date: 1.7.86: Government Gazette 25.6.86 p. 2239
Current State: All of Act in operation

Crimes (Confiscation of Profits) Act 1986, No. 101/1986

Assent Date: 16.12.86
Commencement Date: 1.8.87: Government Gazette 22.7.87 p. 1924
Current State: All of Act in operation

Crimes (Proceedings) Act 1986, No. 102/1986

Assent Date: 16.12.86
Commencement Date: 1.4.87: Government Gazette 11.3.87 p. 539
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Transport Accident Act 1986, No. 111/1986

Assent Date: 16.12.86
Commencement Date: S. 180(2)(Sch. 2 item 5) on 1.2.87: Government Gazette 28.1.87 p. 180
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Corrections Act 1986, No. 117/1986

Assent Date: 23.12.86
Commencement Date: S. 6(Sch. 1 item 2(4)(5)) on 6.5.87: Government Gazette 6.5.87 p. 1004; Sch. 1 item 1(8) on 1.3.88: Government Gazette 24.2.88 p. 363
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Prostitution Regulation Act 1986, No. 124/1986

Assent Date: 23.12.86
Commencement Date: Ss 74(a)(b)(d)(e), 80 on 16.8.87: Government Gazette 12.8.87 p. 2175; s. 74(c) on 1.4.90: Government Gazette 28.3.90 p. 895
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Road Safety Act 1986, No. 127/1986

Assent Date: 23.12.86
Commencement Date: S. 102 on 1.3.87: Government Gazette 25.2.87 p. 445; Sch. 4 items 5.1–5.5 on 1.7.87: Special Gazette (No. 27) 25.6.87 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: Ss 1–6, 9–13 on 22.2.89: Government Gazette 22.2.89 p. 386; Sch. 2 items 1–13 on 15.3.89: Government Gazette 15.3.89 p. 587; ss 7, 8 on 25.6.92: Government Gazette 24.6.92 p. 1532
Current State: All of Act in operation

Crimes (Family Violence) Act 1987, No. 19/1987

Assent Date: 12.5.87
Commencement Date: 1.12.87: Government Gazette 23.9.87 p. 2521
Current State: All of Act in operation

Crimes (Amendment) Act 1987, No. 70/1987

Assent Date: 24.11.87
Commencement Date: Ss 1–3, 5–7 on 6.12.87: Government Gazette 2.12.87 p. 3309; s. 8 on 1.9.88: Government Gazette 31.8.88 p. 2598; s. 4 on 27.6.89: Special Gazette (No. 35) 27.6.89 p. 1
Current State: All of Act in operation

Road Safety (Amendment) Act 1987, No. 78/1987

Assent Date: 24.11.87
Commencement Date: S. 10 on 1.3.87: s. 2(2); rest of Act on 9.12.87: Government Gazette 9.12.87 p. 3328
Current State: All of Act in operation

Crimes (Computers) Act 1988, No. 36/1988

Assent Date: 24.5.88
Commencement Date: 1.6.88: Government Gazette 1.6.88 p. 1487
Current State: All of Act in operation

Crimes (Custody and Investigation) Act 1988, No. 37/1988 (as amended by No. 38/1988)

Assent Date: 24.5.88
Commencement Date: 15.3.89: Government Gazette 15.3.89 p. 589
Current State: All of Act in operation

Crimes Act 1958
No. 6231 of 1958

Endnotes

Crimes (Fingerprinting) Act 1988, No. 38/1988 (as amended by No. 25/1989)

Assent Date: 24.5.88
Commencement Date: Ss 4, 5 on 1.1.90: Government Gazette 20.12.89 p. 3290
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Firearms (Amendment) Act 1988, No. 40/1988

Assent Date: 24.5.88
Commencement Date: S. 22 on 25.5.88: Government Gazette 25.5.88 p. 1458
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Local Government (Consequential Provisions) Act 1989, No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 item 20.1) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Crimes Legislation (Miscellaneous Amendments) Act 1989, No. 25/1989

Assent Date: 6.6.89
Commencement Date: Ss 3–10, 15–20 on 25.6.89: Special Gazette (No. 34) 20.6.89 p. 1; ss 11–13 on 1.1.90: Government Gazette 20.12.89 p. 3290; s. 14 on 1.9.90: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Prescribed Weapons Act 1989, No. 39/1989

Assent Date: 6.6.89
Commencement Date: 1.9.89: Government Gazette 30.8.89 p. 2210
Current State: All of Act in operation

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 41(Sch. 2 item 7) on 1.7.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Court Act 1989, No. 51/1989

Assent Date: 14.6.89
Commencement Date: S. 143 on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Young Persons Act 1989, No. 56/1989

Assent Date: 14.6.89
Commencement Date: S. 286(Sch. 2 items 7.1, 7.2, 7.5–7.9, 7.11, 7.12, 7.14, 7.15) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; Sch. 2 items 7.3, 7.4, 7.10, 7.13, 7.16 on 23.9.91: Government Gazette 28.8.91 p. 2368
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989
(as amended by No. 34/1990)

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Crimes (Blood Samples) Act 1989, No. 84/1989

Assent Date: 5.12.89
Commencement Date: Ss 1–6, 9, 10 on 1.6.90: Government Gazette 30.5.90 p. 1662; s. 7 on 1.9.90: Government Gazette 25.7.90 p. 2217; s. 8 on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2
Current State: All of Act in operation

Control of Weapons Act 1990, No. 24/1990

Assent Date: 5.6.90
Commencement Date: 31.8.90: Government Gazette 29.8.90 p. 2616
Current State: All of Act in operation

Courts (Amendment) Act 1990, No. 64/1990

Assent Date: 20.11.90
Commencement Date: Ss 12, 20(Sch. item 3(a)(b)) on 1.1.91: Government Gazette 19.12.90 p. 3750
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Young Persons (Amendment) Act 1990, No. 93/1990

Assent Date: 18.12.90
Commencement Date: All of Act (*except* s. 8(2)) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; s. 8(2) on 30.9.92: Government Gazette 26.8.92 p. 2470
Current State: All of Act in operation

Crimes (Sexual Offences) Act 1991, No. 8/1991

Assent Date: 16.4.91
Commencement Date: S. 22(1) on 16.4.91: s. 2(2); ss 3–6 on 5.8.91: Government Gazette 24.7.91 p. 2026
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation (Miscellaneous Amendments) Act 1991, No. 23/1991

Assent Date: 31.5.91
Commencement Date: 31.5.91: s. 2
Current State: All of Act in operation

Endnotes

Sentencing Act 1991, No. 49/1991 (as amended by No. 81/1991)

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Crimes (Year and A Day Rule) Act 1991, No. 65/1991

Assent Date: 19.11.91
Commencement Date: 19.11.91: s. 2
Current State: All of Act in operation

Crimes (Rape) Act 1991, No. 81/1991

Assent Date: 3.12.91
Commencement Date: Ss 7, 8 on 16.4.91: s. 2(2); ss 1–4, 6, 9, 10 on 1.1.92: Government Gazette 18.12.91 p. 3486; s. 5 on 1.2.92: Government Gazette 22.1.92 p. 114
Current State: All of Act in operation

Crimes (Culpable Driving) Act 1992, No. 13/1992

Assent Date: 2.6.92
Commencement Date: 13.6.92: Government Gazette 10.6.92 p. 1418
Current State: All of Act in operation

Evidence (Unsworn Evidence) Act 1993, No. 12/1993

Assent Date: 11.5.93
Commencement Date: 11.5.93: s. 2
Current State: All of Act in operation

Crimes (HIV) Act 1993, No. 19/1993

Assent Date: 25.5.93
Commencement Date: 25.5.93: s. 2
Current State: All of Act in operation

Sentencing (Amendment) Act 1993, No. 41/1993

Assent Date: 1.6.93
Commencement Date: Ss 1, 2 on 1.6.93: s. 2(1); rest of Act (*except* ss 13, 15) on 15.8.93; ss 13, 15 on 1.11.93: Government Gazette 12.8.93 p. 2244
Current State: All of Act in operation

Crimes (Criminal Trials) Act 1993, No. 60/1993

Assent Date: 8.6.93
Commencement Date: Ss 1–3 on 8.6.93: s. 2(1); s. 27 on 21.6.93: Special Gazette (No. 40) 17.6.93 p. 1; rest of Act (ss 4–26, 28) on 1.7.93: Government Gazette 1.7.93 p. 1735
Current State: All of Act in operation

Transport (Amendment) Act 1993, No. 120/1993

Assent Date: 7.12.93
Commencement Date: S. 79 on 7.12.93: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1993, No. 129/1993 (as amended by No. 33/1994)

Assent Date: 14.12.93
Commencement Date: Pt 1 (ss 1–3) on 14.12.93: s. 2(1); s. 10 on 21.12.93:
Special Gazette (No. 95) 21.12.93 p. 1; ss 4–9, 11
on 1.6.94: s. 2(3)
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94:
Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Public Prosecutions Act 1994, No. 43/1994

Assent Date: 7.6.94
Commencement Date: S. 56(Sch. items 1.1–1.8) on 1.7.94: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Crimes (Amendment) Act 1994, No. 95/1994

Assent Date: 13.12.94
Commencement Date: Pt 1 (ss 1, 2) on 13.12.94: s. 2(1); ss 3–10 on
23.1.95: Government Gazette 19.1.95 p. 121; rest
of Act on 13.6.95: s. 2(3)
Current State: All of Act in operation

Prostitution Control Act 1994, No. 102/1994

Assent Date: 13.12.94
Commencement Date: Ss 1, 2 on 13.12.94: s. 2(1); rest of Act on 13.6.95:
s. 2(3)
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on
7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Legal Aid Commission (Amendment) Act 1995, No. 48/1995

Assent Date: 14.6.95
Commencement Date: Pt 1 (ss 1–3) on 14.6.95: s. 2(1); rest of Act on
14.12.95: s. 2(3)
Current State: All of Act in operation

**Classification (Publications, Films and Computer Games) (Enforcement)
Act 1995, No. 90/1995**

Assent Date: 5.12.95
Commencement Date: Pt 1 (ss 1–5) on 5.12.95: s. 2(1); rest of Act on
1.1.96: Government Gazette 21.12.95 p. 3570
Current State: All of Act in operation

Endnotes

Mental Health (Amendment) Act 1995, No. 98/1995

Assent Date: 5.12.95
Commencement Date: S. 65(Sch. 1 item 3) on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: Ss 5–8 on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 16.1–16.20) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Corrections (Amendment) Act 1996, No. 45/1996

Assent Date: 26.11.96
Commencement Date: S. 18(Sch. 2 items 6.1–6.6) on 6.2.97: Government Gazette 6.2.97 p. 257
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Female Genital Mutilation) Act 1996, No. 46/1996

Assent Date: 26.11.96
Commencement Date: 26.11.96: s. 2
Current State: All of Act in operation

Firearms Act 1996, No. 66/1996 (as amended by Nos 26/1997, 74/2000)

Assent Date: 17.12.96
Commencement Date: Ss 201(1)(2) on 29.4.97: Government Gazette 24.4.97 p. 921; s. 202 on 31.1.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Police and Corrections (Amendment) Act 1997, No. 26/1997

Assent Date: 20.5.97
Commencement Date: Ss 51–53 on 22.5.97: Government Gazette 22.5.97 p. 1131
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Road Safety (Disclosure of Information) Act 1997, No. 30/1997

Assent Date: 27.5.97
Commencement Date: S. 6 on 1.9.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Law and Justice Legislation Amendment Act 1997, No. 44/1997

Assent Date: 11.6.97
Commencement Date: S. 3 on 19.6.97: Government Gazette 19.6.97 p. 1384
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: Ss 54–58, 60–63, Sch. 1 on 1.9.97: s. 2(2), s. 59 on 20.11.97: Government Gazette 20.11.97 p. 3169
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997

Assent Date: 18.11.97
Commencement Date: S. 82 on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing (Amendment) Act 1997, No. 69/1997

Assent Date: 18.11.97
Commencement Date: Pt 3 (ss 22–25) on 18.11.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1997, No. 81/1997

Assent Date: 2.12.97
Commencement Date: Ss 4–8, 14, 15 on 1.1.98: s. 2(2); ss 16–31 on 1.7.98: s. 2(4)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 42 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Confiscation Act 1997, No. 108/1997

Assent Date: 23.12.97
Commencement Date: S. 151 on 1.7.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 17) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Crimes (Amendment) Act 1998, No. 65/1998

Assent Date: 4.11.98
Commencement Date: Ss 3, 4, 6 on 4.11.98: s. 2(1); s. 5 on 1.1.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes, Confiscation and Evidence Acts (Amendment) Act 1998, No. 80/1998

Assent Date: 13.11.98
Commencement Date: Pt 2 (ss 3, 4) on 13.11.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Court (Amendment) Act 1999, No. 10/1999

Assent Date: 11.5.99
Commencement Date: S. 31(5) on 11.5.99: s. 2(1); ss 8(5), 18(4), 20 on 1.7.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Dental Practice Act 1999, No. 26/1999

Assent Date: 1.6.99
Commencement Date: S. 107(Sch. item 1) on 1.7.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Criminal Trials) Act 1999, No. 35/1999

Assent Date: 8.6.99
Commencement Date: S. 34 on 1.9.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Juries Act 2000, No. 53/2000

Assent Date: 12.9.00
Commencement Date: S. 94 on 1.8.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 2000, No. 67/2000

Assent Date: 21.11.00
Commencement Date: 22.11.00: s. 2
Current State: All of Act in operation

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 30) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Questioning of Suspects) Act 2000, No. 86/2000

Assent Date: 5.12.00
Commencement Date: 6.12.00: s. 2
Current State: All of Act in operation

Magistrates' Court (Committal Proceedings) Act 2000, No. 92/2000

Assent Date: 5.12.00
Commencement Date: Ss 11, 12 on 1.7.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Corrections (Custody) Act 2001, No. 45/2001

Assent Date: 27.6.01
Commencement Date: S. 40 on 1.3.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Validation of Orders) Act 2001, No. 58/2001

Assent Date: 16.10.01
Commencement Date: 17.10.01: s. 2
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001

Assent Date: 23.10.01
Commencement Date: S. 16(1) on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001, No. 69/2001

Assent Date: 7.11.01
Commencement Date: S. 20 on 8.11.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing (Emergency Service Costs) Act 2001, No. 80/2001

Assent Date: 4.12.01
Commencement Date: S. 7 on 5.12.01: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 13) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (DNA Database) Act 2002, No. 16/2002

Assent Date: 21.5.02
Commencement Date: S. 18(2) on 1.1.02: s. 2(2); ss 1–18(1), 19 on 22.5.02: s. 2(1)
Current State: All of Act in operation

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002

Assent Date: 18.6.02
Commencement Date: Ss 3–5, 28(Sch. item 3) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Crimes (Property Damage and Computer Offences) Act 2003, No. 10/2003

Assent Date: 6.5.03
Commencement Date: Ss 4–9 on 7.5.03: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Australian Crime Commission (State Provisions) Act 2003, No. 52/2003

Assent Date: 16.6.03
Commencement Date: S. 52(Sch. 1 item 2) on 17.6.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Confiscation (Amendment) Act 2003, No. 63/2003

Assent Date: 30.9.03
Commencement Date: S. 43, 44 on 1.12.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Cemeteries and Crematoria Act 2003, No. 80/2003

Assent Date: 11.11.03
Commencement Date: S. 185 on 1.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Money Laundering) Act 2003, No. 104/2003

Assent Date: 9.12.03
Commencement Date: Ss 3, 4 on 1.1.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Stalking) Act 2003, No. 105/2003

Assent Date: 9.12.03
Commencement Date: 10.12.03: s. 2
Current State: All of Act in operation

Justice Legislation (Sexual Offences and Bail) Act 2004, No. 20/2004

Assent Date: 18.5.04
Commencement Date: Ss 3–7 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 2004, No. 41/2004

Assent Date: 16.6.04
Commencement Date: 17.6.04: s. 2
Current State: All of Act in operation

Sex Offenders Registration Act 2004, No. 56/2004

Assent Date: 21.9.04
Commencement Date: S. 79 on 1.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Dangerous Driving) Act 2004, No. 59/2004

Assent Date: 12.10.04
Commencement Date: 13.10.04: s. 2
Current State: All of Act in operation

Sentencing (Superannuation Orders) Act 2004, No. 65/2004

Assent Date: 12.10.04
Commencement Date: S. 4(1) on 13.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Young Persons (Age Jurisdiction) Act 2004, No. 72/2004

Assent Date: 9.11.04
Commencement Date: Ss 24–33 on 1.7.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 48) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005, No. 6/2005

Assent Date: 27.4.05
Commencement Date: S. 12 on 28.4.05: s. 2; s. 13(1)–(3) on 26.5.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 4(Sch. 2 item 1) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 27) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005, No. 56/2005

Assent Date: 13.9.05
Commencement Date: Ss 6, 7 on 14.9.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Contamination of Goods) Act 2005, No. 66/2005

Assent Date: 11.10.05
Commencement Date: 12.10.05: s. 2
Current State: All of Act in operation

Crimes (Homicide) Act 2005, No. 77/2005

Assent Date: 22.11.05
Commencement Date: Ss 3–7, 8(3), 9 on 23.11.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 9 on 1.7.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 14) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Sexual Offences) Act 2006, No. 2/2006 (as amended by No. 76/2006)

Assent Date: 7.3.06
Commencement Date: Ss 3–19B, 42 on 1.12.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Document Destruction) Act 2006, No. 6/2006

Assent Date: 4.4.06
Commencement Date: S. 3 on 1.9.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: Ss 13–15 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 236 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation (Further Miscellaneous Amendments) Act 2006, No. 27/2006

Assent Date: 6.6.06
Commencement Date: Ss 3–18 on 30.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 9) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Legislation (Jurisdiction) Act 2006, No. 50/2006

Assent Date: 15.8.06
Commencement Date: Ss 7, 9, 11 on 16.8.06: s. 2(1); s. 10 on 1.11.06:
Government Gazette 5.10.06 p. 2100; ss 6, 8, 12 on
1.7.07: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Crimes (Sexual Offences) (Further Amendment) Act 2006, No. 76/2006

Assent Date: 10.10.06
Commencement Date: Ss 3, 4 on 1.12.06: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Crimes Amendment (DNA Database) Act 2007, No. 32/2007

Assent Date: 24.7.07
Commencement Date: 25.7.07: s. 2
Current State: All of Act in operation

Firearms Amendment Act 2007, No. 50/2007

Assent Date: 17.10.07
Commencement Date: S. 57 on 30.6.08: Government Gazette 26.6.08 p. 1388
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Crimes Amendment (Rape) Act 2007, No. 57/2007

Assent Date: 27.11.07
Commencement Date: Ss 8, 9 on 28.11.07: s. 2(2); ss 3–7 on 1.1.08: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Crimes Amendment (Child Homicide) Act 2008, No. 7/2008

Assent Date: 18.3.08
Commencement Date: Ss 3–6, 7(3) on 19.3.08: s. 2
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Criminal Procedure Legislation Amendment Act 2008, No. 8/2008

Assent Date: 18.3.08
Commencement Date: S. 22(1) on 23.4.07: s. 2(2); s. 13 on 1.7.08: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Infringements and Other Acts Amendment Act 2008, No. 9/2008

Assent Date: 18.3.08
Commencement Date: S. 10 on 1.7.08: Special Gazette (No. 172) 27.6.08 p. 1
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 16) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Crimes Act 1958**

Endnotes

Justice Legislation Amendment (Sex Offences Procedure) Act 2008, No. 18/2008

Assent Date: 13.5.08
Commencement Date: Ss 3–5 on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008

Assent Date: 3.6.08
Commencement Date: S. 77 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 3) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 272 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: S. 242 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Abortion Law Reform Act 2008, No. 58/2008

Assent Date: 22.10.08
Commencement Date: Ss 9–11 on 23.10.08: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Stalking Intervention Orders Act 2008, No. 68/2008

Assent Date: 18.11.08
Commencement Date: S. 69 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Legislation Amendment (Costs Court and Other Matters) Act 2008, No. 78/2008

Assent Date: 11.12.08
Commencement Date: S. 25 on 31.12.09: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation Amendment (Food and Drink Spiking) Act 2009, No. 1/2009

Assent Date: 10.2.09
Commencement Date: S. 3 on 11.2.09: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 9) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)

Assent Date: 10.3.09
Commencement Date: S. 422 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Identity Crime) Act 2009, No. 22/2009

Assent Date: 17.6.09
Commencement Date: Ss 3, 4 on 16.7.09: Government Gazette 16.7.09 p. 1884
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment Act 2009, No. 25/2009

Assent Date: 17.6.09
Commencement Date: Ss 3–5 on 3.9.09: Government Gazette 3.9.09 p. 2331
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009 (as amended by No. 29/2011)

Assent Date: 24.11.09
Commencement Date: S. 97(Sch item 40) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: Ss 37–51 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Miscellaneous Amendments Act 2009, No. 87/2009
(as amended by No. 30/2010)

Assent Date: 15.12.09
Commencement Date: Ss 3–5 on 1.11.10: s. 2(5)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009

Assent Date: 15.12.09
Commencement Date: Ss 44–46 on 17.12.09: Government Gazette 17.12.09 p. 3339
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation Amendment Act 2010, No. 7/2010

Assent Date: 16.3.10
Commencement Date: S. 3 on 17.3.10: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 17) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Supported Residential Services (Private Proprietors) Act 2010, No. 49/2010

Assent Date: 24.8.10
Commencement Date: Ss 227, 228 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date: 7.9.10
Commencement Date: S. 221(Sch. item 4) on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 81(Sch. item 4) on 1.11.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Further Amendment Act 2010, No. 64/2010

Assent Date: 28.9.10
Commencement Date: Ss 3–6 on 1.11.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Marine Safety Act 2010, No. 65/2010

Assent Date: 28.9.10
Commencement Date: S. 420(Sch. 3 item 3) on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Bullying) Act 2011, No. 20/2011

Assent Date: 7.6.11
Commencement Date: S. 5(2) on 12.12.07: s. 2(2); ss 3–5(1) on 8.6.11: s. 2(4)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Infringement Offences) Act 2011, No. 27/2011
(as amended by No. 26/2012)

Assent Date: 21.6.11
Commencement Date: S. 5 on 1.7.14: s. 2(5)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Protective Services Officers) Act 2011, No. 43/2011

Assent Date: 6.9.11
Commencement Date: Ss 14–17 on 28.11.11: Special Gazette (No. 379) 22.11.11 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Act 2011, No. 55/2011

Assent Date: 2.11.11
Commencement Date: S. 3 on 3.11.11: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children's Services Amendment Act 2011, No. 80/2011

Assent Date: 21.12.11
Commencement Date: S. 79(Sch. item 3) on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 11) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Criminal Procedure Amendment Act 2012, No. 48/2012

Assent Date: 4.9.12
Commencement Date: S. 47 on 5.9.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: S. 159 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Endnotes

Justice Legislation Amendment (Family Violence and Other Matters) Act 2012, No. 83/2012

Assent Date: 18.12.12
Commencement Date: S. 32 on 20.12.12: Special Gazette (No. 444) 19.12.12 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Gross Violence Offences) Act 2013, No. 6/2013

Assent Date: 26.2.13
Commencement Date: Ss 3–7 on 1.7.13: Special Gazette (No. 180) 21.5.13 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Integrity in Sports) Act 2013, No. 20/2013

Assent Date: 23.4.13
Commencement Date: 24.4.13: s. 2
Current State: All of Act in operation

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 5(Sch. 3 item 1) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Investigation Powers) Act 2013, No. 72/2013

Assent Date: 3.12.13
Commencement Date: Ss 3–18 on 1.7.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Miscellaneous) Act 2013, No. 77/2013

Assent Date: 17.12.13
Commencement Date: Ss 15, 16 on 18.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Grooming) Act 2014, No. 7/2014

Assent Date: 25.2.14
Commencement Date: Ss 3, 4 on 9.4.14: Special Gazette (No. 112) 8.4.14 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Domestic Animals Amendment Act 2014, No. 8/2014

Assent Date: 25.2.14
Commencement Date: Ss 32–35 on 1.7.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Act 2014, No. 25/2014

Assent Date: 8.4.14
Commencement Date: Ss 14, 15 on 9.4.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 7) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 36) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Criminal Appeal Rules 1965, S.R. No. 144/1965 (as amended by S.R. No. 75/1987)

Date of Making: 6.7.65
Date of Commencement: 1.2.66: reg. 1(1)

3. Explanatory Details

¹ Pt 1 Div. 1 Subdiv. (3):

Pt 1 Div. 1 Subdiv. (3) (Heading) repealed by No. 25/1989 s. 20(b).

Ss 11–13 amended by No. 9576 s. 11(1), repealed by No. 10233 s. 8(1).

S. 14 amended by No. 9576 s. 11(1), repealed by No. 10233 s. 5.

² S. 36: Section 9(1) of the **Crimes (Rape) Act 1991**, No. 81/1991 reads as follows:

9 Transitional provisions

- (1) Sections 36 and 37 of the **Crimes Act 1958** (as inserted by section 3 of this Act) and the amendments made by sections 4 and 5 of this Act apply to proceedings that occur after the commencement of the relevant provision of this Act regardless of when the alleged offence was committed.

Section 61 of the **Crimes Act 1958** sets out other jury warnings.

³ Pt 1 Div. 1 Subdiv. (8A): Section 9(2)–(4) of the **Crimes (Rape) Act 1991**, No. 81/1991 reads as follows:

9 Transitional provisions

- (2) Subdivision (8A) of Division 1 of Part I of the **Crimes Act 1958** (as inserted by section 3 of this Act) applies only to offences alleged to have been committed after the commencement of that section.
- (3) The abolition of the common law offence of rape by section 6 does not apply to an offence that is alleged to have been committed before the commencement of that section.
- (4) For the purposes of this section, if an offence is alleged to have been committed between two dates and the relevant provision of this Act commences on a date between those two dates, the

offence is alleged to have been committed before
the commencement date.

⁴ Pt 1 Div. 1 Subdiv. (12): See section 6 as to the offence of infanticide.

⁵ S. 95(2) (*repealed*): The amendment proposed by section 97(Schedule item 40.9) of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, No. 68/2009 is not included in this publication because the words "an information laid" do not appear in section 95(2). Section 97(Schedule item 40.9) reads as follows:

40.9 In section 95(2), for "an information laid"
substitute "the filing of a charge-sheet".

⁶ Ss 96–174:

S. 96 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b),
repealed by No. 10260 s. 114(Sch. 4 item 4).

Ss 97–173 repealed by No. 8425 s. 2(1)(b).

S. 174 repealed by No. 7705 s. 10.

⁷ S. 175: As to trade and commerce with other countries and among the States and to dealings with the Commonwealth, see Parts 7.6 and 7.7 of the Commonwealth Criminal Code Act 1995.

⁸ S. 176: See note 7.

⁹ S. 177: See note 7.

¹⁰ S. 178: See note 7.

¹¹ S. 179: See note 7.

¹² S. 180: See note 7.

¹³ S. 181: See note 7.

¹⁴ S. 182: See note 7.

¹⁵ S. 184: See note 7.

¹⁶ S. 185: See note 7.

¹⁷ S. 186: See note 7.

¹⁸ S. 206: See section 435.

¹⁹ S. 232: Compare sections 25–28.

²⁰ S. 233: See note 19.

²¹ Pt 1 Div. 8: See also sections 15–31, Pt 1 Div. 3, section 466 and the **Dangerous Goods Act 1985**, No. 10189/1985.

²² S. 317(9)(d): See section 466 of this Act and the **Dangerous Goods Act 1985**, No. 10189/1985.

²³ Ss 327–332:

S. 327 amended by No. 6731 s. 4, repealed by No. 9576 s. 4(1).

S. 328 repealed by No. 9576 s. 4(1).

Ss 329–332 repealed by No. 8425 s. 2(1)(h).

²⁴ Pt 3 Div. 1 Subdiv. (1) (Heading and ss 351–356) amended by Nos 7546 s. 7, 7703 s. 5, 7705 s. 10, 9407 s. 2(d), 9576 s. 11(1), 9848 s. 18(1), 10026 s. 3(1)(2), 10233 s. 9(c), 110/1986 s. 140(2), 19/1989 s. 16(Sch. item 16.2), 57/1989 s. 3(Sch. items 42.20, 42.21), 64/1990 s. 12(1), 43/1994 s. 56(Sch. items 1.1–1.5), 10/1999 s. 31(5)(b), 35/1999 s. 34(1), 53/2000 s. 94(2), 50/2006 ss 6, 7(1)(2), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

²⁵ Section 359 amended by Nos 7703 s. 5, 7705 s. 10, 8338 s. 7(a)(d)–(f)(q), 9008 s. 2(1)(Sch. item 2(c)), 9848 s. 18(1), 10087 s. 3(1)(Sch. 1 item 26), 110/1986 s. 140(2), 16/1987 s. 4(3)(Sch. 1 item 8(a)), 19/1989 s. 16(Sch. item 16.3), 57/1989 s. 3(Sch. item 42.23), 64/1990 s. 12(2)–(4), 43/1994 s. 56(Sch. item 1.6), 35/1996 s. 453(Sch. 1 item 16.2), 46/1998 s. 7(Sch. 1), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

²⁶ Pt 3 Div. 1 Subdiv. 5 (Heading and s. 360) amended by Nos 7703 s. 5, 7705 s. 10, 8338 s. 7(a), 9008 s. 2(1)(Sch. item 2(d)), 9427 s. 6(1)(Sch. 5 item 37), 9576 s. 11(1), 9848 s. 18(1), 60/1993 s. 27, 43/1994 s. 56(Sch. item 1.7), 48/1995 s. 11(3)(a), 65/1998 s. 6, 18/2005 s. 18(Sch. 1 items 27.4, 27.5), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

²⁷ Pt 3 Div. 1 Subdiv. 6 (Heading and s. 361) amended by Nos 7703 s. 5, 8280 s. 14, 8338 s. 7(a)(d)(g), 9019 s. 2(1)(Sch. item 41), 110/1986 s. 140(2), 19/1989 s. 16(Sch. item 16.4), 26/1997 s. 51, 65/1997 s. 82(1), 45/2001 s. 40(1), 11/2002 s. 3(Sch. 1 item 13), 23/2006 s. 236(3), 48/2006 s. 42(Sch. item 9.1), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

²⁸ Pt 3 Div. 1 Subdiv. (9) (Heading and ss 364–387) amended by Nos 8425 s. 2(1)(h)(j)(k), 9019 s. 2(1)(Sch. items 42, 43), 9427 s. 6(1)(Sch. 5 item 38), 9576 s. 11(1), 10079 s. 8(e), 10084 s. 6(1)(2), 10260 s. 114(Sch. 4 item 5), 25/1989 ss 9, 20(i), 57/1989 s. 3(Sch. item 42.27), 49/1991 s. 119(7)(Sch. 4 item 4.2), 81/1997 s. 7(1), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

²⁹ S. 393 (*repealed*): Schedule 3 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, No. 65/1997 reads as follows:

SCHEDULE 3

SAVINGS AND TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which this Schedule comes into operation;

existing detainee means a person who, immediately before the commencement day, was subject to an order under section 393 or 420 of the **Crimes Act 1958** (whether by the court or by the Governor).

2 Existing detainees

- (1) Each existing detainee is, on and after the commencement day, deemed to be subject to a custodial supervision order under this Act.
- (2) The nominal term of the custodial supervision order is to be determined in accordance with section 28 as if the maximum penalty for the offence which led to the person becoming an existing detainee were the maximum penalty attaching to that offence on the commencement day.
- (3) If the offence referred to in subsection (2) no longer exists—
 - (a) the Supreme Court, on application by the existing detainee or the Director of Public Prosecutions, must determine whether there is an existing offence, as at the commencement day, with which the existing detainee could have been charged had it existed at the time of the original charge; and

(b) if there is such an offence, the nominal term is to be determined by reference to the maximum penalty for that offence as at the commencement day.

(4) The nominal term runs from the day on which the existing detainee was made subject to the order under section 393 or 420 of the **Crimes Act 1958**.

Sch. 3 cl. 2(5) amended by No. 43/1998 s. 40(b)(i).

(5) If the nominal term has expired, a major review must be held within 6 months after the commencement day.

3 Leave

(1) Subject to this clause, an existing detainee who, immediately before the commencement day, was on leave from the place of detention that corresponds to leave that may be granted under Part 7 is deemed to be on the corresponding leave as if granted under that Part, and any conditions to which the leave was subject immediately before the commencement day continue to apply.

Sch. 3 cl. 3(2) amended by No. 43/1998 s. 40(b)(ii).

(2) Subclause (1) applies for the period of 12 months commencing on, and including, the commencement day.

(3) For the purposes of this clause, leave granted before the commencement day corresponds to leave that may be granted under Part 7 if it is substantially similar to that leave.

Sch. 3 cl. 3(4) inserted by No. 7/2002 s. 33(1).

(4) Sections 53 and 54, as in force immediately before the commencement of sections 24 and 25 of the **Forensic Health Legislation (Amendment) Act 2002**, continue to apply in relation to any limited off-ground leave granted before that commencement, until the expiry of that leave.

4 Revocation of supervision order

- (1) Despite anything to the contrary in Part 5, an existing detainee who has been, or is deemed to have been, on extended leave for a period of at least 12 months may apply to the court that made the original order under which he or she was detained for revocation of his or her supervision order.
- (2) On an application under subclause (1) the court may revoke the supervision order if satisfied on the evidence available that the safety of the existing detainee or members of the public will not be seriously endangered as a result of the revocation of the order.
- (3) In considering an application for revocation of a supervision order in respect of an existing detainee the court may take into account any reports on the existing detainee made by, or submitted to, the Adult Parole Board before the commencement day.

5 Persons released under section 498 of Crimes Act 1958

Despite the repeal of section 498 of the **Crimes Act 1958**, any conditions imposed on a person under that section that were in force immediately before the commencement day continue to apply on and after the commencement day.

6 Unfitness to stand trial

- (1) Part 2 applies with respect to an offence that is alleged to have been committed, whether before, on or after the commencement day.
- (2) If a person has been found unfit to stand trial but no order has been made in respect of the person before the commencement day, the court must

proceed to hold a special hearing under Part 3 in respect of the person.

7 Mental impairment and insanity

- (1) Despite section 25, the defence of insanity continues to apply with respect to any offence alleged to have been committed before the commencement day.
- (2) If a jury returns a verdict of not guilty on account of insanity in relation to a person charged with an offence alleged to have been committed before the commencement day, that verdict is to be taken for all purposes to be a finding of not guilty because of mental impairment under Part 4.

Sch. 3 cl. 8 inserted by No. 7/2002 s. 33(2).

8 Periodic major reviews

Section 35, as amended by section 14 of the **Forensic Health Legislation (Amendment) Act 2002**, applies to a supervision order made before, on or after the commencement of that section 14.

Sch. 3 cl. 9 inserted by No. 7/2002 s. 33(2).

9 Notification requirements

Sections 38A, 38B, 38C and 38E, as inserted by section 17 of the **Forensic Health Legislation (Amendment) Act 2002**, apply to—

- (a) applications that are made after the commencement of that section 17; and
- (b) reviews that are listed by the court after the commencement of that section 17.

Sch. 3 cl. 10 inserted by No. 7/2002 s. 33(2).

10 Appeals

- (1) An order for unconditional release can be appealed under section 19A or 24A (as the case may be) whether the order was made before or after the commencement of that section, unless—

- (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.
- (2) A supervision order can be appealed under section 28A whether the order was made before or after the commencement of that section, unless—
- (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.
- (3) An order confirming, varying or revoking a supervision order can be appealed under section 34 (as substituted by section 13 of the **Forensic Health Legislation (Amendment) Act 2002**) or section 34A (as the case may be) whether the order was made before or after the commencement of that section, unless—
- (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.
- (4) A refusal to grant extended leave or a grant of extended leave can be appealed under section 57B whether the refusal or grant was made before or after the commencement of that section.
- (5) A revocation of extended leave or a refusal to revoke extended leave can be appealed under section 58A whether the revocation or refusal was made before or after the commencement of that section.
- (6) Any appeal referred to in subclause (1)(a), (2)(a) or (3)(a) that has not been determined before the commencement referred to in that subclause is to

be determined in accordance with this Act as in force immediately before that commencement.

Sch. 3 cl. 11 inserted by No. 68/2009 s. 97(Sch. item 39.52).

11 Transitional provisions—Criminal Procedure Act 2009

- (1) Section 14A as inserted by section 423 of the **Criminal Procedure Act 2009** applies to a finding on an investigation under Part 2 that an accused is unfit to stand trial made on or after the commencement of section 423 of that Act.
- (2) Section 24AA as inserted by section 424 of the **Criminal Procedure Act 2009** applies to a verdict of not guilty because of mental impairment recorded on or after the commencement of section 424 of that Act.

Sch. 3 cl. 12 inserted by No. 68/2009 s. 97(Sch. item 39.52).

12 Transitional provisions—Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009

- (1) Section 19A as amended by item 39.17 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.
- (2) Section 24A as amended by item 39.24 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.

- (3) Section 28A as amended by item 39.25 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.
- (4) Section 34 as amended by item 39.28 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.
- (5) Section 34A as amended by item 39.31 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal against the revocation of a non-custodial supervision order where the order revoking the supervision order is made on or after the commencement of that item.
- (6) Section 57B as amended by item 39.38 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the application for extended leave is refused or granted, as the case may be, on or after the commencement of that item.
- (7) Section 58A as amended by item 39.40 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the extended leave is revoked or the application for revocation of extended leave

is refused, as the case may be, on or after the commencement of that item.

- (8) Section 73H as amended by item 39.44 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.
- (9) Section 73N as amended by item 39.46 of the Schedule to the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal under that section where the order to which the appeal relates is made on or after the commencement of that item.

Sch. 3 cl. 13 inserted by No. 29/2010 s. 36, amended by No. 29/2011 s. 3(Sch. 1 item 23).

13 Transitional provision—Health and Human Services Legislation Amendment Act 2010

Any act matter or thing of a continuing nature that was done by or in relation to, or any proceeding brought by or against, the Secretary to the Department of Human Services before the commencement of Division 1 of Part 5 of the **Health and Human Services Legislation Amendment Act 2010** is to be taken to be done by or in relation to, and may be brought by or against, the Secretary to the Department of Health after that commencement if the act matter or thing or proceeding relates to—

- (a) a forensic patient; or
- (b) an approved mental health service.

³⁰ Pt 3 Div. 1 Subdiv. (12) (Heading and ss 390–396) amended by Nos 6884 s. 2(1), 7705 s. 10, 7994 s. 2, 8338 s. 7(j), 9576 ss 5, 11(1), 9848 s. 18(1), 10026 ss 5, 6, 10084 s. 6(3), 10233 s. 9(d), 102/1986 s. 8(a)(b), 19/1989 s. 16(Sch. item 16.5), 25/1989 s. 19(c)(d), 56/1989 s. 286(Sch. 2 item 7.2),

57/1989 s. 3(Sch. items 42.30, 42.31) (as amended by No. 34/1990 s. 5(Sch. 4 item 23)), 35/1996 s. 453(Sch. 1 items 16.4, 16.5), 48/1997 s. 57, 65/1997 s. 82(2)(a), 45/2001 s. 40(2), 50/2006 s. 9, repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

³¹ S. 395 (*repealed*): The amendments proposed by section 41 of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, No. 69/2009 are not included in this publication due to the earlier repeal of section 395 by section 422(2)(a) of the **Criminal Procedure Act 2009**, No. 7/2009 (as amended by No. 68/2009 s. 54(h)).

³² S. 401 (*repealed*): The amendment proposed by section 45 of the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, No. 69/2009 is not included in this publication due to the earlier repeal of section 401 by section 422(2)(b) of the **Criminal Procedure Act 2009**, No. 7/2009 (as amended by No. 68/2009 s. 54(h)).

³³ Ss 406–408A:

S. 406 repealed by No. 9576 s. 11(1).

S. 407 repealed by No. 25/1989 s. 9.

S. 408 amended by Nos 6886 s. 3, 7184 s. 5, 7327 s. 3(a)(b), 7696 s. 2, repealed by No. 8143 s. 11.

S. 408A inserted by No. 6806 s. 2, amended by Nos 7327 s. 3(a)–(d), 7546 s. 10(1)(2), 7645 s. 6, 7696 s. 3, 7782 ss 2, 3, repealed by No. 8143 s. 11.

³⁴ S. 420 (*repealed*): See note 29.

³⁵ Pt 3 Div. 1 Subdiv. (25) (Heading and ss 446–450) amended by Nos 7705 s. 10, 8338 s. 7(c), 9008 s. 2(1)(Sch. item 2(h)(j)), 9242 s. 2, 9576 s. 11(1), 9848 s. 18(1), 110/1986 s. 140(2), 51/1989 s. 143(c)–(e), 60/1993 s. 28, 109/1994 s. 25, 35/1996 s. 453(Sch. 1 item 16.14), 78/2008 s. 25(2), repealed by No. 7/2009 s. 422(2)(a) (as amended by No. 68/2009 s. 54(h)).

³⁶ S. 464S: The amendments proposed by section 118(Sch. 1 items 15.2–15.6, 15.8) to the **Medical Practice Act 1994**, No. 23/1994 are not included in this publication because section 464S had been substituted before the proposed amendments came into operation.

³⁷ S. 464T(1)(c): See note 36.

³⁸ S. 464U(5): See note 36.

³⁹ S. 464V(6)(d): See note 36.

⁴⁰ S. 464X(1): See note 36.

⁴¹ S. 464ZE: See note 36.

⁴² S. 466: See **Dangerous Goods Act 1985**, No. 10189/1985.

⁴³ Ss 472–476A:

S. 472 repealed by No. 8679 s. 3(1)(b), new s. 472 inserted by No. 9576 s. 8(b), amended by No. 10260 s. 114(Sch. 4 item 4), repealed by No. 70/1987 s. 6.

S. 473 substituted by No. 6884 s. 2(3), amended by No. 7651 s. 2(1)(Sch. item 3), repealed by No. 8679 s. 3(1)(b).

Ss 474, 475 repealed by No. 8679 s. 3(1)(b).

S. 476 amended by Nos 8338 s. 7(a), 8426 s. 9(1) (as amended by No. 8701 s. 7(f)), 8870 s. 7(a), 9554 s. 47(a)(b), 9945 s. 3(3)(Sch. 2 item 9), substituted by No. 10084 s. 8(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 476A inserted by No. 6651 s. 57(a), repealed by No. 10084 s. 8(2).

⁴⁴ Ss 477–479:

S. 477 amended by Nos 6731 s. 5, 8338 s. 7(a)(b), repealed by No. 9554 s. 2(1)(Sch. 1 item 7).

S. 478 amended by Nos 8280 s. 16, 9576 ss 8(c), 11(1), 9945 s. 3(3)(Sch. 2 item 10), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 479 amended by No. 7705 s. 10, repealed by No. 10260 s. 114(Sch. 4 item 4).

⁴⁵ Ss 480–484:

Ss 480, 481 amended by No. 8181 s. 2(1)(Sch. item 31), repealed by No. 10260 s. 114(Sch. 4 item 4).

Ss 482, 483 amended by No. 10087 s. 3(1)(Sch. 1 item 27), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 484 amended by Nos 9554 s. 2(1)(Sch. 1 item 8), 9945 s. 3(3)(Sch. 2 item 11), 10152 s. 9(b)(i)(ii), repealed by No. 10260 s. 114(Sch. 4 item 4).

⁴⁶ S. 485 amended by No. 8338 s. 7(b), repealed by No. 8679 s. 3(1)(b).

Ss 486, 487 amended by No. 8338 s. 7(a)(c), repealed by No. 8679 s. 3(1)(b).

S. 488 amended by No. 8338 s. 7(a)(c)(l), repealed by No. 8679 s. 3(1)(b).

Ss 489, 490 amended by No. 8338 s. 7(a), repealed by No. 8679 s. 3(1)(b).

S. 491 repealed by No. 8679 s. 3(1)(b).

S. 492 amended by No. 8338 s. 7(a), repealed by No. 8679 s. 3(1)(b).

⁴⁷ Ss 495–497:

S. 495 repealed by No. 9945 s. 3(3)(Sch. 2 item 13).

S. 496 repealed by No. 8679 s. 3(1)(b).

S. 497 amended by No. 8280 s. 17, repealed by No. 8679 s. 3(1)(b).

⁴⁸ S. 498 (*repealed*): See note 31.

⁴⁹ Ss 499–502:

S. 499 substituted by No. 6884 s. 3, amended by Nos 9498 s. 3, 16/1986 s. 30, repealed by No. 117/1986 s. 6(Sch. 1 item 2(4)).

S. 500 amended by Nos 8493 s. 33(c), 9549 s. 2(1)(Sch. item 51), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 501 repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 502 amended by Nos 7876 s. 2(3), 8493 s. 33(d), 8731 s. 173, 10087 s. 3(1)(Sch. 1 item 29), repealed by No. 10260 s. 114(Sch. 4 item 4).

⁵⁰ Ss 508, 509:

S. 508 amended by Nos 7263 s. 2(c)(i)–(iv), 7705 s. 10, 7876 s. 2(3), 9059 s. 2(1)(Sch. item 11), 9966 s. 21(3)(a)–(f), 10087 s. 3(Sch. 1 item 30), 10152 s. 9(c), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 509 amended by No. 10152 s. 9(d), repealed by No. 10260 s. 114(Sch. 4 item 5).

⁵¹ Ss 510–515A:

S. 510 amended by Nos 7577 s. 6, 7705 s. 10, 7876 s. 2(3), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 511 amended by No. 9966 s. 21(4), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 512 amended by Nos 7263 s. 2(d), 7876 s. 2(3), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 513 amended by Nos 7263 s. 2(e), 9966 s. 21(4)(5), 10152 s. 9(e), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 514 repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 515 amended by No. 9966 s. 21(4), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 515A inserted by No. 10152 s. 9(f), repealed by No. 10260 s. 114(Sch. 4 item 5).

⁵² Ss 516–519A:

S. 516 amended by Nos 7184 s. 8, 7705 s. 10, 7876 s. 2(3), 9554 s. 2(2)(Sch. 2 item 62), 9848 s. 18(1), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 517 amended by Nos 7184 s. 8, 7705 s. 10, 7876 s. 2(3), 8181 s. 2(1)(Sch. item 35), 9848 s. 18(1), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 518 amended by No. 7705 s. 10, repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 519 amended by Nos 8731 s. 173, 9019 s. 2(1)(Sch. item 46), 9059 s. 2(1)(Sch. item 12), 10087 s. 3(1)(Sch. 1 item 30), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 519A inserted by No. 7184 s. 9, repealed by No. 10260 s. 114(Sch. 4 item 5).

⁵³ Ss 543–544:

S. 543 amended by Nos 9576 s. 11(1), 9902 s. 2(1)(Sch. item 56), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 543A inserted by No. 9407 s. 2(h), amended by No. 9576 s. 11(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 544 amended by No. 8679 s. 3(1)(d), substituted by No. 9576 s. 11(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

⁵⁴ S. 547: As to trust property vested in any person who becomes a "convict", see section 72 of the **Trustee Act 1958**, No. 6401/1958.

⁵⁵ Pt 6 (Headings and ss 566–584) amended by Nos 7184 s. 12, 7546 s. 12, 7705 s. 10, 7919 s. 2(1), 8063 s. 2, 8280 ss 19, 20, 8338 s. 7(a)(p), 8425 s. 2(1)(n), 8679 s. 3(1)(g), 8870 s. 8, 9019 s. 2(1)(Sch. item 47), 9242 s. 4, 9576 s. 11(1), 9848 s. 18(1), 10026 s. 8, 10084 ss 11–14, 10260 s. 114(Sch. 4 item 5), 110/1986 s. 140(2), 16/1987 s. 4(3)(Sch. 1 item 8(d)), 19/1989 s. 16(Sch. item 16.13), 25/1989 ss 17(1)(4), 20(o), 57/1989 s. 3(Sch. items 42.70–42.74), 49/1991 s. 119(7)(Sch. 4 item 4.3), 109/1994 ss 26–28, 35/1996 s. 453(Sch. 1 items 16.18, 16.19), 48/1997 s. 59, 65/1997 s. 82(3)(4)(a)–(d), 69/1997 s. 24, 10/1999 s. 18(4), 56/2004 s. 79, 65/2004 s. 4(1), 93/2005 s. 9, 48/2006 s. 42(Sch. item 9.7), 50/2006 s. 10, 78/2008 s. 25(4), repealed by No. 7/2009 s. 422(4) (as amended by No. 68/2009 s. 54(h)).

Crimes Act 1958
No. 6231 of 1958

⁵⁶ Sch. 6 amended by S.R. No. 144/1965 Order 7 (as amended by S.R. No. 75/1987 cl. 5), Nos 7705 s. 10, 8181 s. 2(1)(Sch. item 32), S.R. No. 372/1973 reg. 2, 8425 s. 2(1)(o), 9019 s. 2(1)(Sch. item 48), 9228 s. 2(1)(k), 9427 s. 6(1)(Sch. 5 item 42), 9576 s. 11(1), 9848 s. 18(1), 9921 s. 255, 10233 s. 9(e)–(g), 25/1989 ss 18(2), 20(p), 44/1989 s. 41(Sch. 2 item 7), 57/1989 s. 3(Sch. item 42.77), 8/1991 s. 6(e), 48/1995 s. 11(3)(b), 35/1996 s. 453(Sch. 1 item 16.20), 104/1997 s. 42, repealed by No. 7/2009 s. 422(7) (as amended by No. 68/2009 s. 54(h)).

⁵⁷ Schs 8A–11:

Sch. 8A inserted by No. 7184 s. 13, amended by No. 8338 s. 7(a)(d), repealed by No. 10152 s. 9(g).

Sch. 9 amended by No. 8338 s. 7(a), repealed by No. 9059 s. 2(1)(Sch. item 13).

Sch. 10 amended by No. 8338 s. 7(o), repealed by No. 9059 s. 2(1)(Sch. item 13).

Sch. 11 amended by No. 7705 s. 10, repealed by No. 8493 s. 33(f).