

Authorised Version No. 294

Crimes Act 1958

No. 6231 of 1958

Authorised Version incorporating amendments as at
1 March 2021

TABLE OF PROVISIONS

<i>Section</i>		<i>Page</i>
1	Short title and commencement	1
2	Repeals and savings	2
2A	Definitions	3
2B	Offences under this Act deemed to be indictable offences	6
Part I—Offences		7
Division 1—Offences against the person		7
(1) Homicide		7
3	Punishment for murder	7
3A	Unintentional killing in the course or furtherance of a crime of violence	9
3B	Provocation no longer a partial defence to murder	9
4A	Manslaughter—single punch or strike taken to be dangerous act	10
5	Punishment of manslaughter	11
5A	Child homicide	12
5B	Homicide by firearm	12
5C	Relationship between manslaughter, child homicide and homicide by firearm	13
6	Infanticide	13
6A	Suicide no longer a crime	14
6B	Survivor of suicide pact who kills deceased party is guilty of manslaughter	14
8	Petit treason	16
9	Provision for trial for murder or manslaughter in Victoria where death or cause of death only happens in Victoria	16
9AA	Abolition of year-and-a-day rule	17
(1A) Treasonable offences		17
9A	Treason	17

<i>Section</i>	<i>Page</i>
(4) Offences against the person	20
15	Definitions 20
15A	Causing serious injury intentionally in circumstances of gross violence 24
15B	Causing serious injury recklessly in circumstances of gross violence 26
15C	Other offenders need not be prosecuted 28
16	Causing serious injury intentionally 28
17	Causing serious injury recklessly 29
18	Causing injury intentionally or recklessly 30
19	Offence to administer certain substances 31
20	Threats to kill 32
21	Threats to inflict serious injury 32
21A	Stalking 33
22	Conduct endangering life 37
23	Conduct endangering persons 37
24	Negligently causing serious injury 38
25	Setting traps etc. to kill 38
26	Setting traps etc. to cause serious injury 38
27	Extortion with threat to kill 38
28	Extortion with threat to destroy property etc. 39
29	Using firearm to resist arrest etc. 39
30	Threatening injury to prevent arrest 40
31	Assaults 41
31A	Use of firearms in the commission of offences 43
31B	Being armed with criminal intent 44
31C	Discharging a firearm reckless to safety of a police officer or a protective services officer 45
31D	Intimidation of a law enforcement officer or a family member of a law enforcement officer 47
32	Offence to perform female genital mutilation 50
33	Offence to take a person from the State with the intention of having prohibited female genital mutilation performed 51
34	Consent not a defence to a charge under sections 32 or 33 51
34A	Exceptions to offences under section 32 52
(5) Corpses	53
34B	Sexual activity with the corpse of a human being 53
34BA	Removal of body parts from the corpse of a human being 54
34BB	Offensive conduct involving human remains 54
34BC	Location of corpse or human remains immaterial 55
34BD	Exceptions 55

<i>Section</i>	<i>Page</i>
34BE	56
No defence of mistaken but honest and reasonable belief that activity was not sexual or conduct was not offensive	
(8) Sexual offences (general provisions)	57
35	58
Definitions	
35A	59
Sexual penetration	
35B	60
Touching	
35C	61
Taking part in a sexual act	
35D	61
Sexual activity	
36	62
Consent	
36A	63
Reasonable belief in consent	
36B	63
Effect of intoxication on reasonable belief	
37	65
Care, supervision or authority	
37A	66
Objectives of Subdivisions 8A to 8G	
37B	66
Guiding principles	
(8A) Rape, sexual assault and associated sexual offences	68
38	69
Rape	
39	70
Rape by compelling sexual penetration	
40	71
Sexual assault	
41	72
Sexual assault by compelling sexual touching	
42	72
Assault with intent to commit a sexual offence	
43	73
Threat to commit a sexual offence	
44	74
Procuring sexual act by threat	
45	75
Procuring sexual act by fraud	
46	76
Administration of an intoxicating substance for a sexual purpose	
47	77
Abduction or detention for a sexual purpose	
48	78
Sexual activity directed at another person	
48A	79
Exceptions—medical, hygienic, veterinary, agricultural or scientific purposes	
48B	79
No defence of mistaken but honest and reasonable belief that touching or activity was not sexual	
(8B) Sexual offences against children	80
49A	80
Sexual penetration of a child under the age of 12	
49B	82
Sexual penetration of a child under the age of 16	
49C	83
Sexual penetration of a child aged 16 or 17 under care, supervision or authority	
49D	83
Sexual assault of a child under the age of 16	
49E	85
Sexual assault of a child aged 16 or 17 under care, supervision or authority	
49F	87
Sexual activity in the presence of a child under the age of 16	
49G	89
Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority	

<i>Section</i>	<i>Page</i>	
49H	Causing a child under the age of 16 to be present during sexual activity	91
49I	Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity	93
49J	Persistent sexual abuse of a child under the age of 16	95
49K	Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity	98
49L	Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity	99
49M	Grooming for sexual conduct with a child under the age of 16	101
49N	Loitering near schools etc. by sexual offender	103
49O	Failure by a person in authority to protect a child from a sexual offence	106
49P	Abduction or detention of a child under the age of 16 for a sexual purpose	109
49Q	Causing or allowing a sexual performance involving a child	110
49R	Inviting or offering a sexual performance involving a child	111
49S	Facilitating a sexual offence against a child	112
49T	Exception to sexual penetration offences—medical or hygienic purposes	114
49U	Exceptions to offences against children under 16—similarity in age	114
49V	Defence to offence against a child under 16—similarity in age	114
49W	Defences to offences against children under 16—reasonable belief as to age	115
49X	Defences to offences against children aged 16 or 17 or under 18—reasonable belief as to age	116
49Y	Exceptions to offences against children aged 16 or 17—marriage or domestic partnership	117
49Z	Defences to offences against children aged 16 or 17—reasonable belief as to marriage or domestic partnership	118
49ZA	Defences to offences against children aged 16 or 17—reasonable belief as to care, supervision or authority	119
49ZB	Exception to loitering offence	120
49ZC	No defence of mistaken but honest and reasonable belief of certain matters	120
(8C) Incest		121
50A	Definitions	121

<i>Section</i>		<i>Page</i>
50B	Rebuttable presumption as to family relationship	122
50C	Sexual penetration of a child or lineal descendant	123
50D	Sexual penetration of a step-child	124
50E	Sexual penetration of a parent, lineal ancestor or step-parent	125
50F	Sexual penetration of a sibling or half-sibling	125
50G	Exception—medical or hygienic purposes	126
50H	Defence—accused did not consent	126
50I	Exception to offences against section 50D	126
50J	Exceptions to offences against section 50E	127
50K	Consent not a defence	127
(8D)	<i>Child abuse material</i>	128
51A	Definitions	128
51B	Involving a child in the production of child abuse material	132
51C	Producing child abuse material	133
51D	Distributing child abuse material	133
51E	Administering a website used to deal with child abuse material	134
51F	Encouraging use of a website to deal with child abuse material	136
51G	Possession of child abuse material	137
51H	Accessing child abuse material	139
51I	Assisting a person to avoid apprehension	139
51J	Exception—administration of the law	141
51K	Exception—classification	141
51L	Defence of artistic merit or public benefit	142
51M	Exceptions applying to children	143
51N	Defence applying to children	144
51O	Defence—image of oneself	145
51P	Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child's consent	146
51Q	Defence—marriage or domestic partnership	147
51R	Defence—reasonable belief in marriage or domestic partnership	149
51S	Defence—reasonable steps to prevent use of a website for child abuse material	150
51T	Defence—unsolicited possession	151
51U	No defence of mistaken but honest and reasonable belief that child abuse material not offensive	152
51V	Use of random sample evidence in child abuse material cases	152
51W	Application for child abuse material disposal order	154
51X	Child abuse material disposal order	156
51Y	Disposal of thing or material by consent	158

<i>Section</i>	<i>Page</i>
(8E) <i>Sexual offences against persons with a cognitive impairment or mental illness</i>	159
52A	Definitions 159
52B	Sexual penetration of a person with a cognitive impairment or mental illness 162
52C	Sexual assault of a person with a cognitive impairment or mental illness 163
52D	Sexual activity in the presence of a person with a cognitive impairment or mental illness 164
52E	Causing a person with a cognitive impairment or mental illness to be present during sexual activity 166
52F	Exceptions to sexual penetration offence—medical, hygienic, veterinary, agricultural or scientific purposes 168
52G	Exception—marriage or domestic partnership 168
52H	Defence—reasonable belief in marriage or domestic partnership 169
52I	Defence—reasonable belief a person does not have a cognitive impairment or mental illness 169
52J	Defence—reasonable belief the service provider does not provide treatment or support services to the person with a cognitive impairment or mental illness 170
52K	No defence of mistaken but honest and reasonable belief of certain matters 170
(8F) <i>Sexual servitude</i>	173
53A	Definitions 173
53B	Using force, threat etc. to cause another person to provide commercial sexual services 174
53C	Causing another person to provide commercial sexual services in circumstances involving sexual servitude 176
53D	Conducting a business in circumstances involving sexual servitude 177
53E	Aggravated sexual servitude 178
53F	Deceptive recruiting for commercial sexual services 178
53G	Aggravated deceptive recruiting for commercial sexual services 179
(8FA) <i>Other sexual offences</i>	179
54A	Bestiality 179
54B	Exception—veterinary, agricultural or scientific research 180
54C	Abolition of common law offence of wilful exposure 180

<i>Section</i>	<i>Page</i>
(8G) Abrogation of obsolete rules of law	180
62 Abrogation of obsolete rules of law	180
(9) Child stealing	181
63 Child stealing	181
(9A) Kidnapping	182
63A Kidnapping	182
(10) Bigamy	183
64 Bigamy	183
(11) Attempts to procure abortion	183
65 Abortion performed by unqualified person	183
66 Abortion—Abolition of common law offences	185
(12) Concealing the birth of a child	185
67 Concealing birth of a child	185
Division 1A—Piracy	187
70A Piracy with violence	187
70B Piratical acts	188
70C Trading etc. with pirates	190
70D Being found on board piratical vessel and unable to prove non-complicity	190
Division 2—Theft and similar or associated offences	191
71 Definitions	191
72 Basic definition of theft	192
73 Further explanation of theft	192
<i>Theft, robbery, burglary, &c.</i>	197
74 Theft	197
74AA Theft of firearm	198
75 Robbery	198
75A Armed robbery	198
76 Burglary	199
77 Aggravated burglary	200
77A Home invasion	201
77B Aggravated home invasion	203
77C Alternative verdict for charge of aggravated home invasion	205
78 Removal of articles from places open to the public	205
79 Carjacking	206
79A Aggravated carjacking	207
80 Unlawfully taking control of an aircraft	208

<i>Section</i>	<i>Page</i>
<i>Fraud and blackmail</i>	209
80A Extra-territorial offences	209
81 Obtaining property by deception	210
82 Obtaining financial advantage by deception	211
83 False accounting	212
83A Falsification of documents	213
83B Abolition of common law offences of forgery and uttering	218
84 Liability of company officers for certain offences by company	218
85 False statements by company directors etc.	219
86 Suppression etc. of documents	220
87 Blackmail	221
<i>Offences relating to goods stolen, &c.</i>	221
88 Handling stolen goods	221
88A Alternative charges of theft and handling stolen goods	222
89 Advertising rewards for return of goods stolen or lost	223
90 Scope of offences relating to stolen goods	223
<i>Possession of housebreaking implements, &c.</i>	224
91 Going equipped for stealing etc.	224
92 Search for stolen goods	225
93 Procedure and evidence	227
<i>General and consequential provisions</i>	228
95 Husband and wife	228
<i>Secret commissions prohibition</i>	229
175 Definitions	229
176 Receipt or solicitation of secret commission by an agent an indictable offence	232
177 Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent	233
178 Giving or receiving false or misleading receipt or account an indictable offence	233
179 Gift or receipt of secret commission in return for advice given	234
180 Secret commission to trustee in return for substituted appointment	236
181 Aiding and abetting offences within or outside Victoria	237
182 Liability of directors etc. acting without authority	237

<i>Section</i>	<i>Page</i>	
184	Protection of witness giving answers criminating himself	238
185	Stay of proceedings against such witness	239
186	Custom of itself no defence	239
<i>Fraudulently inducing persons to invest</i>		240
191	Fraudulently inducing persons to invest money	240
Division 2AA—Identity crime		243
192A	Definitions	243
192B	Making, using or supplying identification information	244
192C	Possession of identification information	245
192D	Possession of equipment used to make etc. identification documentation	246
192E	Not an offence to attempt to commit an identity crime offence	246
Division 2A—Money laundering etc.		247
193	Definitions	247
194	Dealing with proceeds of crime	248
195	Dealing with property suspected of being proceeds of crime	249
195A	Dealing with property which subsequently becomes an instrument of crime	249
Division 2B—Cheating at gambling		250
195B	Interpretation	250
195C	Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency	253
195D	Facilitating conduct that corrupts or would corrupt a betting outcome of event or event contingency	253
195E	Concealing conduct, agreement or arrangement	254
195F	Use of corrupt conduct information for betting purposes	255
Division 2C—Offences against public order		256
195G	Abolition of certain common law offences against public order	256
195H	Affray	256
195I	Violent disorder	257
Division 3—Criminal damage to property		258
(1) <i>General offences and procedural provisions</i>		258
196	Definition	258
197	Destroying or damaging property	259

<i>Section</i>	<i>Page</i>	
197A	Arson causing death	261
198	Threats to destroy or damage property	261
199	Possessing anything with intent to destroy or damage property	262
201	Lawful excuse	263
201A	Intentionally or recklessly causing a bushfire	264
202	Jurisdiction of magistrates' courts	265
(2) Injuries to buildings &c. by rioters and forcible entries and detainees		266
206	Rioters demolishing buildings	267
207	Forcible entry	268
(3) Interference with mines, sea banks &c., railways and navigation aids		269
225	Conveying water into a mine	269
228	Removing etc. piles of sea banks	270
232	Placing things on railways to obstruct or overturn engine etc.	270
233	Obstructing engine, carriage etc. on railway	271
244	Altering signals or exhibiting false ones	272
245	Removing buoy etc.	272
(4) Injuries to aircraft		273
246A	Endangering safe operation of an aircraft	273
246B	Setting fire etc. to aircraft	273
246C	Endangering safety of aircraft	274
246D	Dangerous goods on aircraft	274
246E	Threats to safety of aircraft	275
(5) False statements		276
247	False statements	276
(6) Computer offences		277
247A	Interpretation	277
247B	Unauthorised access, modification or impairment with intent to commit serious offence	279
247C	Unauthorised modification of data to cause impairment	280
247D	Unauthorised impairment of electronic communication	281
247E	Possession of data with intent to commit serious computer offence	281
247F	Producing, supplying or obtaining data with intent to commit serious computer offence	282
247G	Unauthorised access to or modification of restricted data	283

<i>Section</i>	<i>Page</i>	
247H	Unauthorised impairment of data held in computer disk, credit card or other device	283
247I	Extra-territorial operation of offences	284
(7) Sabotage		284
247J	Interpretation	284
247K	Sabotage	286
247L	Threats to sabotage	286
Division 4—Contamination of goods		288
248	Interpretation	288
249	Contaminating goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss	289
250	Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss	290
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	291
252	Territorial nexus for offences	292
Division 5—Destruction of evidence		292
253	Definitions	292
254	Destruction of evidence	294
255	Corporate criminal responsibility for offence against section 254	295
Division 5A—Intimidation and reprisals relating to witnesses, etc.		297
256	Interpretation	297
257	Intimidation or reprisals relating to involvement in criminal investigation or criminal proceeding	298
Division 6—Perjury		300
314	Perjury	300
315	All evidence material with respect to perjury	302
Division 7—Unlawful oaths		302
316	Unlawful oaths to commit treason, murder etc.	302
Division 8—Offences connected with explosive substances		305
317	Offences connected with explosive substances	305
317A	Bomb hoaxes	308

<i>Section</i>	<i>Page</i>
Division 8A—Driving offences connected with emergency workers, custodial officers, youth justice custodial workers and emergency service vehicles	310
317AB Interpretation	310
317AC Intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving	311
317AD Aggravated offence of intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving	313
317AE Recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving	315
317AF Aggravated offence of recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving	317
317AG Damaging an emergency service vehicle	318
Division 9—Driving offences connected with motor vehicles	320
317B Interpretation	320
318 Culpable driving causing death	321
319 Dangerous driving causing death or serious injury	324
319AA Dangerous or negligent driving while pursued by police	325
Division 9AA—Offences connected with dangerous, menacing and restricted breed dogs and related court powers	327
Subdivision 1—Offences	327
319A Definitions	327
319B Failure to control dangerous, menacing or restricted breed dog that kills person	328
319C Recklessness as to whether controlling dangerous, menacing or restricted breed dog may place another person in danger of death	329
Subdivision 2—Disqualification of person from owning or being in charge or control of a dog	330
319D Court may disqualify person from owning or being in charge or control of a dog	330
319E Search warrant for failure to comply with court order	330
319F Certain sections of the Domestic Animals Act 1994 apply to search warrant under this section	331
319G Order under section 319D may be suspended	331

<i>Section</i>	<i>Page</i>	
319H	Person subject to order under section 319D may apply for variation, suspension or revocation of order	332
319I	Power of court to vary etc. order under section 319D	332
319J	Person may not make another application for variation, suspension or revocation of order for 12 months	333
319K	Orders under section 319D are to operate consecutively	333
319L	Person must comply with order under section 319D	333
Division 9A—Penalties for certain common law offences		334
320	Maximum term of imprisonment for certain common law offences	334
320A	Maximum term of imprisonment for common assault in certain circumstances	335
Division 10—Conspiracy		339
321	Conspiracy to commit an offence	339
321A	Agreements to commit offences outside Victoria	340
321B	As to consequences of acquittal of co-conspirators	341
321C	Penalties for conspiracy	341
321D	Application of certain provisions	343
321E	Limitations on prosecution	343
321F	Abolition of certain offences of conspiracy at common law	344
Division 11—Incitement		345
321G	Incitement	345
321H	Incitement to commit offences outside Victoria	346
321I	Penalties for incitement	346
321J	Application of certain provisions	348
321K	Limitations on prosecution	349
321L	Incitement at common law abolished	349
Division 11A—Recruiting a child to engage in criminal activity		349
321LA	Definitions	349
321LB	Recruiting a child to engage in criminal activity	350
321LC	Child need not engage in conduct or be prosecuted or found guilty of an offence	350
321LD	Limitation on prosecution	350
Division 12—Attempts		351
321M	Attempt	351
321N	Conduct constituting attempt	351
321O	Attempts to commit offence outside Victoria	352
321P	Penalties for attempt	352

<i>Section</i>	<i>Page</i>
321Q	Limitations on prosecution 355
321R	Application of Division 356
321S	Abolition of attempt at common law 356
Part IA—Abolition of obsolete offences	357
322A	Maintenance and certain other offences abolished 357
Part IB—Abolition of historical classifications	358
322B	Abolition of distinctions between felony and misdemeanour 358
322C	Nomenclature 358
322D	Transitional provisions 359
322E	Treason and misprision of treason not affected 360
322F	Other enactments not affected 360
Part IC—Self-defence, duress, sudden or extraordinary emergency and intoxication	361
Division 1—General	361
322G	Application of Part 361
322H	Definitions 361
322I	Onus of proof 361
322J	Evidence of family violence 361
Division 2—Self-defence	364
322K	Self-defence 364
322L	Self-defence does not apply to a response to lawful conduct 365
322M	Family violence and self-defence 365
322N	Abolition of self-defence at common law 366
Division 3—Duress	366
322O	Duress 366
322P	Family violence and duress 366
322Q	Abolition of duress at common law 367
Division 4—Sudden or extraordinary emergency	367
322R	Sudden or extraordinary emergency 367
322S	Abolition of necessity at common law 367
Division 5—Intoxication	367
322T	Intoxication 367

<i>Section</i>	<i>Page</i>
Part II—Offenders	370
Division 1—Abettors, accessories and concealers of offences	370
(1) <i>Complicity in commission of offences</i>	370
323	370
324	371
324A	372
324B	372
324C	372
(3) <i>Accessories</i>	373
325	373
(4) <i>Concealers of offences</i>	375
326	375
327	376
328	380
329	381
330	382
Division 3—Criminal liability of married persons	384
336	384
337	385
338	385
339	385
Part IIA—Extra-territorial offences	387
340	387
341	389
342	390
343	391
344	391
345	392
Part III—Procedure and punishment	393
Division 1—Pleading procedure, proof &c.	393
(14) <i>Evidence. Depositions. Subpoenas and warrants against witnesses</i>	398
404	401

<i>Section</i>	<i>Page</i>
405	Meaning of term <i>official record</i> 402
(19) Verdicts, Attempts, &c.	406
420A	Where person charged with unlawful publication of defamatory matter 406
421	Alternative verdicts on charge of murder 406
422	Alternative verdict on charge of causing serious injury in circumstances of gross violence 407
422A	Alternative verdict for certain charges relating to driving 408
426	Alternative verdict for identity crime offences 410
427	Alternative verdict for destroying property charges 410
428	Alternative verdict for charges of unauthorised modification of data to cause impairment 411
429	Alternative verdict for charges of unauthorised impairment of electronic communication 411
435	Alternative verdict for charges relating to riots 412
(29A) Giving name and address on demand	416
456AA	Requirement to give name and address 416
(30) Apprehension of offenders	418
457	No person to be arrested without warrant except under this Act etc. 418
458	Person found committing offences may be arrested without warrant by any person 419
459	Powers of police officer or protective services officer to apprehend offenders 421
459A	Entry and search of premises 422
461	Arrest on reasonable grounds not to be taken to be unlawful 423
462	Definition of <i>finds committing</i> 424
462A	Use of force to prevent the commission of an indictable offence 424
463A	Arrest of offenders on board aircraft 424
463B	Prevention of suicide 425
(30A) Custody and investigation	425
464	Definitions 425
464AA	Digital recordings 445
464AAB	Investigating official to ask whether person in custody is an Aboriginal person 445
464A	Detention of person in custody 445
464B	Questioning or investigation of person already held for another matter 448
464C	Right to communicate with friend, relative and legal practitioner 460

<i>Section</i>	<i>Page</i>	
464D	Right to an interpreter	461
464E	Persons under 18 years	462
464F	Right of foreign national to communicate with consular office	463
464FA	Victorian Aboriginal Legal Service to be notified if Aboriginal person taken into custody	464
464G	Recording of information required to be given to person in custody	465
464H	Recording of confessions and admissions	466
464I	No power to detain person not under arrest	468
464J	Right to remain silent etc. not affected	468
464JA	Offences in relation to recordings	469
464JB	Court may give directions in relation to a recording	475
464JC	Retention of copy of recording	475
464JD	Use of recordings for training, teaching or testing purposes	477
	<i>Fingerprinting</i>	478
464K	Fingerprinting of adults and children aged 15 or above	478
464L	Fingerprinting of children aged 14 or under	481
464M	Children's Court may order fingerprinting	484
464N	Taking of fingerprints	488
464NA	Fingerscanning for identification purposes	488
464O	Destruction of records	490
464P	Records of juvenile	493
464Q	Evidence of fingerprints	494
	<i>Forensic procedures and DNA profile samples</i>	495
464R	Forensic procedure on adult	495
464S	Informed consent	496
464SA	Senior police officer may authorise non-intimate compulsory procedure for certain adults	498
464SB	Making or refusing authorisation	500
464SC	DNA profile sample from DNA person	502
464SD	Informed consent—DNA person and their parent or guardian	503
464SE	Senior police officer may authorise the taking of a DNA profile sample from DNA person	506
464SF	Making or refusing authorisation—DNA profile sample	508
464T	Court may order compulsory procedure	511
464U	Forensic procedure on child	516
464V	Interim orders	522
464W	Application by audio link or audio visual link for interim order	524
464X	Warrants	528

<i>Section</i>	<i>Page</i>	
464Y	Caution before forensic procedure or taking of a DNA profile sample	529
464Z	Procedure for taking samples etc.	530
464ZA	Execution of authorisation, direction or order	537
464ZB	Analysis of samples	541
464ZC	Analysis of material found at scene of offence etc.	542
464ZD	Forensic reports to be made available	543
464ZE	Evidence relating to forensic procedures or DNA profile samples	544
464ZF	Forensic procedure following the commission of forensic sample offence	548
464ZFAAA	Forensic procedure following finding of not guilty because of mental impairment	554
464ZFAA	Notice to attend for forensic procedure	558
464ZFAB	DNA profile sample from registrable offenders under the Sex Offenders Registration Act 2004	561
464ZFAC	Senior police officer authorisation—to take DNA profile sample from certain adults	564
464ZFAD	Notice to attend—to take DNA profile sample from certain adults	568
464ZFAE	Senior police officer may authorise taking a DNA profile sample from certain adults and children who have previously provided a sample	570
464ZFA	Warrants issued for forensic procedures under section 464ZF or 464ZFAAA	572
464ZFB	Retention of information following finding of guilt etc.	576
464ZFC	Destruction of information following finding of guilt etc.	581
464ZFD	Victorian DNA database	582
464ZFE	Report to Attorney-General	583
464ZG	Destruction of identifying information	585
464ZGA	Forensic information from juveniles	588
464ZGB	Samples given voluntarily	589
464ZGC	Withdrawal of consent prior to giving sample	592
464ZGD	Procedure to take sample	592
464ZGE	Safeguards after giving sample	593
464ZGF	Application to court where consent to retention of sample withdrawn	597
464ZGFA	Voluntary samples given by police or VIFM personnel	599
464ZGFB	Destruction of samples given by police and VIFM personnel and storage of DNA information	601
<i>DNA database systems</i>		604
464ZGG	Supply of forensic material for purposes of DNA database	604

<i>Section</i>	<i>Page</i>	
464ZGH	Use of information on Victorian DNA database	606
464ZGI	Permissible matching of DNA profiles	608
464ZGJ	Recording, retention and removal of identifying information on DNA database	610
464ZGK	Disclosure of Victorian information	612
<i>Inter-jurisdictional enforcement</i>		615
464ZGL	Registration of orders	615
464ZGM	Carrying out of registered orders	616
464ZGN	Arrangements for transmission of information on DNA database	616
464ZGO	Taking, retention and use of forensic material authorised by laws of other jurisdictions	619
<i>General</i>		620
464ZH	Immunity of medical practitioners, nurses, midwives, dentists and other persons	620
464ZI	Supreme Court—limitation of jurisdiction	621
464ZJ	Regulations	622
464ZK	Operation of other Acts	623
464ZL	Validation of certain orders	623
464ZLA	Validation of sample taken in accordance with section 464ZFAB	625
<i>Oversight by IBAC</i>		626
464ZM	Functions of IBAC	626
464ZN	Chief Commissioner of Police to report to IBAC	626
464ZO	Inspection of records by authorised officers	628
464ZP	IBAC to report to the Attorney-General	630
464ZQ	Recommendations	631
464ZR	Attorney-General may make a complaint to the IBAC	631
464ZS	Immunity of the IBAC and sworn IBAC Officers	631
<i>(31) Search warrants for and seizure of things</i>		632
465	Issue of search warrant by magistrate	632
465AAA	Warrant may authorise the giving of a direction requiring assistance from person with knowledge of a computer or computer network	634
465AA	Power to require assistance from person with knowledge of a computer or computer network	637
465A	Notice that seized thing is being held for purposes of Confiscation Act 1997	641
465B	Application for tainted property to be held or retained—return of warrant to court	641
465C	Court may make direction	642
465D	Notice of direction under section 465C	642

<i>Section</i>	<i>Page</i>	
465E	Effect of directions under sections 465(1B) and 465C	643
466	Justice may issue warrant to search for gunpowder	643
469AA	Seizure and destruction of documents containing libel	644
469A	Power of persons to search aircraft	644
(32) Search warrants for women and girls		645
470	Power of search when female unlawfully detained for immoral purposes	645
Division 2—Punishment		647
(1) Sentences for offences		647
476B	Young person sentenced to life imprisonment	647
479A	Rescuing of prisoner from lawful custody	648
479B	Aiding a prisoner in escaping	648
479C	Escape and related offences	649
(3) Execution of sentences		651
493	Sentences of imprisonment etc. to be carried out according to law relating to prisons	651
Division 3—Regulations		653
505A	Regulations	653
Part IV—Probation and parole provisions		654
506	Definitions	654
Division 1—Probation		656
(1) Probation officers		656
507	Probation officers	656
Division 3—Regulations		659
542	Regulations	659
Part V—Property of persons convicted of treason or an indictable offence. Orders as to costs		660
545	Persons convicted of treason or indictable offence may pay costs	660
547	Definition of <i>forfeiture</i> and <i>convict</i>	661
548	When convict shall cease to be subject to operation of this Part	661
562	Execution of judgments against convict provided for	662
563	Proceedings to recover property of convict from third person	662

<i>Section</i>		<i>Page</i>
564	Third person etc. accountable to convict when property reverts	663
565	Saving of general law as to indictable offence	663
Part 7—General		664
585	Supreme Court—limitation of jurisdiction	664
585AAA	Regulations	664
585AA	Transitional provisions—(Crimes (Theft) Act 1973)	665
585AB	Transitional provisions—(Crimes (Criminal Damage) Act 1978)	666
585AC	Transitional provisions—(Crimes (Classification of Offences) Act 1981)	667
585AD	Transitional provisions—(Crimes (Conspiracy and Incitement) Act 1984)	667
585AE	Transitional provisions—(Crimes (Custody and Investigation) Act 1988)	668
585AF	Transitional provisions—(Crimes (Fingerprinting) Act 1988)	669
585A	Transitional provisions—(Crimes (Sexual Offences) Act 1991)	669
585B	Transitional provisions—(Crimes (Amendment) Act 1993)	671
585C	Transitional provisions—(Miscellaneous Acts (Omnibus Amendments) Act 1996)	671
585D	Transitional provisions—(Sentencing and Other Acts (Amendment) Act 1997)	672
586	Transitional provisions (Sentencing (Amendment) Act 1997)	673
587	Transitional provisions (Crimes (Amendment) Act 1997—Part 2)	673
588	Transitional provisions (Crimes (Amendment) Act 1997—Part 3)	674
589	Transitional provisions (Crimes (Amendment) Act 1997—Part 4)	675
590	Transitional provision—Crimes, Confiscation and Evidence Acts (Amendment) Act 1998	676
591	Transitional provision—Crimes (Amendment) Act 1998	677
592	Transitional provisions—Magistrates' Court (Amendment) Act 1999	677
593	Transitional provisions—Crimes (Amendment) Act 2000	677
593A	Transitional provision—Crimes (Questioning of Suspects) Act 2000	679
594	Transitional provision—Magistrates' Court (Committal Proceedings) Act 2000	679

<i>Section</i>	<i>Page</i>	
596	Transitional provisions—Crimes (DNA Database) Act 2002	680
597	Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003	681
598	Transitional provision—Crimes (Stalking) Act 2003	681
599	Transitional provision—Crimes (Money Laundering) Act 2003	682
600	Transitional provisions—Crimes (Dangerous Driving) Act 2004	682
601	Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004	683
602	Transitional provision—Crimes (Contamination of Goods) Act 2005	684
603	Transitional provision—Crimes (Homicide) Act 2005	684
604	Transitional provision—Justice Legislation (Miscellaneous Amendments) Act 2006	684
605	Transitional provision—Justice Legislation (Further Miscellaneous Amendments) Act 2006	685
606	Transitional provision—Courts Legislation (Jurisdiction) Act 2006	685
606A	Transitional provision—Crimes (Sexual Offences) Act 2006	686
607	Transitional provision—Crimes (Sexual Offences) (Further Amendment) Act 2006	687
608	Transitional provisions—Crimes Amendment (DNA Database) Act 2007	687
609	Transitional provision—Crimes Amendment (Rape) Act 2007	688
610	Transitional provision—Crimes Amendment (Child Homicide) Act 2008	689
612	Transitional provision—Justice Legislation Amendment (Sex Offences Procedure) Act 2008	689
613	Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009	690
614	Transitional provision—Justice Legislation Miscellaneous Amendments Act 2009	690
615	Transitional provision—Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009	691
616	Transitional provision—Justice Legislation Further Amendment Act 2010	691
617	Transitional provision—Crimes Amendment (Bullying) Act 2011	691
618	Transitional provision—Crimes Amendment (Gross Violence Offences) Act 2013	692

<i>Section</i>	<i>Page</i>	
619	Transitional provision—Crimes Amendment (Integrity in Sports) Act 2013	692
620	Transitional provision—Crimes Amendment (Investigation Powers) Act 2013	693
621	Transitional provision—Crimes Amendment (Grooming) Act 2014	693
621A	Transitional provision—Justice Legislation Amendment (Confiscation and Other Matters) Act 2014	693
622	Transitional provision—Crimes Amendment (Protection of Children) Act 2014	694
623	Transitional provision—Crimes Amendment (Abolition of Defensive Homicide) Act 2014	694
624	Transitional provisions—Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014	695
625	Transitional provision—Sentencing Amendment (Emergency Workers) Act 2014	695
626	Transitional provision—Crimes Amendment (Sexual Offences and Other Matters) Act 2014	696
627	Transitional provision—Justice Legislation Amendment Act 2015	697
628	Transitional provision—Crimes Amendment (Child Pornography and Other Matters) Act 2015	697
628A	Transitional provision—Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017	698
629	Transitional provision—Crimes Amendment (Sexual Offences) Act 2016	699
630	Transitional provision—Police and Justice Legislation Amendment (Miscellaneous) Act 2016	699
631	Transitional provision—Crimes Legislation Further Amendment Act 2017	700
632	Transitional provision—Family Violence Protection Amendment Act 2017	700
633	Transitional provision—Justice Legislation Amendment (Victims) Act 2018	700
634	Transitional provision—Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017	701
635	Transitional provision—Justice Legislation Amendment (Police and Other Matters) Act 2019	702
636	Transitional provision—Children Legislation Amendment Act 2019	702
637	Transitional provision—Crimes Amendment (Manslaughter and Related Offences) Act 2020	703

<i>Section</i>	<i>Page</i>
Schedules	705
First Schedule	705
Schedule 7—Summary offences for which a person may be fingerprinted	707
Schedule 8—Forensic sample offences	708
Schedule 9—DNA sample offences	720
<hr/> <hr/>	
Endnotes	726
1 General information	726
2 Table of Amendments	728
3 Amendments Not in Operation	764
4 Explanatory details	765

Authorised Version No. 294

Crimes Act 1958

No. 6231 of 1958

Authorised Version incorporating amendments as at
1 March 2021

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.

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**;

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

S. 2A(1) def. of *baseline sentence* inserted by No. 52/2014 s. 11, repealed by No. 34/2017 s. 12.

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),
amended by
No. 17/2014
s. 160(Sch. 2
item 28).

legal practitioner means an Australian lawyer;

S. 2A(1) def. of
*medicinal
cannabis
product*
inserted by
No. 20/2016
s. 143,
repealed by
No. 34/2019
s. 45.

* * * * *

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;

Crimes Act 1958
No. 6231 of 1958

* * * * *

S. 2A(1) def. of
patient medicinal cannabis access authorisation
inserted by
No. 20/2016
s. 143,
repealed by
No. 34/2019
s. 45.

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

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

* * * * *

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

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

S. 2A(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)).

* * * * *

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
*standard
sentence*
inserted by
No. 34/2017
s. 24.

standard sentence, in relation to an offence,
has the same meaning as in the **Sentencing
Act 1991**.

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).

* * * * *

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

**2B Offences under this Act deemed to be indictable
offences**

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

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

(a) level 1 imprisonment (life); or

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

as the court determines.

* * * * *

S. 3 substituted by Nos 8679 s. 2, 37/1986 s. 8, amended by Nos 49/1991 s. 119(1) (Sch. 2 item 1(a)), 52/2014 s. 12 (ILA s. 39B(1)).

S. 3(1)(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).

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

Note to s. 3(1) inserted by No. 65/2016 s. 20(1), repealed by No. 34/2017 s. 25(1).

S. 3(2)
inserted by
No. 52/2014
s. 12,
substituted by
No. 69/2014
s. 11,
repealed by
No. 34/2017
s. 13(1),
new s. 3(2)
inserted by
No. 34/2017
s. 25(2).

- (2) The standard sentence for murder is—
- (a) 30 years if the court, in determining sentence, is satisfied that the prosecution has proved beyond reasonable doubt that—
 - (i) the person murdered was a custodial officer on duty or an emergency worker on duty; and
 - (ii) at the time of carrying out the conduct the accused knew or was reckless as to whether that person was a custodial officer or an emergency worker; and
 - (b) in any other case, 25 years.

Notes

- 1 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 2 Murder is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

S. 3(3)
inserted by
No. 69/2014
s. 11,
repealed by
No. 34/2017
s. 13(1),
new s. 3(3)
inserted by
No. 34/2017
s. 25(2).

- (3) In subsection (2)(a) *custodial officer on duty*, *custodial officer*, *emergency worker on duty* and *emergency worker* have the same meanings as in section 10AA of the **Sentencing Act 1991**.

Note to s. 3
inserted by
No. 69/2014
s. 11,
repealed by
No. 34/2017
s. 13(2).

* * * * *

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 of murder as though he had killed that person intentionally.

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)).

(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

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

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

* * * * *

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,
repealed by
No. 63/2014
s. 3(1).

S. 4A
inserted by
No. 72/2014
s. 3.

4A Manslaughter—single punch or strike taken to be dangerous act

- (1) This section applies to a single punch or strike that—
 - (a) is delivered to any part of a person's head or neck; and
 - (b) by itself causes an injury to the head or neck.
- (2) A single punch or strike is to be taken to be a dangerous act for the purposes of the law relating to manslaughter by an unlawful and dangerous act.
- (3) For the purposes of subsection (2), it is irrelevant that the single punch or strike is one of a series of punches or strikes.
- (4) A single punch or strike may be the cause of a person's death even if the injury from which the person dies is not the injury that the punch or strike itself caused to the person's head or neck but another injury resulting from an impact to the person's head or neck, or to another part of the person's body, caused by the punch or strike.

Example

If a person punches another person to the head, and that other person falls, hits their head on the road, and dies from the injury resulting from their head hitting the road, the punch may be the cause of their death.

- (5) Nothing in this section limits the circumstances in which a punch or strike may be an unlawful and dangerous act for the purposes of the law relating to manslaughter by an unlawful and dangerous act.

(6) In this section—

injury has the same meaning as in
Subdivision (4);

strike means a strike delivered with any part of the
body.

Notes

- 1 Under section 11 of the **Jury Directions Act 2015**, after the close of all evidence and before the closing address of the prosecution, defence counsel must inform the trial judge whether each element of the offence is or is not in issue, including—
 - whether the punch or strike was a dangerous act; and
 - whether the punch or strike caused the person's death.
- 2 Under section 12 of the **Jury Directions Act 2015**, the prosecution and defence counsel must each request that the trial judge give, or not give, to the jury particular directions in respect of the matters in issue, which may include—
 - whether the punch or strike was a dangerous act; and
 - whether the punch or strike caused the person's death.

Notes to s. 4A
amended by
No. 14/2015
s. 69(7)(8).

5 Punishment of manslaughter

Whosoever is convicted of manslaughter shall
be liable to level 2 imprisonment (25 years
maximum).

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),
65/2016
s. 20(2),
16/2020 s. 3.

Notes

- 1 Manslaughter is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Notes to s. 5
inserted by
No. 72/2014
s. 4,
amended by
No. 65/2016
s. 20(3)(4).

- 2 Sections 9B and 9C of the **Sentencing Act 1991** require that, in certain circumstances, a term of imprisonment be imposed for manslaughter and a non-parole period of not less than 10 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.

Note 3 to s. 5
repealed by
No. 23/2020
s. 9.

* * * * *

- 4 Sections 9B and 9C of the **Sentencing Act 1991** do not apply unless the DPP serves and files a notice under section 9A of that Act.

S. 5A
inserted by
No. 7/2008
s. 3,
amended by
No. 16/2020
s. 4.

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 constitute manslaughter is guilty of child homicide and liable to level 2 imprisonment (25 years maximum).

Note

Child homicide is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to s. 5A
inserted by
No. 65/2016
s. 20(5).

S. 5B
inserted by
No. 16/2020
s. 5.

5B Homicide by firearm

- (1) A person who, by discharging a firearm, causes the death of another person in circumstances that constitute manslaughter is guilty of homicide by firearm and liable to level 2 imprisonment (25 years maximum).
- (2) The standard sentence for homicide by firearm is 13 years.
- (3) In this section—
discharge has the same meaning as in section 31C(4);

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

Notes

- 1 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 2 Homicide by firearm is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order unless the circumstances set out in paragraphs (a) to (e) of that section exist.

5C Relationship between manslaughter, child homicide and homicide by firearm

S. 5C
inserted by
No. 16/2020
s. 5.

Nothing in section 5A or 5B is to be taken to provide that conduct that constitutes any one of the following offences is, because it constitutes that offence, incapable of constituting another of those offences—

- (a) manslaughter;
- (b) child homicide;
- (c) homicide by firearm.

6 Infanticide

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.

- (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).

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

- (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. 6A
inserted by
No. 7546 s. 2.

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

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

- (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.

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).

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

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

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

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.

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),
63/2014
s. 3(2),
16/2020 s. 6.

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

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 homicide by firearm or of being accessory to murder or manslaughter or child homicide or homicide by firearm, 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

- (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. 9AA
inserted by
No. 65/1991
s. 3.

Pt 1 Div. 1
Subdiv. (1AA)
(Heading and
ss 9AB–9AJ)
inserted by
No. 77/2005
s. 6,
repealed by
No. 63/2014
s. 3(3).

(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.

9A Treason

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

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;

S. 9A(1)(b)
amended by
No. 60/2013
s. 6(Sch. 2
item 1).

(b) kills the eldest child 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—

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).

(g) level 1 imprisonment (life); or

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

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).

as the court determines.

(2) A person who—

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).

(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.

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

* * * * *

No. 6103 s. 15.

(4) Offences against the person

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).

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

15 Definitions

In this subdivision—

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

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

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

child means any person under the age of 18 years;

female genital mutilation means all or any of the following—

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

- (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;

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

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

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

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

injury means—

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

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

whether temporary or permanent;

medical practitioner means—

- (a) a registered medical practitioner; or

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

- (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 procedure* inserted by No. 58/2008 s. 10(1).

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 *midwife* inserted by No. 46/1996 s. 3.

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 *offensive weapon* inserted by No. 6/2013 s. 3(c).

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

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;

<p><i>prohibited female genital mutilation</i> means female genital mutilation the performance of which would be an offence under this Act if carried out in the State;</p>	<p>S. 15 def. of <i>prohibited female genital mutilation</i> inserted by No. 46/1996 s. 3.</p>
<p><i>registered medical practitioner</i> means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);</p>	<p>S. 15 def. of <i>registered medical practitioner</i> 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).</p>
<p><i>registered 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. 15 def. of <i>registered midwife</i> 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).</p>
<p><i>registered nurse</i> 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);</p>	<p>S. 15 def. of <i>registered nurse</i> inserted by No. 58/2008 s. 10(1), substituted by No. 13/2010 s. 51(Sch. item 17.1).</p>

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).

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
serious injury
substituted by
Nos 58/2008
s. 10(2),
6/2013 s. 3(b).

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
woman
inserted by
No. 58/2008
s. 10(1).

woman means a female person of any age.

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

15A Causing serious injury intentionally in circumstances of gross violence

- (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).

Note to
s. 15A(1)
inserted by
No. 65/2016
s. 20(6),
repealed by
No. 23/2020
s. 10(1).

* * * * *

- (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 entered into an agreement, arrangement or understanding with 2 or more other persons to cause a serious injury;

S. 15A(2)(c)
substituted by
No. 63/2014
s. 7(3).

Note

See Subdivision (1) (Complicity in commission of offences) of Division 1 of Part II.

- (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 to
s. 15A
amended by
Nos 69/2014
s. 8(1)(2),
28/2016
s. 6(1),
65/2016
s. 20(7),
substituted by
No. 23/2020
s. 10(2).

Notes

- 1 See section 422(1) for an alternative verdict.
- 2 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.
- 3 See section 10 of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an offence against section 15A(1) 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.
- 4 If a victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty, see section 10AA(1) of the **Sentencing Act 1991** for the requirement that a non-parole period of not less than 5 years be fixed unless the court finds under section 10A of that Act that a special reason exists.

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

15B Causing serious injury recklessly in circumstances of gross violence

- (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).

* * * * *

Note to
s. 15B(1)
inserted by
No. 65/2016
s. 20(8),
repealed by
No. 23/2020
s. 11(1).

- (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 entered into an agreement, arrangement or understanding with 2 or more other persons to cause a serious injury;

S. 15B(2)(c)
substituted by
No. 63/2014
s. 7(4).

Note

See Subdivision (1) (Complicity in commission of offences) of Division 1 of Part II.

- (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(2) for an alternative verdict.
- 2 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.
- 3 See section 10 of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an offence against section 15B(1) and that a non-parole period of not less than 4 years be fixed under section 11 of that Act

Notes to
s. 15B
amended by
Nos 69/2014
s. 8(1)(2),
28/2016
s. 6(1),
65/2016
ss 20(9), 25,
substituted by
No. 23/2020
s. 11(2).

unless the court finds under section 10A of that Act that a special reason exists.

- 4 If a victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty, see section 10AA(1) of the **Sentencing Act 1991** for the requirement that a non-parole period of not less than 5 years be fixed unless the court finds under section 10A of that Act that a special reason exists.

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).

Notes to s. 16
inserted by
No. 69/2014
s. 8(3),
amended by
Nos 28/2016
s. 6(2),
65/2016
s. 20(10)(11),
48/2018 s. 85,
substituted by
No. 23/2020
s. 12.

Notes

- 1 An offence against this section is a category 1 offence under the **Sentencing Act 1991** if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty and the offender knew or was reckless as to whether the victim was such a person. See section 5(2G) and (2GA) of that Act for the requirement to impose a custodial order or other specified order for this offence if committed in those circumstances.
- 2 An offence against section 16 (other than a category 1 offence referred to in note 1) is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.
- 3 See section 10AA(1) of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an offence against section 16 and that a non-parole period of not less than 3 years be fixed under section 11 of that Act if the

victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty unless the court finds under section 10A of that Act that a special reason exists.

- 4 See section 10AA(2) and (3) of the **Sentencing Act 1991** that allow a youth justice centre order for a term of not less than 3 years to be made in certain circumstances in respect of a young offender for an offence against section 16 if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty.

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).

Notes

- 1 An offence against this section is a category 1 offence under the **Sentencing Act 1991** if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty and the offender knew or was reckless as to whether the victim was such a person. See section 5(2G) and (2GA) of that Act for the requirement to impose a custodial order or other specified order for this offence if committed in those circumstances.
- 2 See section 10AA(1) of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an offence against section 17 and that a non-parole period of not less than 2 years be fixed under section 11 of that Act if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty unless the court finds under section 10A of that Act that a special reason exists.
- 3 See section 10AA(2) and (3) of the **Sentencing Act 1991** that allow a youth justice centre order for a term of not less than 2 years to be made in certain circumstances in respect of a young offender for an offence against section 17 if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty.

Notes to s. 17 inserted by No. 69/2014 s. 8(4), amended by Nos 28/2016 s. 6(3), 48/2018 s. 86, substituted by No. 23/2020 s. 13.

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).

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).

Notes to s. 18
inserted by
No. 69/2014
s. 8(5),
amended by
Nos 28/2016
s. 6(4),
48/2018 s. 87,
substituted by
No. 23/2020
s. 14.

Notes

- 1 An offence against this section is a category 1 offence under the **Sentencing Act 1991** if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty and the offender knew or was reckless as to whether the victim was such a person. See section 5(2G) and (2GA) of that Act for the requirement to impose a custodial order or other specified order for this offence if committed in those circumstances.
- 2 See section 10AA(4) of the **Sentencing Act 1991** for the requirement that a term of imprisonment of not less than 6 months be imposed for an offence against section 18 if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty unless the court finds under section 10A of that Act that a special reason exists.
- 3 See section 10AA(2) and (3) of the **Sentencing Act 1991** that allow a youth justice centre order for a term of not less than 6 months to be made in certain circumstances in respect of a young offender for an offence against section 18 if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty.

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

(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. 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
inserted by
No. 19/1993
s. 3,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 13),
46/2008 s. 272,
repealed by
No. 17/2015
s. 3.

* * * * *

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).

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. 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).

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).

21A Stalking

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

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

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

(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—

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

(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;

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

(ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material—

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

(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;

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

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

- (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);

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

- (da) making threats to the victim;

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

- (db) using abusive or offensive words to or in the presence of the victim;

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

- (dc) performing abusive or offensive acts in the presence of the victim;

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

- (dd) directing abusive or offensive acts towards the victim;

- (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;

S. 21A(2)(g)
substituted by
No. 20/2011
s. 3(2).

- (g) acting in any other way that could reasonably be expected—
 - (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—
- (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(3)
substituted by
No. 105/2003
s. 4(2),
amended by
No. 20/2011
s. 3(4).

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.

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).

* * * * *

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

(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(7)
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.

(8) In this section—

mental harm includes—

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

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

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).

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. 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).

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. 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).

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).

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).

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. 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).

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).

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).

29 Using firearm to resist arrest etc.

(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).

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).

(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.

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

(3) In this section—

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

(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.

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).

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

(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—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years
maximum).

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

31 Assaults

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

(1) A person who—

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

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

(b) assaults or threatens to assault, resists or intentionally obstructs an emergency worker on duty or a youth justice custodial worker on duty, or a custodial officer on duty, knowing or being reckless as to whether the person was an emergency worker or a youth justice custodial worker or a custodial officer; or

S. 31(1)(b)
amended by
Nos 43/2011
s. 16, 37/2014
s. 10(Sch.
item 36.3),
substituted by
No. 69/2014
s. 13(1),
amended by
Nos 28/2016
s. 7(1),
43/2017
s. 48(1).

(ba) assaults or threatens to assault, resists or intentionally obstructs a person lawfully assisting an emergency worker on duty or a youth justice custodial worker on duty, or a custodial officer on duty, knowing or being reckless as to whether the person was assisting an emergency worker or a youth justice custodial worker or a custodial officer; or

S. 31(1)(ba)
inserted by
No. 69/2014
s. 13(1),
amended by
Nos 20/2015
s. 21, 28/2016
s. 7(2),
43/2017
s. 48(2).

(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).

S. 31(2A)
inserted by
No. 69/2014
s. 13(2).

(2A) In subsection (1)—

S. 31(2A)
defs of
*custodial
officer on duty
and custodial
officer*
inserted by
No. 28/2016
s. 7(3),
amended by
No. 38/2017
s. 81(1).

custodial officer on duty and *custodial officer*
have the same meanings as in section 10AA
of the **Sentencing Act 1991**;

emergency worker on duty, emergency worker, youth justice custodial worker on duty and youth justice custodial worker have the same meanings as in section 10AA of the **Sentencing Act 1991**.

S. 31(2A)
defs of
*emergency
worker on
duty and
emergency
worker*
amended as
*emergency
worker on
duty,
emergency
worker, youth
justice
custodial
worker on
duty and
youth justice
custodial
worker* by
No. 43/2017
s. 48(3).

(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—

- (a) a firearm (within the meaning of the **Firearms Act 1996**); or

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

(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

(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).

31C Discharging a firearm reckless to safety of a police officer or a protective services officer

S. 31C
inserted by
No. 3/2019
s. 3.

- (1) A person commits an offence if—
- (a) the person discharges a firearm and is reckless as to the safety of another person (the *victim*) due to the discharge of the firearm; and
 - (b) the victim is a police officer on duty or a protective services officer on duty; and
 - (c) the person knows or is reckless as to whether the victim is a police officer or a protective services officer.
- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).
- (3) Subsection (1) does not apply to conduct engaged in by a person who is—
- (a) a police officer or a protective services officer acting in the course of the police officer's or the protective services officer's official duties when authorised to discharge a firearm by the Chief Commissioner of Police; or
 - (b) a senior IBAC Officer carrying out the purposes for which firearms may be used under Part 5 of the **Independent Broad-based Anti-corruption Commission Act 2011** and as authorised under that Part; or
 - (c) a member of a police force or police service of the Commonwealth or of another State or a Territory discharging a firearm issued to the member for the performance of a detailed duty; or

- (d) a prison guard who holds a licence under the **Firearms Act 1996** issued for the requirement of the occupation of prison guard discharging a firearm as authorised under that licence while acting in the course of the prison guard's duties in the immediate pursuit of another person who is under the prison guard's custody; or
- (e) a person who holds a licence under the **Firearms Act 1996**, discharging a firearm the person is authorised to use under the licence in the course of the person's duties under—
 - (i) the **Conservation, Forests and Lands Act 1987**; or
 - (ii) the **Livestock Disease Control Act 1994**; or
 - (iii) the **Prevention of Cruelty to Animals Act 1986**.

Notes

- 1 An offence against this section if committed in certain circumstances is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that section exist.
- 2 Section 16(3E) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section if committed in certain circumstances must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

(4) In this section—

discharge means the discharge of shot or a bullet or other missile from a firearm;

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

police officer on duty means a police officer who is performing any duty or exercising any power as such an officer;

protective services officer on duty means a protective services officer who is performing any duty or exercising any power as such an officer;

senior IBAC Officer has the same meaning as it has in the **Independent Broad-based Anti-corruption Commission Act 2011**.

31D Intimidation of a law enforcement officer or a family member of a law enforcement officer

S. 31D
inserted by
No. 3/2019
s. 3.

(1) A person commits an offence if—

- (a) the person uses or procures the use of intimidation towards another person (the *victim*); and
- (b) the victim is a law enforcement officer or a family member of a law enforcement officer; and
- (c) the use or procuring of intimidation is for reasons related to the victim being a law enforcement officer or a family member of a law enforcement officer.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

- (3) For the purposes of subsection (1)(a), a person uses *intimidation* towards a victim if—
- (a) the person engages in conduct that could reasonably be expected to arouse apprehension or fear in the victim for the safety of the victim; and
 - (b) either—
 - (i) the person knows that engaging in that conduct would be likely to arouse that apprehension or fear; or
 - (ii) in all the particular circumstances, the person ought to have known that engaging in that conduct would be likely to arouse that apprehension or fear.
- (4) Subsection (3) applies whether or not the conduct arouses apprehension or fear in the victim.
- (5) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that conduct in respect of a victim referred to in paragraph (d), (e), (f) or (g) of the definition of *law enforcement officer* in subsection (8) 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 the publication, of news or current affairs material); or
 - (b) for the purposes of an industrial dispute; or
 - (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

- (6) For the purposes of this section a single act may amount to intimidation.
- (7) For the purposes of this section, it is immaterial—
- (a) that some or all of the 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; or
 - (b) that the victim was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria; or
 - (c) some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria and the victim was outside Victoria at the relevant time or times, so long as the conduct is for reasons related to the victim being a law enforcement officer in Victoria, or a family member of a law enforcement officer in Victoria.
- (8) In this section—
- family member* has the meaning given in section 8 of the **Family Violence Protection Act 2008**;
- law enforcement officer* means a person who is—
- (a) a police officer; or
 - (b) a protective services officer; or
 - (c) a police custody officer within the meaning of the **Victoria Police Act 2013**; or

- (d) a Governor, prison officer or escort officer within the meaning of the **Corrections Act 1986**; or
- (e) authorised under section 9A(1) of the **Corrections Act 1986** to exercise a function or power of a Governor, a prison officer or an escort officer under that Act; or
- (f) authorised under section 9A(1A) or (1B) of the **Corrections Act 1986** to exercise a function or power referred to in that subsection; or
- (g) a youth justice custodial worker within the meaning of the **Children, Youth and Families Act 2005**.

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

32 Offence to perform female genital mutilation

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

- (1) A person must not perform female genital mutilation on a child.
Penalty: Level 4 imprisonment (15 years maximum).

S. 32(2)
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).

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,
substituted as
Pt 1 Div. 1
Subdiv. (5)
(Heading and
ss 34B–34BE)
by
No. 47/2016
s. 3.

34B Sexual activity with the corpse of a human being

S. 34B
substituted by
No. 47/2016
s. 3.

- (1) A person (A) commits an offence if—
 - (a) A intentionally engages in an activity involving the corpse of a human being; and
 - (b) the activity is sexual.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (1)—
 - (a) an activity is sexual if it would involve sexual penetration as defined by section 35A were the corpse a person;

- (b) an activity may be sexual due to—
- (i) the area of A's body or of the corpse involved in the activity, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female, the breasts; or
 - (ii) the fact that A seeks or gets sexual arousal or sexual gratification from the activity; or
 - (iii) any other aspect of the activity, including the circumstances in which it takes place.

Notes

- 1 Exceptions apply to this offence—see section 34BD.
- 2 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 34BE.

S. 34BA
inserted by
No. 47/2016
s. 3.

34BA Removal of body parts from the corpse of a human being

- (1) A person (A) commits an offence if A intentionally removes a body part from the corpse of a human being.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Note

Exceptions apply to this offence—see section 34BD.

S. 34BB
inserted by
No. 47/2016
s. 3.

34BB Offensive conduct involving human remains

- (1) A person (A) commits an offence if—
 - (a) A intentionally engages in conduct involving human remains; and
 - (b) the conduct is offensive.

- (2) A person who commits an offence against subsection (1) is liable to level 7 imprisonment (2 years maximum).
- (3) An offence against subsection (1) is a summary offence.
- (4) For the purposes of subsection (1), conduct is offensive if, in all the circumstances, it is likely to arouse significant anger, resentment, outrage, disgust or repulsion in the minds of reasonable persons.
- (5) In this section—
human remains has the same meaning as in the **Cemeteries and Crematoria Act 2003**.

Notes

- 1 Exceptions apply to this offence—see section 34BD.
- 2 A mistaken but honest and reasonable belief that the conduct was not offensive is not a defence to this offence—see section 34BE.

34BC Location of corpse or human remains immaterial

S. 34BC
inserted by
No. 47/2016
s. 3.

- (1) For the purposes of sections 34B and 34BA, it is immaterial whether the corpse is in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.
- (2) For the purposes of section 34BB, it is immaterial whether the human remains are in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.

34BD Exceptions

S. 34BD
inserted by
No. 47/2016
s. 3.

A does not commit an offence against a provision of this Subdivision if A's conduct occurs in the course of—

- (a) a procedure carried out in good faith for the purpose of preparing the corpse or human remains for cremation or for interment

within the meaning of the **Cemeteries and Crematoria Act 2003**; or

- (b) any other lawful procedure carried out in good faith for medical, hygienic, scientific, forensic or law enforcement purposes.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

S. 34BE
inserted by
No. 47/2016
s. 3.

34BE No defence of mistaken but honest and reasonable belief that activity was not sexual or conduct was not offensive

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 34B(1)—
the activity was not sexual; or
- (b) for an offence against section 34BB(1)—
the conduct was not offensive.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

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).

* * * * *

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

* * * * *

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).

(8) *Sexual offences (general provisions)*

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.

* * * * *

S. 34C
inserted by
No. 74/2014
s. 3 (as
amended by
No. 14/2015
s. 69(2)),
repealed by
No. 47/2016
s. 4.

New s. 35
inserted by
No. 81/1991
s. 3,
amended by
Nos 2/2006
s. 3, 12/2008
s. 73(1)(Sch. 1
item 16),
4/2009
s. 37(Sch. 1
item 9),
74/2014
s. 7(1),
substituted by
No. 47/2016
s. 5.

35 Definitions

(1) In Subdivisions (8A) to (8FA)—

animal means any animal (other than a human being), whether vertebrate or not;

care, supervision or authority—see section 37;

consent—see section 36;

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 or gender identity);

Note

See also subsection (2).

sexual, in relation to an activity—see section 35D;

sexual, in relation to touching—see section 35B;

sexual penetration—see section 35A;

take part in a sexual act—see section 35C;

touching—see section 35B;

vagina includes the external genitalia;

S. 35(1) def. of
vagina
substituted by
No. 5/2018
s. 3(1).

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

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

(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.

(3) For the purposes of Subdivisions (8A) to (8FA), a reference to a part of the body includes a reference to a surgically altered or constructed part of the body.

S. 35(3)
inserted by
No. 5/2018
s. 3(2).

35A Sexual penetration

(1) A person (A) sexually penetrates another person (B) if—

- (a) A introduces (to any extent) a part of A's body or an object into B's vagina; or
- (b) A introduces (to any extent) a part of A's body or an object into B's anus; or
- (c) A introduces (to any extent) their penis into B's mouth; or
- (d) A, having introduced a part of A's body or an object into B's vagina, continues to keep it there; or
- (e) A, having introduced a part of A's body or an object into B's anus, continues to keep it there; or
- (f) A, having introduced their penis into B's mouth, continues to keep it there.

S. 35A
inserted by
No. 47/2016
s. 5.

(2) A person sexually penetrates themselves if—

- (a) the person introduces (to any extent) a part of their body or an object into their own vagina; or

- (b) the person introduces (to any extent) a part of their body or an object into their own anus; or
 - (c) having introduced a part of their body or an object into their own vagina, they continue to keep it there; or
 - (d) having introduced a part of their body or an object into their own anus, they continue to keep it there.
- (3) A person (A) sexually penetrates an animal if A engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (B).
- (4) A person (B) is sexually penetrated by an animal if B engages in conduct with the animal that would involve sexual penetration as defined by subsection (1) were the animal another person (A).
- (5) In relation to sexual penetration of an animal, a reference to the vagina or anus includes a reference to any similar part.

Note

References to A and B are included to help readers understand the definition of sexual penetration. The same technique is used in the offence provisions involving sexual penetration. There is no connection between the A and B referred to in one section and the A and B referred to in another section.

S. 35B
inserted by
No. 47/2016
s. 5.

35B Touching

- (1) Touching may be done—
- (a) with any part of the body; or
 - (b) with anything else; or
 - (c) through anything, including anything worn by the person doing the touching or by the person touched.

(2) Touching may be sexual due to—

- (a) the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female or a person who identifies as a female, the breasts; or
- (b) the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or
- (c) any other aspect of the touching, including the circumstances in which it is done.

35C Taking part in a sexual act

S. 35C
inserted by
No. 47/2016
s. 5.

A person takes part in a sexual act if—

- (a) the person is sexually penetrated or sexually touched—
 - (i) by another person; or
 - (ii) by an animal; or
- (b) the person sexually penetrates or sexually touches—
 - (i) another person; or
 - (ii) themselves; or
 - (iii) an animal.

35D Sexual activity

S. 35D
inserted by
No. 47/2016
s. 5.

An activity may be sexual due to—

- (a) the area of the body that is involved in the activity, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female or a person who identifies as a female, the breasts; or

- (b) the fact that the person engaging in the activity seeks or gets sexual arousal or sexual gratification from the activity; or
- (c) any other aspect of the activity, including the circumstances in which it is engaged in.

Example

A watches pornography in the presence of A's daughter (B) and her friend (C).

S. 36
substituted by
No. 81/1991
s. 3,
repealed by
No. 74/2014
s. 7(2),
new s. 36
inserted by
No. 47/2016
s. 5.

36 Consent

- (1) For the purposes of Subdivisions (8A) to (8E), consent means free agreement.
- (2) Circumstances in which a person does not consent to an act include, but are not limited to, the following—
 - (a) the person submits to the act because of force or the fear of force, whether to that person or someone else;
 - (b) the person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal;
 - (c) the person submits to the act because the person is unlawfully detained;
 - (d) the person is asleep or unconscious;
 - (e) the person is so affected by alcohol or another drug as to be incapable of consenting to the act;
 - (f) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the act;

Note

This circumstance may apply where a person gave consent when not so affected by alcohol or another drug as to be incapable of consenting.

- (g) the person is incapable of understanding the sexual nature of the act;
- (h) the person is mistaken about the sexual nature of the act;
- (i) the person is mistaken about the identity of any other person involved in the act;
- (j) the person mistakenly believes that the act is for medical or hygienic purposes;
- (k) if the act involves an animal, the person mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes;
- (l) the person does not say or do anything to indicate consent to the act;
- (m) having given consent to the act, the person later withdraws consent to the act taking place or continuing.

36A Reasonable belief in consent

- (1) Whether or not a person reasonably believes that another person is consenting to an act depends on the circumstances.
- (2) Without limiting subsection (1), the circumstances include any steps that the person has taken to find out whether the other person consents or, in the case of an offence against section 42(1), would consent to the act.

S. 36A
inserted by
No. 47/2016
s. 5.

36B Effect of intoxication on reasonable belief

- (1) In determining whether a person who is intoxicated has a reasonable belief at any time—
 - (a) if the intoxication is self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as that person at the relevant time; and

S. 36B
inserted by
No. 47/2016
s. 5.

(b) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person who is intoxicated to the same extent as that person and who is in the same circumstances as that person at the relevant time.

(2) 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

(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

S. 36B(2)(ca)
inserted by
No. 5/2018
s. 4(1)(a),
repealed by
No. 34/2019
s. 46(a).

* * * * *

S. 36B(2)(d)
amended by
Nos 5/2018
s. 4(1)(b),
34/2019
s. 46(b).

(d) from the use of a drug for which a prescription is not required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

S. 36B(3)
amended by
No. 5/2018
s. 4(2).

(3) However, intoxication that comes about in the circumstances referred to in subsection (2)(c), (ca) or (d) is self-induced if the person using the drug knew, or had reason to believe, when taking the drug that it would significantly impair the person's judgement or control.

37 Care, supervision or authority

- (1) Without limiting the circumstances in which a child is under the care, supervision or authority of a person, a person (A) has a child (B) under their care, supervision or authority if A is—
- (a) B's parent or step-parent; or
 - (b) B's teacher; or
 - (c) B's employer; or
 - (d) B's youth worker; or
 - (e) B's sports coach; or
 - (f) B's counsellor; or
 - (g) B's health professional; or
 - (h) a person who has parental responsibility (within the meaning of the **Children, Youth and Families Act 2005**) for B; or
 - (i) a religious or spiritual guide, or a leader or official (including a lay member) of a church or religious body, however any such guide, leader, official, church or body is described, who provides care, advice or instruction to B or has authority over B; or
 - (j) an out of home carer (within the meaning given by section 74 of the **Children, Youth and Families Act 2005**) of B; or
 - (k) a police officer acting in the course of their duty in respect of B; or
 - (l) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of their duty in respect of B.

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, repealed by No. 74/2014 s. 7(3), new s. 37 inserted by No. 47/2016 s. 5.

(2) In this section—

parent includes—

- (a) a parent by operation of the **Adoption Act 1984**; and
- (b) a parent by operation of the **Status of Children Act 1974**;

step-parent, in relation to a person, includes the spouse or domestic partner of the person's parent.

S. 37AAA
inserted by
No. 57/2007
s. 4,
repealed by
No. 74/2014
s. 7(3).

* * * * *

S. 37AA
inserted by
No. 57/2007
s. 4,
repealed by
No. 74/2014
s. 7(3).

* * * * *

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

37A Objectives of Subdivisions 8A to 8G

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 or mental illness from sexual exploitation.

S. 37A(b)
amended by
No. 47/2016
s. 6.

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

37B Guiding principles

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 or mental illness; 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.

S. 37B(c)
amended by
No. 47/2016
s. 7.

(8A) *Rape, sexual assault and associated sexual offences*

Pt 1 Div. 1
Subdiv. (8A)
(Heading)
substituted by
No. 47/2016
s. 8.

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 amended

by Nos
49/1991
s. 119(3)(Sch.
3 item 1) (as
amended by
No. 81/1991

s.10(Sch. item
3.1)), 41/1993

s. 20, 48/1997
s. 60(1)(Sch. 1
items 19, 20),
67/2000 s. 4,
2/2006 ss 6, 7,
57/2007

ss 5–7,
substituted as
Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 37C–43) by
No. 74/2014
s. 4.

* * * * *

Ss 37C–37G
inserted by
No. 74/2014
s. 4,
repealed by
No. 47/2016
s. 9.

* * * * *

S. 37H
inserted by
No. 74/2014
s. 4,
amended by
No. 20/2016
s. 144,
repealed by
No. 47/2016
s. 9.

38 Rape

- (1) A person (A) commits an offence if—
- (a) A intentionally sexually penetrates another person (B); and
 - (b) B does not consent to the penetration; and
 - (c) A does not reasonably believe that B consents to the penetration.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

S. 38
substituted by
No. 74/2014
s. 4.

* * * * *

Note to
s. 38(2)
inserted by
No. 65/2016
s. 20(12),
repealed by
No. 34/2017
s. 26(1).

S. 38(3)
repealed by
No. 47/2016
s. 10(1),
new s. 38(3)
inserted by
No. 34/2017
s. 26(2).

- (3) The standard sentence for an offence against subsection (1) is 10 years.

Note to s. 38
inserted by
No. 47/2016
s. 10(2),
substituted as
Notes by
No. 34/2017
s. 26(3).

Notes

- 1 An exception applies to this offence—see section 48A.
- 2 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 3 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

S. 39
substituted by
No. 74/2014
s. 4.

39 Rape by compelling sexual penetration

S. 39(1)
substituted by
No. 47/2016
s. 11(1).

- (1) A person (A) commits an offence if—
- (a) A intentionally causes another person (B)—
 - (i) to sexually penetrate A; or
 - (ii) to sexually penetrate themselves; or
 - (iii) to sexually penetrate another person (C) or an animal; or
 - (iv) to be sexually penetrated by C or by an animal; and
 - (b) B does not consent to the sexual penetration; and
 - (c) A does not reasonably believe that B consents to the sexual penetration.

- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

Note

An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

Note to s. 39(2) inserted by No. 65/2016 s. 20(13).

* * * * *

S. 39(3) repealed by No. 47/2016 s. 11(2).

Note

Exceptions apply to this offence—see section 48A.

Note to s. 39 inserted by No. 47/2016 s. 11(3).

40 Sexual assault

- (1) A person (A) commits an offence if—
- (a) A intentionally touches another person (B); and
 - (b) the touching is sexual; and
 - (c) B does not consent to the touching; and
 - (d) A does not reasonably believe that B consents to the touching.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

S. 40 substituted by No. 74/2014 s. 4.

* * * * *

S. 40(3)(4) repealed by No. 47/2016 s. 12(1).

Notes

- 1 An exception applies to this offence—see section 48A.
- 2 A mistaken but honest and reasonable belief that the touching was not sexual is not a defence to this offence—see section 48B.

Note to s. 40 substituted as Notes by No. 47/2016 s. 12(2).

S. 41
inserted by
No. 74/2014
s. 4.

41 Sexual assault by compelling sexual touching

(1) A person (A) commits an offence if—

S. 41(1)(a)
substituted by
No. 47/2016
s. 13(1).

- (a) A intentionally causes another person (B)—
 - (i) to touch A; or
 - (ii) to touch themselves; or
 - (iii) to touch another person (C) or an animal; or
 - (iv) to be touched by C or by an animal; and
- (b) the touching is sexual; and
- (c) B does not consent to the touching; and
- (d) A does not reasonably believe that B consents to the touching.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

S. 41(3)(4)
repealed by
No. 47/2016
s. 13(2).

* * * * *

Note to s. 41
substituted as
Notes by
No. 47/2016
s. 13(3).

Notes

- 1 Exceptions apply to this offence—see section 48A.
- 2 A mistaken but honest and reasonable belief that the touching was not sexual is not a defence to this offence—see section 48B.

S. 42
inserted by
No. 74/2014
s. 4.

42 Assault with intent to commit a sexual offence

(1) A person (A) commits an offence if—

- (a) A intentionally applies force to another person (B); and
- (b) B does not consent to the application of that force; and

- (c) at the time of applying that force A intends that B take part in a sexual act; and
 - (d) A does not reasonably believe that B would consent to taking part in that sexual act.
- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).
- (3) A may commit an offence against subsection (1) even if B is not aware of the application of force by A.
- (4) Force for the purposes of subsection (1) may be applied—
- (a) directly or indirectly; or
 - (b) to the body of, or to clothing or equipment worn by, B.
- (5) In subsection (1)—
- 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.

43 Threat to commit a sexual offence

- (1) A person (A) commits an offence if—
- (a) A makes to another person (B) a threat to rape or sexually assault B or a third person (C); and
 - (b) A intends that B will believe, or believes that B will probably believe, that A will carry out the threat.

S. 43
inserted by
No. 74/2014
s. 4.

- (2) Words or conduct may constitute a threat for the purposes of subsection (1) if by those words or that conduct an intention to do any of the following is conveyed—
- (a) to sexually penetrate or sexually touch B or C without B or C's consent;
 - (b) to cause B or C, without B or C's consent, to sexually penetrate or sexually touch—
 - (i) A; or
 - (ii) C or B (as the case requires); or
 - (iii) themselves; or
 - (iv) another person; or
 - (v) an animal;
 - (c) to cause B or C, without B or C's consent, to be sexually penetrated or sexually touched by another person or by an animal.
- (3) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (4) For the purposes of this section, a threat may be made by words or conduct and may be explicit or implicit.

S. 43(2)(b)(v)
amended by
No. 47/2016
s. 14(1)(a).

S. 43(2)(c)
inserted by
No. 47/2016
s. 14(1)(b).

S. 43(4)
substituted by
No. 47/2016
s. 14(2).

Note to s. 43
repealed by
No. 47/2016
s. 14(3).

New s. 44
inserted by
No. 47/2016
s. 15.

44 Procuring sexual act by threat

- (1) A person (A) commits an offence if—
- (a) A makes a threat to another person (B) that A will cause harm of any kind to B, another person or an animal; and

* * * * *

- (b) A intends that B will believe, or believes that B will probably believe, that A will cause that harm; and
 - (c) as a result of A's threat, B or another person takes part (whether at the time the threat is made or at a later time) in a sexual act with A or another person; and
 - (d) A intends that, as a result of A's threat, an outcome mentioned in paragraph (c) will occur.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
 - (3) For the purposes of subsection (1), a threat may be made by words or conduct and may be explicit or implicit.
 - (4) For the purposes of subsection (1)(c), a person who takes part in a sexual act with A or another person may or may not be the person to whom A has threatened to cause harm.

Note

See section 35C for the meaning of taking part in a sexual act.

45 Procuring sexual act by fraud

- (1) A person (A) commits an offence if—
 - (a) A makes a false or misleading representation; and
 - (b) A knows that—
 - (i) the representation is false or misleading; or
 - (ii) the representation is probably false or misleading; and

New s. 45
inserted by
No. 47/2016
s. 15.

- (c) as a result of A's representation, another person (B) takes part (whether at the time the representation is made or at a later time) in a sexual act with A or another person; and
 - (d) A intends that, as a result of A's representation, an outcome mentioned in paragraph (c) will occur.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
 - (3) For the purposes of subsection (1), a false or misleading representation may be made by words or conduct (including by omission) and may be explicit or implicit.

Note

See section 35C for the meaning of taking part in a sexual act.

New s. 46
inserted by
No. 47/2016
s. 15.

46 Administration of an intoxicating substance for a sexual purpose

- (1) A person (A) commits an offence if—
 - (a) A—
 - (i) administers an intoxicating substance to another person (B); or
 - (ii) causes B to take an intoxicating substance; or
 - (iii) causes another person (C) to administer an intoxicating substance to B; and
 - (b) A intends that the intoxicating substance—
 - (i) will impair B's capacity to give, withhold or withdraw consent to taking part in a sexual act; and
 - (ii) will facilitate B taking part in a sexual act with A or another person.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(3) In this section—

intoxicating substance includes any substance that affects a person's senses or understanding.

Note

See section 35C for the meaning of taking part in a sexual act.

47 Abduction or detention for a sexual purpose

New s. 47
inserted by
No. 47/2016
s. 15.

(1) A person (A) commits an offence if—

(a) A—

(i) takes away or detains another person (B); or

(ii) causes B to be taken away or detained by another person; and

(b) B does not consent to being taken away or detained; and

(c) A knows that—

(i) B does not consent to being taken away or detained; or

(ii) B probably does not consent to being taken away or detained; and

(d) A intends that—

(i) B will take part in a sexual act with A or another person (C) or both; or

(ii) A or C will marry B (whether or not B consents to being married).

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is immaterial that the law prohibits or would not recognise (for whatever reason) a marriage between A and B or between C and B.

Note

See section 35C for the meaning of taking part in a sexual act.

New s. 48
inserted by
No. 47/2016
s. 15.

48 Sexual activity directed at another person

- (1) A person (A) commits an offence if—
 - (a) A engages in an activity; and
 - (b) the activity is sexual; and
 - (c) another person (B) sees the activity or a part of the activity; and
 - (d) A knows that B will see, or will probably see, the activity or a part of the activity; and
 - (e) A—
 - (i) intends that B will experience fear or distress from seeing the activity or a part of the activity; or
 - (ii) knows that B will experience, or will probably experience, fear or distress from seeing the activity or a part of the activity.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Note

A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 48B.

**48A Exceptions—medical, hygienic, veterinary,
agricultural or scientific purposes**

S. 48A
inserted by
No. 47/2016
s. 15.

- (1) A does not commit an offence against—
- (a) section 38(1) or 40(1)—if the sexual penetration or touching (as the case requires) is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes; or
 - (b) section 39(1) or 41(1)—if the sexual penetration or touching (as the case requires) is of a person and is caused by A to be done in the course of a procedure carried out in good faith for medical or hygienic purposes.
- (2) A does not commit an offence against section 39(1) or 41(1)—if the sexual penetration or touching (as the case requires) is of an animal and is caused by A to be done in the course of a procedure being carried out in good faith for veterinary or agricultural purposes or scientific research purposes.

Note

The reference to A in this section is a reference to the same A referred to in sections 38, 39, 40 and 41.

**48B No defence of mistaken but honest and reasonable
belief that touching or activity was not sexual**

S. 48B
inserted by
No. 47/2016
s. 15.

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 40(1) or 41(1)—the touching was not sexual; or

- (b) for an offence against section 48(1)—
the activity was not sexual.

Note

The reference to A in this section is a reference to the same
A referred to in sections 40, 41 and 48.

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,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
items 3A, 4),
48/1997
s. 60(1)(Sch. 1
item 21),
2/2006 s. 8,
57/2007 s. 8,
52/2014 s. 13,
65/2016
s. 20(14)(15),
substituted as
Pt 1 Div. 1
Subdiv. (8B)
(Heading and
ss 49A–49ZC)
by
No. 47/2016
s. 16.

(8B) *Sexual offences against children*

New s. 49A
inserted by
No. 47/2016
s. 16.

49A Sexual penetration of a child under the age of 12

- (1) A person (A) commits an offence if—
- (a) A intentionally—
- (i) sexually penetrates another person (B);
or

- (ii) causes or allows B to sexually penetrate A; or
- (iii) causes B—
 - (A) to sexually penetrate themselves; or
 - (B) to sexually penetrate another person (C); or
 - (C) to be sexually penetrated by C; and
- (b) B is a child under the age of 12 years.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) The standard sentence for an offence against subsection (1) is 10 years.

S. 49A(3)
inserted by
No. 34/2017
s. 27(1).

Notes

- 1 An exception applies to this offence—see section 49T.
- 2 A mistaken but honest and reasonable belief that B was 12 years of age or more is not a defence to this offence—see section 49ZC.
- 3 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 4 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

Note 3 to
s. 49A
inserted by
No. 65/2016
s. 24(1),
substituted by
No. 34/2017
s. 27(2).

Note 4 to
s. 49A
inserted by
No. 34/2017
s. 27(2).

New s. 49B
inserted by
No. 47/2016
s. 16.

49B Sexual penetration of a child under the age of 16

- (1) A person (A) commits an offence if—
 - (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate
A; or
 - (iii) causes B—
 - (A) to sexually penetrate themselves;
or
 - (B) to sexually penetrate another
person (C); or
 - (C) to be sexually penetrated by C;
and
 - (b) B is a child under the age of 16 years.
- (2) A person who commits an offence against
subsection (1) is liable to level 4 imprisonment
(15 years maximum).
- (3) The standard sentence for an offence against
subsection (1) is 6 years.

S. 49B(3)
inserted by
No. 34/2017
s. 28(1).

Notes

- 1 An exception applies to this offence—see section 49T.
- 2 Defences apply to this offence—see sections 49V and 49W.
- 3 See sections 5A and 5B of the **Sentencing Act 1991** as
to standard sentences.

Note 3 to
s. 49B
inserted by
No. 34/2017
s. 28(2).

49C Sexual penetration of a child aged 16 or 17 under care, supervision or authority

New s. 49C
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually
penetrate A; or
 - (iii) causes B—
 - (A) to sexually penetrate themselves;
or
 - (B) to sexually penetrate another
person (C); or
 - (C) to be sexually penetrated by C;
and
 - (b) B is—
 - (i) a child aged 16 or 17 years; and
 - (ii) under A's care, supervision or authority.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

Notes

- 1 Exceptions apply to this offence—see sections 49T and 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.

49D Sexual assault of a child under the age of 16

S. 49D
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) touches another person (B); or
 - (ii) causes or allows B to touch A; or

(iii) causes B—

(A) to touch, or to continue to touch, themselves; or

(B) to touch, or to continue to touch, another person (C); or

(C) to be touched, or to continue to be touched, by C; and

(b) B is a child under the age of 16 years; and

(c) the touching is—

(i) sexual; and

(ii) contrary to community standards of acceptable conduct.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(2A) The standard sentence for an offence against subsection (1) is 4 years.

(3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.

(4) For the purposes of subsection (3)—

(a) the circumstances include—

(i) the purpose of the touching; and

(ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;

(b) the circumstances do not include—

(i) whether B consents to the touching; or

S. 49D(2A)
inserted by
No. 34/2017
s. 29(1).

- (ii) whether A believes that B consents to the touching.

Notes

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the touching was not sexual or contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.
- 4 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.

Note 4 to s. 49D inserted by No. 34/2017 s. 29(2).

49E Sexual assault of a child aged 16 or 17 under care, supervision or authority

S. 49E inserted by No. 47/2016 s. 16.

- (1) A person (A) commits an offence if—
 - (a) A intentionally—
 - (i) touches another person (B); or
 - (ii) causes or allows B to touch A; or
 - (iii) causes B—
 - (A) to touch, or to continue to touch, themselves; or
 - (B) to touch, or to continue to touch, another person (C); or
 - (C) to be touched, or to continue to be touched, by C; and
 - (b) B is—
 - (i) a child aged 16 or 17 years; and
 - (ii) under A's care, supervision or authority; and

- (c) the touching is—
 - (i) sexual; and
 - (ii) contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
 - (a) the circumstances include—
 - (i) the purpose of the touching; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;
 - (b) the circumstances do not include—
 - (i) whether B consents to the touching; or
 - (ii) whether A believes that B consents to the touching.

Notes

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the touching was not sexual or contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

49F Sexual activity in the presence of a child under the age of 16

S. 49F
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally engages in an activity; and
 - (b) the activity is sexual; and
 - (c) another person (B) is present when A engages in the activity; and
 - (d) A knows that B is, or probably is, present when A engages in the activity; and
 - (e) B is a child under the age of 16 years; and
 - (f) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

- (2A) The standard sentence for an offence against subsection (1) is 4 years.

S. 49F(2A)
inserted by
No. 34/2017
s. 30(1).

- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.

- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;

- (b) the circumstances do not include—
 - (i) whether B consents—
 - (A) to being present when A engages in the activity; or
 - (B) to A engaging in the activity; or
 - (ii) whether A believes that B consents—
 - (A) to being present when A engages in the activity; or
 - (B) to A engaging in the activity.
- (5) For the purposes of subsection (1), when A engages in an activity, B may be present—
 - (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by B in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

Notes

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

- 4 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.

Note 4 to
s. 49F
inserted by
No. 34/2017
s. 30(2).

49G Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority

S. 49G
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally engages in an activity; and
 - (b) the activity is sexual; and
 - (c) another person (B) is present when A engages in the activity; and
 - (d) A knows that B is, or probably is, present when A engages in the activity; and
 - (e) B is—
 - (i) a child aged 16 or 17 years; and
 - (ii) under A's care, supervision or authority; and
 - (f) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.

- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;
 - (b) the circumstances do not include—
 - (i) whether B consents—
 - (A) to being present when A engages in the activity; or
 - (B) to A engaging in the activity; or
 - (ii) whether A believes that B consents—
 - (A) to being present when A engages in the activity; or
 - (B) to A engaging in the activity.
- (5) For the purposes of subsection (1), when A engages in an activity, B may be present—
- (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by B in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.

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

Notes

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

49H Causing a child under the age of 16 to be present during sexual activity

S. 49H
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) another person (B) engages in an activity;
and
 - (b) the activity is sexual; and
 - (c) another person (C) is present when B engages in the activity; and
 - (d) A intentionally causes or allows C to be present when B engages in the activity; and
 - (e) C is a child under the age of 16 years; and
 - (f) A's causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

- (2A) The standard sentence for an offence against subsection (1) is 4 years.

S. 49H(2A)
inserted by
No. 34/2017
s. 31(1).

- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
 - (b) the circumstances do not include—
 - (i) whether C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity; or
 - (ii) whether A believes that C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity.
- (5) For the purposes of subsection (1), when B engages in an activity, C may be present—
- (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by C in real time or close to real time.

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

Notes

- 1 An exception applies to this offence—see section 49U.
- 2 A defence applies to this offence—see section 49W.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.
- 4 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.

Note 4 to
s. 49H
inserted by
No. 34/2017
s. 31(2).

49I Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity

S. 49I
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) another person (B) engages in an activity;
and
 - (b) the activity is sexual; and
 - (c) another person (C) is present when B engages in the activity; and
 - (d) A intentionally causes or allows C to be present when B engages in the activity; and

- (e) C is—
 - (i) a child aged 16 or 17 years; and
 - (ii) under A's care, supervision or authority;
and
 - (f) A's causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
 - (b) the circumstances do not include—
 - (i) whether C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity; or
 - (ii) whether A believes that C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity.

- (5) For the purposes of subsection (1), when B engages in an activity, C may be present—
- (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000** that is received by C in real time or close to real time.
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as C was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that C was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.

Notes

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual or that causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct is not a defence to this offence—see section 49ZC.

49J Persistent sexual abuse of a child under the age of 16

- (1) A person (A) commits an offence if—
- (a) A sexually abuses another person (B) on at least 3 occasions during a particular period; and
 - (b) B is a child under the age of 16 years during the whole of that period.

S. 49J
inserted by
No. 47/2016
s. 16.

S. 49J(2A)
inserted by
No. 34/2017
s. 32(1).

(2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).

(2A) The standard sentence for an offence against subsection (1) is 10 years.

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

(4) It is not necessary to prove conduct constituting sexual abuse 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 conduct instead of an offence against subsection (1).

(5) For the purposes of subsection (1), A sexually abuses B if A engages in conduct that would involve the commission by A of any of the following—

- (a) an offence against a provision of Subdivision (8A) (rape, sexual assault and associated sexual offences);
- (b) an offence against section 49A(1) (sexual penetration of a child under the age of 12);
- (c) an offence against section 49B(1) (sexual penetration of a child under the age of 16);
- (d) an offence against section 49D(1) (sexual assault of a child under the age of 16);
- (e) an offence against section 49F(1) (sexual activity in the presence of a child under the age of 16);

- (f) an offence against section 49H(1) (causing a child under the age of 16 to be present during sexual activity);
 - (g) an offence against a provision of Subdivision (8C) (incest).
- (6) Nothing in this section affects the operation of any exception or defence applicable or available to A in respect of the offence constituting the sexual abuse.
- (7) If, on the trial of A for an offence against subsection (1), the jury is not satisfied that A is guilty of that offence but is satisfied that A engaged in conduct during the particular period that constitutes one or more instances of an offence against a provision referred to in subsection (5)—
- (a) the jury—
 - (i) must find A not guilty of the offence against subsection (1); and
 - (ii) may find A guilty of the one or more instances of an offence against a provision referred to in subsection (5); and
 - (b) A is liable to the penalty for any offence of which, in accordance with this subsection, A is found guilty.
- (8) Subsection (7) does not restrict the operation of section 239 of the **Criminal Procedure Act 2009**.
- (9) A prosecution for an offence under subsection (1) must not be commenced without the consent of the Director of Public Prosecutions.

Note to s. 49J
inserted by
No. 65/2016
s. 24(2),
substituted as
Notes by
No. 34/2017
s. 32(2).

S. 49K
inserted by
No. 47/2016
s. 16.

Notes

- 1 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 2 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

49K Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity

- (1) A person (A) commits an offence if—
 - (a) A is 18 years of age or more; and
 - (b) A encourages another person (B) to engage in, or be involved in, an activity; and
 - (c) the activity is sexual; and
 - (d) B is a child under the age of 16 years; and
 - (e) A seeks or gets sexual arousal or sexual gratification from—
 - (i) the encouragement; or
 - (ii) the sexual activity that is encouraged.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1) encouraging may be done—
 - (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**.
- (4) It is not necessary to prove—
 - (a) that B in fact engaged in, or was involved in, the sexual activity that was encouraged; or

- (b) that any sexual activity that B engaged in, or was involved in, was the same activity that was encouraged; or
 - (c) if B in fact engaged in, or was involved in, sexual activity (whether or not the same activity that was encouraged)—that A was present during that activity.
- (5) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.
- (8) In this section—
encourage includes suggest, request, urge and demand.

Notes

- 1 A defence applies to this offence—see section 49W.
- 2 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 49ZC.

49L Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity

S. 49L
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A is 18 years of age or more; and

- (b) A encourages another person (B) to engage in, or be involved in, an activity; and
 - (c) the activity is sexual; and
 - (d) B is—
 - (i) a child aged 16 or 17 years; and
 - (ii) under A's care, supervision or authority; and
 - (e) A seeks or gets sexual arousal or sexual gratification from—
 - (i) the encouragement; or
 - (ii) the sexual activity that is encouraged.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) For the purposes of subsection (1) encouraging may be done—
- (a) in person; or
 - (b) by means of an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**.
- (4) It is not necessary to prove—
- (a) that B in fact engaged in, or was involved in, the sexual activity that was encouraged; or
 - (b) that any sexual activity that B engaged in, or was involved in, was the same activity that was encouraged; or
 - (c) if B in fact engaged in, or was involved in, sexual activity (whether or not the same activity that was encouraged)—that A was present during that activity.

- (5) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (6) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that B was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time at which that conduct occurred.
- (8) In this section—
encourage includes suggest, request, urge and demand.

Notes

- 1 An exception applies to this offence—see section 49Y.
- 2 Defences apply to this offence—see sections 49X, 49Z and 49ZA.
- 3 A mistaken but honest and reasonable belief that the activity was not sexual is not a defence to this offence—see section 49ZC.

49M Grooming for sexual conduct with a child under the age of 16

S. 49M
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
 - (a) A is 18 years of age or more; and
 - (b) A communicates, by words or conduct (whether or not a response is made to the communication), with—
 - (i) another person (B) who is a child under the age of 16 years; or
 - (ii) another person (C) under whose care, supervision or authority B is; and

- (c) A intends that the communication facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) A does not intend to facilitate B engaging or being involved in the commission of a sexual offence by A or by another person who is 18 years of age or more if, were the conduct constituting the sexual offence to occur, A or the other person would satisfy an exception, or have a defence, to that sexual offence.
- (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as B or C was, or B and C were, in Victoria at the time at which that conduct occurred.
- (5) It is immaterial that B or C was, or B and C were, outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A was in Victoria at the time that conduct occurred.
- (6) It is immaterial that A, B and C were all outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as A intended that the sexual offence would occur in Victoria.
- (7) In this section—

communication includes an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**;

sexual offence means—

- (a) an offence against a provision of Subdivision (8A), this Subdivision (other than section 49K(1) or this section), (8C), (8D), (8E), (8F) or (8FA); or
- (b) an attempt to commit an offence covered by paragraph (a); or
- (c) an assault with intent to commit an offence referred to in paragraph (a).

49N Loitering near schools etc. by sexual offender

(1) A person (A) commits an offence if—

- (a) A has been found guilty of a relevant offence; and
- (b) A loiters at or near a place; and
- (c) the place is—
 - (i) a school, a children's service centre or an education and care service premises; or
 - (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; and
- (d) A knows that the place is—
 - (i) a school, a children's service centre or an education and care service premises; or
 - (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.

S. 49N
inserted by
No. 47/2016
s. 16.

(2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

(3) 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;

relevant offence means—

- (a) a sexual offence; or
- (b) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or
- (c) an offence against—
 - (i) section 5, 6, 7 or 11 of the **Sex Work Act 1994**; or
 - (ii) section 6, 7, 8 or 9 of the **Prostitution Regulation Act 1986**; or
 - (iii) 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
 - (iv) section 19 of the **Summary Offences Act 1966**; or

- (v) any of the following provisions as in force at any time before its repeal—
 - (A) section 60A of the **Classification of Films and Publications Act 1990**;
 - (B) section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995**;
 - (C) section 168A, 168B or 168C of the **Police Offences Act 1958**; or
- (vi) a provision referred to in paragraphs (dam), (dama) or (dan) of clause 1 of Schedule 1 to the **Sentencing Act 1991** or of attempting to commit an offence against a provision referred to in paragraph (dama); or
- (vii) section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) or of attempting to commit an offence against section 51C(1);

sexual offence means—

- (a) an offence against section 38(1), 39(1), 40(1), 41(1), 47(1), 48(1), 49A(1), 49B(1), 49C(1), 49D(1), 49E(1), 49F(1), 49G(1), 49H(1), 49I(1), 49J(1), 49O(1), 50C(1), 50D(1) or 50F(1); or
- (b) an offence against a provision referred to in clause 7A, 7B, 8, 9, 10, 11A, 11B, 11D(b), 11D(c), 11D(d), 11D(g), 11D(h), 11E, 11F or 12 of Schedule 8; or

- (c) an offence against section 44(1), (2) or (4) (incest) as inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**; or
 - (d) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraph (a), (b) or (c).
- (4) If A has at any time been found guilty 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, that finding of guilt must be taken for the purposes of this section to be a finding of guilt of a sexual offence.

Note

An exception applies to this offence—see section 49ZB.

S. 49O
inserted by
No. 47/2016
s. 16.

49O Failure by a person in authority to protect a child from a sexual offence

- (1) A person (A) commits an offence if—
- (a) A occupies a position within, or in relation to, a relevant organisation; and
 - (b) there is a substantial risk that a relevant child will become the victim of a sexual offence committed by another person who is—
 - (i) 18 years of age or more; and
 - (ii) a person associated with the relevant organisation; and
 - (c) A knows that the risk exists; and

- (d) A, by reason of A's position, has the power or responsibility to reduce or remove that risk; and
 - (e) A negligently fails to reduce or remove that risk.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
 - (3) For the purposes of subsection (1), a person negligently fails to reduce or remove a risk if that failure involves a great falling short of the standard of care that a reasonable person would exercise in the circumstances.
 - (4) For the avoidance of doubt, in a prosecution for an offence against subsection (1), it is not necessary to prove that a sexual offence has been committed.
 - (5) It is immaterial that some or all of the circumstances constituting an offence against subsection (1) occurred outside Victoria, so long as the relevant child was in Victoria at any time while the substantial risk referred to in subsection (1)(b) existed.
 - (6) It is immaterial that both A and the relevant child were outside Victoria at the time at which some or all of the circumstances constituting an offence against subsection (1) occurred, so long as the sexual offence was at risk of occurring in Victoria.
 - (7) In this section—
person associated, in relation to a relevant organisation, includes but is not limited to a person who is an officer, employee, manager, owner, volunteer, contractor or agent of the organisation but does not include a person only because the person receives services from the organisation;

relevant child means a child (whether identifiable or not) under the age of 16 years who is, or may come, under the care, supervision or authority of a relevant organisation;

relevant organisation means—

- (a) an organisation that exercises care, supervision or authority over children, whether as its primary function or otherwise, and includes but is not limited to—
 - (i) a church; and
 - (ii) a religious body; and
 - (iii) a school; and
 - (iv) an education and care service within the meaning of the Education and Care Services National Law (Victoria); and
 - (v) a children's service within the meaning of the **Children's Services Act 1996**; and
 - (vi) an out of home care service within the meaning of the **Children, Youth and Families Act 2005**; and
 - (vii) a hospital; and
 - (viii) a government department; and
 - (ix) a government agency; and
 - (x) a municipal council; and
 - (xi) a public sector body; and
 - (xii) a sporting group; and
 - (xiii) a youth organisation; and

(xiv) a charity or benevolent organisation; or

(b) an organisation that, in accordance with an agreement or arrangement with an organisation referred to in paragraph (a), is required or permitted to engage in activities associated with the care, supervision or authority over children exercised by the organisation referred to in paragraph (a);

sexual offence means—

(a) an offence against a provision of Subdivision (8A), this Subdivision (other than this section), (8C), (8D), (8E), (8F) or (8FA); or

(b) an attempt to commit an offence covered by paragraph (a) (other than section 49K); or

(c) an assault with intent to commit an offence covered by paragraph (a).

49P Abduction or detention of a child under the age of 16 for a sexual purpose

S. 49P
inserted by
No. 47/2016
s. 16.

(1) A person (A) commits an offence if—

(a) A—

(i) takes away or detains another person (B); or

(ii) causes B to be taken away or detained by another person; and

(b) B is a child under the age of 16 years; and

(c) the person who has lawful charge of B (C) does not consent to B being taken away or detained; and

(d) A knows that—

- (i) B is a child under the age of 16 years;
or
 - (ii) B is probably a child under the age
of 16 years; and
- (e) A knows that—
- (i) C does not consent to B being taken
away or detained; or
 - (ii) C probably does not consent to B being
taken away or detained; and
- (f) A intends B will take part in a sexual act
with A or another person or both; and
- (g) B taking part in the sexual act would involve
the commission by A, or the other person, or
both, of an offence against section 38(1),
39(1), 40(1), 41(1) or a provision of this
Subdivision (other than this section).
- (2) A person who commits an offence against
subsection (1) is liable to level 5 imprisonment
(10 years maximum).

Note

See section 35C for the meaning of taking part in a sexual act.

S. 49Q
inserted by
No. 47/2016
s. 16.

**49Q Causing or allowing a sexual performance involving
a child**

- (1) A person (A) commits an offence if—
- (a) A intentionally causes or allows another
person (B) to take part in a sexual
performance; and
 - (b) the sexual performance occurs in
circumstances that involve any person
receiving payment, reward or other benefit
(whether before or after the performance)
in respect of the performance; and
 - (c) B is a child under the age of 18 years.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(3) In this section—

sexual performance means a live performance (whether in person or by an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**) that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

Notes

- 1 A defence applies to this offence—see section 49X.
- 2 A mistaken but honest and reasonable belief that the sexual performance did not occur in circumstances that involved payment, reward or other benefit to any person is not a defence to this offence—see section 49ZC.

49R Inviting or offering a sexual performance involving a child

S. 49R
inserted by
No. 47/2016
s. 16.

(1) A person (A) commits an offence if—

(a) A intentionally—

(i) invites another person (B) to take part in a sexual performance; or

(ii) offers to a third person that B will take part in a sexual performance; and

(b) the invitation or offer involves any person receiving payment, reward or other benefit (whether before or after the performance) in respect of the performance; and

(c) B is a child under the age of 18 years.

(2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(3) In this section—

sexual performance means a live performance (whether in person or by an electronic communication within the meaning of the **Electronic Transactions (Victoria) Act 2000**) that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

Notes

- 1 A defence applies to this offence—see section 49X.
- 2 A mistaken but honest and reasonable belief that the invitation or offer did not involve payment, reward or other benefit to any person is not a defence to this offence—see section 49ZC.

S. 49S
inserted by
No. 47/2016
s. 16.

49S Facilitating a sexual offence against a child

(1) A person (A) commits an offence if—

- (a) A engages in conduct that aids, facilitates or contributes in any way to another person (B) engaging in sexual conduct (whether or not in Victoria) in relation to a child; and
- (b) A engages in the conduct with the intention of obtaining a benefit for A or another person (C); and
- (c) A—
 - (i) intends that the conduct will aid, facilitate or contribute in any way to B engaging in sexual conduct in relation to a child; or
 - (ii) knows that the conduct will, or probably will, aid, facilitate or contribute in any way to B engaging in sexual conduct in relation to a child; and

- (d) B's engaging in sexual conduct in relation to a child—
- (i) constitutes an offence against section 38(1), 39(1), 40(1), 41(1) or a provision of this Subdivision (other than this section); or
 - (ii) constitutes an offence against a provision of Division 272 of Chapter 8 of the Criminal Code of the Commonwealth; or
 - (iii) takes place outside Victoria but would, if the conduct occurred in Victoria, constitute an offence against a provision covered by subparagraph (i) whether or not it constitutes an offence in the place in which it takes place.
- (2) A person who commits an offence against subsection (1) is liable to level 3 imprisonment (20 years maximum).
- (3) For the purposes of subsection (1), conduct that aids, facilitates or contributes in any way to another person engaging in sexual conduct in relation to a child includes—
- (a) making travel arrangements; and
 - (b) causing or allowing a child to enter or remain on premises which A owns, occupies, manages or assists in managing.

Note

A mistaken but honest and reasonable belief that B's engaging in sexual conduct in relation to a child did not constitute an offence or, if the conduct takes place outside Victoria, would not constitute an offence, is not a defence to this offence—see section 49ZC.

S. 49T
inserted by
No. 47/2016
s. 16.

49T Exception to sexual penetration offences—medical or hygienic purposes

A does not commit an offence against section 49A(1), 49B(1) or 49C(1) if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.

Note

The reference to A in this section is a reference to the same A referred to in sections 49A, 49B and 49C.

S. 49U
inserted by
No. 47/2016
s. 16.

49U Exceptions to offences against children under 16—similarity in age

- (1) A does not commit an offence against section 49D(1) or 49F(1) if, at the time at which the offence is alleged to have been committed—
 - (a) A is not more than 2 years older than B; and
 - (b) B is 12 years of age or more.
- (2) A does not commit an offence against section 49H(1) if, at the time at which the offence is alleged to have been committed—
 - (a) A is not more than 2 years older than C; and
 - (b) C is 12 years of age or more.

Note

References to A, B and C in this section are references to the same A, B and C referred to in sections 49D, 49F and 49H.

S. 49V
inserted by
No. 47/2016
s. 16.

49V Defence to offence against a child under 16—similarity in age

It is a defence to a charge for an offence against section 49B(1) if, at the time of the conduct constituting the offence—

- (a) A was not more than 2 years older than B;
and
- (b) B was 12 years of age or more; and

(c) B consented to the sexual penetration.

Note

References to A and B in this section are references to the same A and B referred to in section 49B.

**49W Defences to offences against children under 16—
reasonable belief as to age**

S. 49W
inserted by
No. 47/2016
s. 16.

- (1) It is a defence to a charge for an offence against section 49B(1), 49D(1) or 49F(1) if, at the time of the conduct constituting the offence—
 - (a) B was 12 years of age or more; and
 - (b) A reasonably believed that B was 16 years of age or more.
- (2) It is a defence to a charge for an offence against section 49H(1) if, at the time of the conduct constituting the offence—
 - (a) C was 12 years of age or more; and
 - (b) A reasonably believed that C was 16 years of age or more.
- (3) It is a defence to a charge for an offence against section 49K(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 16 years of age or more.
- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(b), (2)(b) or (3).

Notes

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49B, 49D, 49F, 49H and 49K.
- 2 Whether or not A reasonably believed that B or C was 16 years of age or more depends on the circumstances. The circumstances include any steps that A took to find out B or C's age.
- 3 An evidential burden applies to the matters referred to in subsections (1)(a) and (2)(a).

S. 49X
inserted by
No. 47/2016
s. 16.

49X Defences to offences against children aged 16 or 17 or under 18—reasonable belief as to age

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 18 years of age or more.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was 18 years of age or more.
- (3) It is a defence to a charge for an offence against section 49Q(1) or 49R(1) if, at the time of the conduct constituting the offence—
 - (a) B was 12 years of age or more; and
 - (b) A reasonably believed that B was 18 years of age or more.
- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1), (2) or (3)(b).

Notes

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I, 49L, 49Q and 49R.
- 2 Whether or not A reasonably believed that B or C was 18 years of age or more depends on the circumstances. The circumstances include any steps that A took to find out B or C's age.
- 3 An evidential burden applies to the matter referred to in subsection (3)(a).

49Y Exceptions to offences against children aged 16 or 17—marriage or domestic partnership

S. 49Y
inserted by
No. 47/2016
s. 16.

- (1) A does not commit an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time at which the offence is alleged to have been committed—
- (a) A and B are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or
 - (b) A—
 - (i) is not more than 5 years older than B; and
 - (ii) is B's domestic partner and the domestic partnership commenced before B came under A's care, supervision or authority.
- (2) A does not commit an offence against section 49I(1) if, at the time at which the offence is alleged to have been committed—
- (a) A and C are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or
 - (b) A—
 - (i) is not more than 5 years older than C; and
 - (ii) is C's domestic partner and the domestic partnership commenced before C came under A's care, supervision or authority.

Note

References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.

S. 49Z
inserted by
No. 47/2016
s. 16.

49Z Defences to offences against children aged 16 or 17—reasonable belief as to marriage or domestic partnership

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence—
- (a) A reasonably believed that A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
 - (b) A—
 - (i) was not more than 5 years older than B; and
 - (ii) reasonably believed that A was B's domestic partner and that the domestic partnership commenced before B came under A's care, supervision or authority.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence—
- (a) A reasonably believed that A and C were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
 - (b) A—
 - (i) was not more than 5 years older than C; and
 - (ii) reasonably believed that A was C's domestic partner and that the domestic partnership commenced before C came under A's care, supervision or authority.

- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(a) or (b)(ii) or (2)(a) or (b)(ii).

Notes

- 1 References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.
- 2 An evidential burden applies to the matters referred to in subsections (1)(b)(i) and (2)(b)(i).

49ZA Defences to offences against children aged 16 or 17—reasonable belief as to care, supervision or authority

**S. 49ZA
inserted by
No. 47/2016
s. 16.**

- (1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was not under A's care, supervision or authority.
- (2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was not under A's care, supervision or authority.
- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1) or (2).

Note

References to A, B and C in this section are references to the same A, B and C referred to in sections 49C, 49E, 49G, 49I and 49L.

S. 49ZB
inserted by
No. 47/2016
s. 16.

49ZB Exception to loitering offence

A does not commit an offence against section 49N(1) if A has a reasonable excuse for loitering at or near a place referred to in section 49N(1)(c).

Note

The reference to A in this section is a reference to the same A referred to in section 49N.

S. 49ZC
inserted by
No. 47/2016
s. 16.

49ZC No defence of mistaken but honest and reasonable belief of certain matters

It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—

- (a) for an offence against section 49A(1)—
B was 12 years of age or more; or
- (b) for an offence against section 49D(1)
or 49E(1)—the touching was not—
 - (i) sexual; or
 - (ii) contrary to community standards of acceptable conduct; or
- (c) for an offence against section 49F(1)
or 49G(1)—
 - (i) the activity was not sexual; or
 - (ii) engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct; or
- (d) for an offence against section 49H(1)
or 49I(1)—
 - (i) the activity was not sexual; or
 - (ii) A's causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct; or

- (e) for an offence against section 49K(1) or 49L(1)—the activity was not sexual; or
- (f) for an offence against section 49Q(1)—the sexual performance did not occur in circumstances that involved payment, reward or other benefit to any person in respect of the performance; or
- (g) for an offence against section 49R(1)—the invitation or offer did not involve payment, reward or other benefit to any person in respect of the performance; or
- (h) for an offence against section 49S(1)—B's engaging in sexual conduct in relation to a child did not constitute an offence or, if the conduct takes place outside Victoria, would not constitute an offence.

Note

References to A, B and C in this section are references to the same A, B and C referred to in sections 49A, 49D, 49E, 49F, 49G, 49H, 49I, 49K, 49L, 49Q, 49R and 49S.

(8C) *Incest*

Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 52, 53)
inserted by
No. 9509 s. 5,
amended²,
substituted as
Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 50A–50K)
by
No. 47/2016
s. 16.

50A Definitions

In this Subdivision—

child, in relation to a person, means—

- (a) the person's child by birth; or

S. 50A
inserted by
No. 47/2016
s. 16.

- (b) the person's genetic child; or
- (c) the person's child by operation of the **Adoption Act 1984**; or
- (d) the person's child by operation of the **Status of Children Act 1974**;

half-sibling, in relation to a person, means a person who shares a common parent with the person;

lineal ancestor, in relation to a person, means a lineal ancestor of the person's parent;

lineal descendant, in relation to a person, means a lineal descendant of the person's child;

parent, in relation to a person, means—

- (a) the person's birth parent; or
- (b) the person's genetic parent; or
- (c) the person's parent by operation of the **Adoption Act 1984**; or
- (d) the person's parent by operation of the **Status of Children Act 1974**;

sibling, in relation to a person, means a person who has the same parents as the person;

step-parent, in relation to a person, means the spouse or domestic partner of the person's parent, being a person who is not the person's parent.

S. 50B
inserted by
No. 47/2016
s. 16.

50B Rebuttable presumption as to family relationship

In a proceeding for an offence against a provision of this Subdivision, there is a rebuttable presumption that—

- (a) A knows that A is related to B in the way alleged; and

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

50C Sexual penetration of a child or lineal descendant

S. 50C
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate A; and
 - (b) B is A's child or lineal descendant; and
 - (c) A knows that B is A's child or lineal descendant.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) The standard sentence for an offence against subsection (1) is 10 years if B is, at the time of the offence, under the age of 18 years.

S. 50C(3)
inserted by
No. 34/2017
s. 33(1).

Notes

- 1 An exception applies to this offence—see section 50G.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.
- 4 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 5 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991** if B is, at the time of the offence, under the age of 18 years. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

Note 4 to
s. 50C
inserted by
No. 65/2016
s. 24(3),
substituted by
No. 34/2017
s. 33(2).

Note 5 to
s. 50C
inserted by
No. 34/2017
s. 33(2).

S. 50D
inserted by
No. 47/2016
s. 16.

50D Sexual penetration of a step-child

- (1) A person (A) commits an offence if—
 - (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate A; and
 - (b) B is a child or lineal descendant of A's spouse or domestic partner; and
 - (c) A knows that B is a child or lineal descendant of A's spouse or domestic partner.
- (2) A person who commits an offence against subsection (1) is liable to level 2 imprisonment (25 years maximum).
- (3) The standard sentence for an offence against subsection (1) is 10 years if B is, at the time of the offence, under the age of 18 years.

S. 50D(3)
inserted by
No. 34/2017
s. 34(1).

Notes

- 1 Exceptions apply to this offence—see sections 50G and 50I.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.
- 4 See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.
- 5 An offence against subsection (1) is a category 1 offence under the **Sentencing Act 1991** if B is, at the time of the offence, under the age of 18 years. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

Note 4 to
s. 50D
inserted by
No. 65/2016
s. 24(4),
substituted by
No. 34/2017
s. 34(2).

Note 5 to
s. 50D
inserted by
No. 34/2017
s. 34(2).

50E Sexual penetration of a parent, lineal ancestor or step-parent

S. 50E
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate A; and
 - (b) A is 18 years of age or more; and
 - (c) B is A's parent, lineal ancestor or step-parent; and
 - (d) A knows that B is A's parent, lineal ancestor or step-parent.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Notes

- 1 Exceptions apply to this offence—see sections 50G and 50J.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

50F Sexual penetration of a sibling or half-sibling

S. 50F
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate A; and
 - (b) B is A's sibling or half-sibling; and
 - (c) A knows that B is A's sibling or half-sibling.

- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Notes

- 1 An exception applies to this offence—see section 50G.
- 2 A defence applies to this offence—see section 50H.
- 3 B's consent is not a defence to this offence—see section 50K.

S. 50G
inserted by
No. 47/2016
s. 16.

50G Exception—medical or hygienic purposes

A does not commit an offence against a provision of this Subdivision if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

S. 50H
inserted by
No. 47/2016
s. 16.

50H Defence—accused did not consent

It is a defence to a charge for an offence against a provision of this Subdivision if A did not consent to the conduct constituting the offence.

Notes

- 1 The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.
- 2 A person may intentionally engage in conduct but not consent to it—see section 36(2). For example, B threatens to hurt A if A does not allow B to sexually penetrate A. A intentionally allows B to sexually penetrate A because A is afraid of harm. A did not consent to the conduct constituting the offence.

S. 50I
inserted by
No. 47/2016
s. 16.

50I Exception to offences against section 50D

A does not commit an offence against section 50D(1) if, at the time at which the offence is alleged to have been committed—

- (a) B is 18 years of age or more; and
- (b) A has not engaged in sexual activity with B when B was under 18 years of age; and

- (c) B has not at any time been under A's care, supervision or authority.

Note

References to A and B in this section are references to the same A and B referred to in section 50D.

50J Exceptions to offences against section 50E

S. 50J
inserted by
No. 47/2016
s. 16.

- (1) A does not commit an offence against section 50E(1) if, at the time at which the offence is alleged to have been committed—
- (a) B is A's step-parent; and
 - (b) A has not at any time been under B's care, supervision or authority.
- (2) A does not commit an offence against section 50E(1) if B engaged in sexual activity with A when A was under 18 years of age.

Note

References to A and B in this section are references to the same A and B referred to in section 50E.

50K Consent not a defence

S. 50K
inserted by
No. 47/2016
s. 16.

It is not a defence to a charge for an offence against a provision of this Subdivision that B consented to the conduct constituting the offence.

Note

The reference to B in this section is a reference to the same B referred to in the offence provisions in this Subdivision.

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,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
items 8, 9),
98/1995
s. 65(Sch. 1
item 3),
48/1997
s. 60(1)(Sch. 1
items 28, 29),
2/2006 ss 14–
17, 23/2006
s. 236(1)(2),
49/2010
ss 227, 228,
26/2014
s. 455(Sch.
item 7.1),
substituted as
Pt 1 Div. 1
Subdiv. (8D)
(Heading and
ss 51A–51Y)
by
No. 47/2016
s.16.

S. 51A
inserted by
No. 47/2016
s. 16.

(8D) *Child abuse material*

51A Definitions

(1) In this Subdivision—

administer, in relation to a website, includes building, developing and maintaining the website but does not include hosting the website;

authorised classifier means a person, or a person who belongs to a class of person, prescribed by the regulations for the purposes of this definition;

child means a person under the age of 18 years;

child abuse material means material that—

- (a) depicts or describes—
 - (i) a person who is, or who appears or is implied to be, a child—
 - (A) as a victim of torture, cruelty or physical abuse (whether or not the torture, cruelty or abuse is sexual); or
 - (B) as a victim of sexual abuse; or
 - (C) engaged in, or apparently engaging in, a sexual pose or sexual activity (whether or not in the presence of another person); or
 - (D) in the presence of another person who is engaged in, or apparently engaged in, a sexual pose or sexual activity; or
 - (ii) the genital or anal region of a person who is, or who appears or is implied to be, a child; or
 - (iii) the breast area of a person who is, or who appears or is implied to be, a female child; and
- (b) reasonable persons would regard as being, in the circumstances, offensive;

child abuse material disposal order means an order made under section 51X(1);

child abuse material offence means an offence against a provision of this Subdivision;

classified means classified under the Commonwealth Act;

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

deal, in relation to child abuse material, includes any of the following—

- (a) viewing, uploading or downloading child abuse material;
- (b) making child abuse material available for viewing, uploading or downloading;
- (c) facilitating the viewing, uploading or downloading of child abuse material;

electronic material includes data from which text, images or sound may be generated;

encourage includes suggest, request, urge and demand;

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 Australian Capital Territory;
or
- (iv) the Northern Territory of
Australia;

material means—

- (a) any film, audio, photograph, printed matter, image, computer game or text;
or
- (b) any electronic material; or
- (c) any other thing of any kind;

Note

See also subsection (2).

police officer includes a member of the Australian Federal Police;

relevant industry regulatory authority means a person or body prescribed to be a relevant industry regulatory authority for the purposes of section 51S(2)(d);

seized thing means a thing that came into the possession of a police officer in the course of the exercise of functions as a police officer;

website includes a page, or a group of pages, on the Internet.

(2) For the purposes of this Subdivision—

- (a) an image may be still, moving, recorded or unrecorded; and
- (b) the ways in which material is distributed may include—
 - (i) publishing, exhibiting, communicating, sending, supplying or transmitting the material to any other person; or

- (ii) making the material available for access by any other person.

S. 51B
inserted by
No. 47/2016
s. 16.

51B Involving a child in the production of child abuse material

- (1) A person (A) commits an offence if—
- (a) A intentionally involves another person (B) in the production of material; and
 - (b) B is a child; and
 - (c) A knows that B is, or probably is, a child; and
 - (d) the material is child abuse material; and
 - (e) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which A involves B in the production of material may include—
- (a) inviting or encouraging B to be involved, or offering B to be involved, in the production of the material; or
 - (b) causing or allowing B to be involved in the production of the material; or
 - (c) using B in the production of the material.

Notes

- 1 B need not be described or depicted in the material.
- 2 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 3 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.

- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51C Producing child abuse material

S. 51C
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally produces material; and
 - (b) the material is child abuse material; and
 - (c) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which material is produced may include—
- (a) filming, printing, photographing, recording, writing, drawing or otherwise generating material; or
 - (b) altering or manipulating material; or
 - (c) reproducing or copying material.

Notes

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51D Distributing child abuse material

S. 51D
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally distributes material; and
 - (b) the material is child abuse material; and
 - (c) A knows that the material is, or probably is, child abuse material.

- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is not necessary to prove—
 - (a) the identity of any person to whom the material was distributed; or
 - (b) that another person in fact accessed the material.
- (4) It is immaterial that some or all of the child abuse material was distributed outside Victoria, so long as A was in Victoria at some or all of the time at which the material was distributed.
- (5) It is immaterial that A was outside Victoria at some or all of time at which the material was distributed, so long as some or all of the material was distributed in Victoria.

Notes

- 1 Section 51A(2)(b) provides for the ways in which material may be distributed.
- 2 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 3 Defences apply to this offence—see sections 51L, 51P, 51Q and 51R.
- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

S. 51E
inserted by
No. 47/2016
s. 16.

51E Administering a website used to deal with child abuse material

- (1) A person (A) commits an offence if—
 - (a) A administers, or assists in the administration of, a website; and
 - (b) the website is used by another person to deal with child abuse material; and

(c) A—

- (i) intends that the website be used by another person to deal with child abuse material; or
- (ii) is aware that the website is being used by another person to deal with child abuse material.

Examples

- 1 A manages membership of a website. A intends that the website be used by other persons to view child abuse material.
 - 2 A monitors traffic through a website and ensures that the web server hardware and software are running correctly. A is aware that the website is being used by other persons to download child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is not necessary to prove the identity of the person using the website to deal with child abuse material.
- (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria or that a computer or device used in connection with administering the website was outside Victoria, so long as—
- (a) the person using the website to deal with child abuse material was in Victoria; or
 - (b) the computer or device used to deal with child abuse material was in Victoria.
- (5) It is immaterial that the person using the website to deal with child abuse material was outside Victoria or that the computer or device used to deal with child abuse material was outside Victoria, so long as—

- (a) some or all of the conduct constituting an offence against subsection (1) occurred in Victoria; or
- (b) a computer or device used in connection with administering the website was in Victoria.

Notes

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51S.
- 2 Defences apply to this offence—see section 51L.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

S. 51F
inserted by
No. 47/2016
s. 16.

51F Encouraging use of a website to deal with child abuse material

- (1) A person (A) commits an offence if—
 - (a) A is 18 years of age or more; and
 - (b) A encourages another person to use a website; and
 - (c) A intends that the other person use the website to deal with child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) In determining whether A has encouraged another person to use a website to deal with child abuse material, it is not necessary to prove—
 - (a) the identity of the person encouraged to use the website to deal with child abuse material; or
 - (b) that another person in fact used the website to deal with child abuse material; or

- (c) if another person did in fact use the website to deal with child abuse material, that it was A's encouragement that caused the person to do so.
- (4) Despite anything to the contrary in Division 12, it is not an offence for a person to attempt to commit an offence against subsection (1).
- (5) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the person being encouraged was in Victoria at the time at which that conduct occurred.
- (6) It is immaterial that the person being encouraged was outside Victoria at the time the conduct constituting an offence against subsection (1) occurred, so long as some or all of that conduct occurred in Victoria.

Notes

- 1 If an adult uses a child as an innocent agent to encourage another person to use a website, intending that the other person use the website to deal with child abuse material, the adult commits an offence against subsection (1).
- 2 Exceptions apply to this offence—see sections 51J and 51K.
- 3 A defence applies to this offence—see section 51L.
- 4 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51G Possession of child abuse material

- (1) A person (A) commits an offence if A knowingly possesses child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

**S. 51G
inserted by
No. 47/2016
s. 16.**

- (3) For the purposes of subsection (1), A possesses child abuse material that is electronic material if A controls access to the material whether or not A has physical possession of the electronic material.
- (4) It is immaterial that the electronic material was outside Victoria, so long as A was in Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred.
- (5) It is immaterial that A was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as the electronic material was in Victoria.

Examples

- 1 A has an online storage account for electronic material accessible with a username and password. A has control of what is stored in the account and can move material around within the account or delete material from the account. A has an electronic folder in the account that A has titled 'personal' in which A puts some electronic child abuse material. A knowingly has possession of child abuse material.
- 2 In an online chat A is given a password for a joint email account that is shared with multiple users that A doesn't know. A logs into the email account and views emails that contain child abuse material images. While logged in A has the ability to view, move or delete emails that contain child abuse material. A continues to access the email account to view images. A knowingly has possession of child abuse material.

Notes

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q, 51R and 51T.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51H Accessing child abuse material

S. 51H
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
 - (a) A intentionally accesses material; and
 - (b) the material is child abuse material; and
 - (c) A knows that the material is, or probably is, child abuse material.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) For the purposes of subsection (1), the ways in which A accesses material may include—
 - (a) viewing material; or
 - (b) displaying material by an electronic medium or any other output of the material by an electronic medium.

Notes

- 1 Exceptions apply to this offence—see sections 51J, 51K and 51M.
- 2 Defences apply to this offence—see sections 51L, 51N, 51O, 51P, 51Q and 51R.
- 3 A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51I Assisting a person to avoid apprehension

S. 51I
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
 - (a) A intentionally provides information to another person (B); and

(b) A intends that B use the information for the purpose of avoiding or reducing the likelihood of apprehension for an offence committed by B against section 51B(1), 51C(1), 51D(1), 51E(1), 51F(1), 51G(1) or 51H(1).

Examples

- 1 A provides information to B about how to use a website to deal with child abuse material anonymously or how to encrypt electronic material containing child abuse material.
 - 2 A provides information to B about how to delete electronic material that records information about B's identity.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).
- (3) It is not necessary to prove—
- (a) the identity of the person to whom the information was provided; or
 - (b) that the information was actually used by the other person.
- (4) It is immaterial that some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the other person was in Victoria at the time at which that conduct occurred.
- (5) It is immaterial that the other person was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.
- (6) For the purposes of subsections (4) and (5), information is provided by A to B at the place where A is at the time of giving that information

irrespective of where B is at the time of receiving that information.

Note

A mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as offensive is not a defence to this offence—see section 51U.

51J Exception—administration of the law

S. 51J
inserted by
No. 47/2016
s. 16.

A does not commit a child abuse material offence (other than an offence against section 51I(1)) if the conduct is engaged in by A in good faith in the course of official duties of A—

- (a) connected with the administration of the criminal justice system, including the investigation or prosecution of offences; or
- (b) as an employee of the Department of Justice and Regulation who is authorised to engage in that conduct by the Secretary to that Department.

Note

The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.

51K Exception—classification

S. 51K
inserted by
No. 47/2016
s. 16.

A does not commit a child abuse material offence (other than an offence against section 51I(1)) in respect of material that, at the time at which the offence is alleged to have been committed, was classified other than RC or would, if classified, have been classified other than RC.

Notes

- 1 The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.
- 2 Under the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth, a classification of RC means Refused Classification.

S. 51L
inserted by
No. 47/2016
s. 16.

51L Defence of artistic merit or public benefit

- (1) It is a defence to a charge for a child abuse material offence (other than an offence against section 51I(1)) if—
 - (a) the material—
 - (i) was not produced with the involvement of a person who was, at the time it was produced, under the age of 18 years; and
 - (ii) possesses artistic merit; or
 - (b) the material is of public benefit.
- (2) For the purposes of subsection (1)(b), material that is of public benefit includes material that is for a genuine medical, legal, scientific or educational purpose.

Examples

- 1 A is a university lecturer in psychology. During a lecture on abnormal psychology, A shows a lecture slide with examples of textual child abuse material to illustrate the type of material associated with an abnormal psychological profile. The lecture slide is of public benefit.
- 2 A is a photojournalist in a war zone. A takes a photo of a child victim of torture and submits it to a news organisation for publication. The photo is of public benefit.
- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(a)(ii) or (b).

Notes

- 1 The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.
- 2 An evidential burden applies to the matter referred to in subsection (1)(a)(i).

51M Exceptions applying to children

**S. 51M
inserted by
No. 47/2016
s. 16.**

- (1) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
 - (b) the child abuse material is an image; and
 - (c) the image depicts A alone.

Example

A is 15 years old and takes a photograph of themselves. A stores the photograph on their mobile phone. The offences in 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) do not apply to A in respect of the image.

Note

Section 51O may apply if A is an adult.

- (2) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
 - (b) the child abuse material is an image; and
 - (c) A is the victim of a criminal offence punishable by imprisonment and the image depicts that offence.

Example

The image depicts the child (A) being raped by another person. The offences in sections 51B(1), 51C(1), 51D(1), 51G(1) and 51H(1) do not apply to A in respect of the image.

- (3) In subsections (1) and (2), a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.

Note

References to A in this section are references to the same A referred to in sections 51B, 51C, 51D, 51G and 51H.

S. 51N
inserted by
No. 47/2016
s. 16.

51N Defence applying to children

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) A is a child; and
 - (b) the child abuse material is an image; and
 - (c) the image depicts one or more persons (whether or not it depicts A); and
 - (d) the image—
 - (i) does not depict an act that is a criminal offence punishable by imprisonment; or
 - (ii) depicts an act that is a criminal offence punishable by imprisonment but A reasonably believes that it does not; and
 - (e) at the time of the conduct constituting the offence—
 - (i) A was not more than 2 years older than the youngest child depicted in the image; or
 - (ii) A reasonably believed that they were not more than 2 years older than the youngest child depicted in the image.

Examples

- 1 The image depicts A taking part in an act of sexual penetration with another child who is not more than 2 years younger. Both are consenting to the act. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.
- 2 The image depicts a child being sexually penetrated. A is a child and A reasonably believes that the image depicts a consensual sexual relationship between two 16 year olds and is therefore not a criminal offence. A also reasonably believes that A is not more than 2 years older than the youngest child depicted in

the image. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.

- (2) In subsection (1), a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) A bears the burden of proving (on the balance of probabilities) the matters referred to in subsection (1)(d)(ii) and (e)(ii).

Notes

- 1 References to A in this section are references to the same A referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c), (d)(i) and (e)(i).

51O Defence—image of oneself

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51G(1) or 51H(1) if—
 - (a) the child abuse material is an image; and
 - (b) the image depicts A as a child; and
 - (c) the image does not depict A committing a criminal offence punishable by imprisonment; and
 - (d) A does not distribute the image to any other person.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.

S. 51O
inserted by
No. 47/2016
s. 16.

- (3) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(b).

Notes

- 1 References to A in this section are references to the same A referred to in sections 51B, 51C, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (c) and (d).
- 3 Sections 51M(1) or (2) or 51N may apply if A is a child.

S. 51P
inserted by
No. 47/2016
s. 16.

51P Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child's consent

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) the child abuse material is an image; and
 - (b) at the time at which the image was first made, the child (B) whose depiction in the image makes it child abuse material—
 - (i) was aged 16 or 17 years; and
 - (ii) was not, or had not been, under A's care, supervision or authority; and
 - (c) the image does not depict an act that is a criminal offence punishable by imprisonment; and
 - (d) A does not distribute the image to any person other than B; and
 - (e) A is not more than 2 years older than B; and
 - (f) at the time of the conduct constituting the offence, A reasonably believed that B consented to that conduct.

S. 51P(1)(d)
amended by
No. 5/2018
s. 5.

- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves B in producing.
- (3) For the purposes of subsection (1)(b), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.
- (4) A bears the burden of proving (on the balance of probabilities) the matters referred to in subsection (1)(e) and (f).

Notes

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c) and (d).

51Q Defence—marriage or domestic partnership

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
 - (a) the child abuse material is an image; and
 - (b) the image is child abuse material because of its depiction of another person (B); and
 - (c) the image does not depict a criminal offence punishable by imprisonment; and
 - (d) A does not distribute the image to any person other than B; and
 - (e) at the time at which the image was first made—
 - (i) B was 16 or 17 years of age; and

S. 51Q
inserted by
No. 47/2016
s. 16.

- (ii) either A and B were married to each other and the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
 - (iii) where A was B's domestic partner, if B was under A's care, supervision or authority, the domestic partnership commenced before B came under A's care, supervision or authority; and
- (f) at the time of the conduct constituting the offence—
- (i) either A and B were married to each other and the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
 - (ii) A reasonably believed that B consented to the conduct constituting the offence.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) For the purposes of subsection (1)(e), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.

- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(f)(ii).

Notes

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c), (d), (e) and (f)(i).
- 3 See section 36 for the meaning of consent.

51R Defence—reasonable belief in marriage or domestic partnership

S. 51R
inserted by
No. 47/2016
s. 16.

- (1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—
- (a) the child abuse material is an image; and
 - (b) the image is child abuse material because of its depiction of another person (B); and
 - (c) the image does not depict a criminal offence punishable by imprisonment; and
 - (d) A does not distribute the image to any person other than B; and
 - (e) at the time at which the image was first made, A reasonably believed that—
 - (i) B was 16 or 17 years of age; and
 - (ii) either A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
 - (iii) where A was B's domestic partner, if B was under A's care, supervision or authority, the domestic partnership

commenced before B came under A's care, supervision or authority; and

- (f) at the time of the conduct constituting the offence, A reasonably believed that—
- (i) either A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B's domestic partner and was no more than 2 years older than B; and
 - (ii) B consented to that conduct.
- (2) In subsection (1) a reference to an image, in relation to an offence against section 51B(1), is a reference to the image that A involves the child in producing.
- (3) For the purposes of subsection (1)(e), the reference to the time at which the image was first made does not include a reference to any later time at which a copy, reproduction or alteration of the image is made.
- (4) A bears the burden of proving (on the balance of probabilities) the matter referred to in subsection (1)(e) and (f).

Notes

- 1 References to A and B in this section are references to the same A and B referred to in sections 51B, 51C, 51D, 51G and 51H.
- 2 An evidential burden applies to the matters referred to in subsection (1)(a), (b), (c) and (d).
- 3 See section 36 for the meaning of consent.

S. 51S
inserted by
No. 47/2016
s. 16.

51S Defence—reasonable steps to prevent use of a website for child abuse material

- (1) It is a defence to a charge for an offence against section 51E(1) if A, on becoming aware that the website is being used, or has been used, by

another person to deal with child abuse material, takes all reasonable steps in the circumstances to prevent any person from being able to use the website to deal with child abuse material.

- (2) In determining whether A has taken all reasonable steps in the circumstances for the purposes of subsection (1), regard must be had to whether A did any of the following as soon as it was practicable to do so—
- (a) shut the website down;
 - (b) modified the operation of the website so that it could not be used to deal with child abuse material;
 - (c) notified a police officer that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by a police officer as to what to do in relation to that use of the website;
 - (d) notified a relevant industry regulatory authority that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by that authority as to what to do in relation to that use of the website.

Note

The reference to A in this section is a reference to the same A referred to in section 51E.

51T Defence—unsolicited possession

It is a defence to a charge for an offence against section 51G(1) for A to prove on the balance of probabilities that—

- (a) A did not intentionally come into possession of child abuse material; and

**S. 51T
inserted by
No. 47/2016
s. 16.**

- (b) on becoming aware of having come into possession of child abuse material, A, as soon as it was practicable to do so, took all reasonable steps in the circumstances to cease possessing the material.

Note

The reference to A in this section is a reference to the same A referred to in section 51G.

S. 51U
inserted by
No. 47/2016
s. 16.

51U No defence of mistaken but honest and reasonable belief that child abuse material not offensive

It is not a defence to a charge for a child abuse material offence that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that reasonable persons would not regard the child abuse material as being, in the circumstances, offensive.

Note

The reference to A in this section is a reference to the same A referred to in the child abuse material offence provisions.

S. 51V
inserted by
No. 47/2016
s. 16.

51V Use of random sample evidence in child abuse material cases

- (1) An authorised classifier, in connection with any proceeding for a child abuse material offence, may conduct an examination of a random sample of seized material.
- (2) In the proceeding for the child abuse material offence concerned, evidence adduced by the prosecution of any of the authorised classifier's findings as to the nature and content of the random sample is admissible as evidence of the nature and content of the whole of the material from which the random sample was taken.
- (3) Accordingly, it is open to a court to find that any type of child abuse material found by an authorised classifier to be present in a particular proportion in the random sample is

present in the same proportion in the material from which the random sample was taken.

- (4) A certificate of an authorised classifier that certifies the following is admissible in proceedings for a child abuse material offence as evidence of the matters certified—
 - (a) that the authorised classifier conducted an examination of a random sample of seized material;
 - (b) the findings of the authorised classifier as to the nature and content of the random sample.
- (5) A certificate signed by a person purporting to be an authorised classifier is, in the absence of evidence to the contrary, taken to be a certificate of an authorised classifier.
- (6) Evidence is admissible under this section only if the court is satisfied that an Australian legal practitioner representing the accused, or the accused, has been given a reasonable opportunity to inspect the seized material.
- (7) This section does not affect the operation of any provision of the **Criminal Procedure Act 2009** that restricts inspection by an accused of evidence that is child abuse material.

Note

See sections 46(3), 125(3) and 185A of the **Criminal Procedure Act 2009**.

- (8) The regulations may make further provision for or with respect to the taking and admissibility of random sample evidence under this section, including by providing for—
 - (a) the circumstances or classes of case in which the prosecutor may adduce evidence of the findings of an authorised classifier under this section; and

- (b) the procedure for taking and examining random samples of material; and
- (c) any further requirements as to the content of a certificate of an authorised classifier.

(9) In this section—

seized material, in relation to a proceeding for a child abuse material offence, means material—

- (a) that came into the possession of a police officer in the course of the exercise of functions as a police officer; and
- (b) some of which is alleged to be child abuse material that is the subject of the proceeding.

Note

Section 177 of the **Evidence Act 2008** provides for the adducing of expert evidence by the tendering of a certificate.

S. 51W
inserted by
No. 47/2016
s. 16.

51W Application for child abuse material disposal order

- (1) The Director of Public Prosecutions or a police officer may apply to a court for a child abuse material disposal order in respect of a seized thing, or of electronic material contained in a seized thing, that—
 - (a) was the subject of a criminal proceeding for a child abuse material offence in relation to which—
 - (i) the charge was discontinued, withdrawn or permanently stayed; or
 - (ii) the person charged was acquitted or found not guilty (including because of mental impairment) of the charge; or

- (iii) the charge was dismissed; or
 - (iv) the person charged was released on an undertaking under section 75 of the **Sentencing Act 1991**; or
- (b) was not the subject of a criminal proceeding.

Note

Sections 77 and 78 of the **Confiscation Act 1997** apply to the disposal of child abuse material where a person is convicted of an offence set out in Schedule 1 to that Act.

- (2) The court to which an application under subsection (1) is to be made is—
- (a) the court in which the proceeding was at the time at which the event mentioned in subsection (1)(a)(i) to (iv) occurred; or
 - (b) the Magistrates' Court.
- (3) The applicant must give written notice of an application under subsection (1) to every person whom the applicant has reason to believe has an interest in the seized thing or in the electronic material contained in the seized thing.
- (4) A notice under subsection (3) must be given by ordinary service at least 14 days before the return date.
- (5) The court may waive the requirement under subsection (3) to give notice if satisfied either—
- (a) that all persons who have an interest mentioned in that subsection have appeared before the court; or
 - (b) that it is fair to waive the requirement despite a person who has such an interest not having appeared before the court.

- (6) At any time before the final determination of the application, the court may require the applicant to give notice of the application to any person, in any manner and within any period that the court thinks fit.
- (7) The following persons are entitled to appear and give evidence at the hearing of the application—
- (a) any person notified under subsection (3) or (6);
 - (b) any other person who claims an interest in the seized thing or in electronic material contained in the seized thing.
- (8) However, the fact that a person mentioned in subsection (7) has not appeared before the court does not prevent the court from making a child abuse material disposal order.
- (9) In this section, *ordinary service* and *return date* have the same meanings as in the **Criminal Procedure Act 2009**.

S. 51X
inserted by
No. 47/2016
s. 16.

51X Child abuse material disposal order

- (1) On an application under section 51W, the court may order that the seized thing, or the electronic material contained in the seized thing, to which the application relates be—
- (a) forfeited to the State; and
 - (b) destroyed or disposed of in a manner determined by the court and specified in the order.

Note

A child abuse material disposal order that relates to a seized thing that is child abuse material results in forfeiture of the seized thing. A child abuse material disposal order that relates to electronic material that is contained in a seized thing results in forfeiture of the electronic material only.

- (2) The court may only make a child abuse material disposal order—
 - (a) if satisfied, on the balance of probabilities, that—
 - (i) the seized thing is, or the electronic material contained in the seized thing includes, child abuse material; and
 - (ii) the return to a person of the seized thing, or of the electronic material contained in the seized thing, may result in the commission of a child abuse material offence; or
 - (b) if satisfied, on the balance of probabilities, that—
 - (i) the seized thing contains encrypted or password protected electronic material; and
 - (ii) there are reasonable grounds to believe that the electronic material includes child abuse material.
- (3) The court has power to give any direction necessary to give effect to a child abuse material disposal order made by it.
- (4) Without affecting any other right of appeal, a person who has an interest in a seized thing, or in electronic material contained in a seized thing, may appeal against a child abuse material disposal order made in respect of it.
- (5) An appeal is to be made by a person in the same manner as if the person had been convicted, by the court that made the order, of a child abuse material offence and the order were, or were part of, the sentence imposed in respect of that offence.

- (6) On appeal—
- (a) the child abuse material disposal order may be confirmed, discharged or varied; or
 - (b) the matter may be remitted for re-hearing to the court that made the order with or without any direction in law.
- (7) A child abuse material disposal order is stayed during the appeal period.
- (8) In this section—

appeal period means the period permitted under the **Criminal Procedure Act 2009** for commencing an appeal of a kind mentioned in subsection (5) or, if such an appeal is commenced within that period, the determination of the appeal.

S. 51Y
inserted by
No. 47/2016
s. 16.

51Y Disposal of thing or material by consent

Nothing in section 51W or 51X prevents the destruction or disposal of a seized thing that is, or of electronic material contained in a seized thing that includes, child abuse material with the consent of all persons who have an interest in the thing or material.

(8E) *Sexual offences against persons with a cognitive impairment or mental illness*

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,
amended by
Nos 49/1991
s. 119(3)(Sch.
3 items 9–14),
41/1993 s. 21,
48/1997
s. 60(1)(Sch. 1
items 30–37),
69/1997
s. 22(2)(3),
2/2006 ss 18,
19, 8/2008
s. 22(1),
1/2009 s. 3,
37/2014
s. 10(Sch.
item 36.4),
74/2014
s. 7(4),
substituted as
Part 1 Div. 1
Subdiv. (8E)
(Heading and
ss 52A–52K)
by
No. 47/2016
s. 16.

52A Definitions

In this Subdivision—

cognitive impairment includes impairment
because of intellectual disability, dementia,
neurological disorder or brain injury;

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

mental illness has the same meaning as in the
Mental Health Act 2014;

S. 52A
inserted by
No. 47/2016
s. 16.

S. 52A def. of
*residential
service*
amended by
No. 19/2019
s. 257(1).

residential service includes—

- (a) a residential service within the meaning of the **Disability Act 2006**; and
- (b) a supported residential service within the meaning of the **Supported Residential Services (Private Proprietors) Act 2010**; and
- (ba) an SDA enrolled dwelling within the meaning of the **Residential Tenancies Act 1997**; and
- (c) residential care within the meaning of the Aged Care Act 1997 of the Commonwealth;

S. 52A def. of
*service
provider*
amended by
No. 19/2019
s. 257(2).

service provider includes—

- (a) a disability service provider within the meaning of the **Disability Act 2006**; and
- (ab) a registered NDIS provider within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth; and
- (b) a residential service; and
- (c) a designated mental health service within the meaning of the **Mental Health Act 2014**; and
- (d) a person who, or a body that, delivers treatment or support services to persons with a cognitive impairment or mental illness;

treatment or support services means any of the following delivered in a professional capacity—

- (a) mental health treatment;
- (b) medical treatment;
- (c) therapeutic services;
- (d) personal care or support services;

Example

A worker supporting a person with a cognitive impairment to undertake tasks such as bathing and dressing.

worker means a person—

- (a) who delivers, assists in delivering, or who manages the delivery of, services to persons with a cognitive impairment or mental illness; and

Example

A cook at a supported residential service.

- (b) who does so for or on behalf of a service provider (whether paid or unpaid); and

Example

A volunteer bus driver for a mental health service.

- (c) who is not a person with a cognitive impairment or mental illness who receives treatment or support services from that service provider.

S. 52B
inserted by
No. 47/2016
s. 16.

52B Sexual penetration of a person with a cognitive impairment or mental illness

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) sexually penetrates another person (B);
or
 - (ii) causes or allows B to sexually penetrate A; or
 - (iii) causes B—
 - (A) to sexually penetrate themselves;
or
 - (B) to sexually penetrate another person (C) or an animal; or
 - (C) to be sexually penetrated by C or by an animal; and
 - (b) B has a cognitive impairment or mental illness; and
 - (c) A—
 - (i) provides treatment or support services to B; or
 - (ii) is a worker for a service provider that provides treatment or support services to B.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

Notes

- 1 Exceptions apply to this offence—see sections 52F and 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

52C Sexual assault of a person with a cognitive impairment or mental illness

S. 52C
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A intentionally—
 - (i) touches another person (B); or
 - (ii) causes or allows B to touch A; or
 - (iii) causes B—
 - (A) to touch, or to continue to touch, themselves; or
 - (B) to touch, or to continue to touch, another person (C) or an animal; or
 - (C) to be touched, or to continue to be touched, by C or by an animal; and
 - (b) B has a cognitive impairment or mental illness; and
 - (c) A—
 - (i) provides treatment or support services to B; or
 - (ii) is a worker for a service provider that provides treatment or support services to B; and
 - (d) the touching is—
 - (i) sexual; and
 - (ii) contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

- (3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
 - (a) the circumstances include—
 - (i) the purpose of the touching; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from the touching;
 - (b) the circumstances do not include—
 - (i) whether B consents to the touching; or
 - (ii) whether A believes that B consents to the touching.

Notes

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

S. 52D
inserted by
No. 47/2016
s. 16.

52D Sexual activity in the presence of a person with a cognitive impairment or mental illness

- (1) A person (A) commits an offence if—
 - (a) A intentionally engages in an activity; and
 - (b) the activity is sexual; and
 - (c) another person (B) is present when A engages in the activity; and
 - (d) A knows that B is, or probably is, present when A engages in the activity; and
 - (e) B has a cognitive impairment or mental illness; and

- (f) A—
 - (i) provides treatment or support services to B; or
 - (ii) is a worker for a service provider that provides treatment or support services to B; and
 - (g) engaging in the activity in the presence of B is contrary to community standards of acceptable conduct.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).
- (3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;
 - (b) the circumstances do not include—
 - (i) whether B consents—
 - (A) to being present when A engages in the activity; or
 - (B) to A engaging in the activity; or
 - (ii) whether A believes that B consents—
 - (A) to being present when A engages in the activity; or

(B) to A engaging in the activity.

Notes

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

S. 52E
inserted by
No. 47/2016
s. 16.

52E Causing a person with a cognitive impairment or mental illness to be present during sexual activity

- (1) A person (A) commits an offence if—
 - (a) another person (B) engages in an activity;
and
 - (b) the activity is sexual; and
 - (c) another person (C) is present when
B engages in the activity; and
 - (d) A intentionally causes or allows C to be
present when B engages in the activity; and
 - (e) C has a cognitive impairment or mental
illness; and
 - (f) A—
 - (i) provides treatment or support services
to C; or
 - (ii) is a worker for a service provider that
provides treatment or support services
to C; and
 - (g) A's causing or allowing C to be present
when B engages in the activity is contrary to
community standards of acceptable conduct.
- (2) A person who commits an offence against
subsection (1) is liable to level 6 imprisonment
(5 years maximum).

- (3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.
- (4) For the purposes of subsection (3)—
- (a) the circumstances include—
 - (i) the purpose of the activity; and
 - (ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;
 - (b) the circumstances do not include—
 - (i) whether C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity; or
 - (ii) whether A believes that C consents—
 - (A) to being present when B engages in the activity; or
 - (B) to B engaging in the activity.

Notes

- 1 An exception applies to this offence—see section 52G.
- 2 Defences apply to this offence—see sections 52H, 52I and 52J.
- 3 A mistaken but honest and reasonable belief of certain matters is not a defence against this offence—see section 52K.

S. 52F
inserted by
No. 47/2016
s. 16.

52F Exceptions to sexual penetration offence—medical, hygienic, veterinary, agricultural or scientific purposes

A does not commit an offence against section 52B(1) if—

- (a) the sexual penetration is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes; or
- (b) the sexual penetration is of an animal and is caused by A to be done in the course of a procedure being carried out in good faith for veterinary or agricultural purposes or scientific research purposes.

Example

A is a support worker assisting B on a farm. B assists in birthing a calf. During this process, A causes B to insert B's hand into the cow's vagina. A has not committed an offence against section 52B(1).

Note

The reference to A in this section is a reference to the same A referred to in section 52B.

S. 52G
inserted by
No. 47/2016
s. 16.

52G Exception—marriage or domestic partnership

A does not commit an offence against a provision of this Subdivision if, at the time at which the offence is alleged to have been committed—

- (a) A and the person who has a cognitive impairment or mental illness are married to each other and the marriage is recognised as valid under the Marriage Act 1961 of the Commonwealth; or

- (b) A is the domestic partner of the person who has a cognitive impairment or mental illness.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

52H Defence—reasonable belief in marriage or domestic partnership

S. 52H
inserted by
No. 47/2016
s. 16.

It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that—

- (a) A and the person who has a cognitive impairment or mental illness were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth; or
- (b) A was the domestic partner of the person who has a cognitive impairment or mental illness.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

52I Defence—reasonable belief a person does not have a cognitive impairment or mental illness

S. 52I
inserted by
No. 47/2016
s. 16.

It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the person who has a cognitive impairment or mental illness did not have a cognitive impairment or mental illness.

Note

The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.

S. 52J
inserted by
No. 47/2016
s. 16.

52J Defence—reasonable belief the service provider does not provide treatment or support services to the person with a cognitive impairment or mental illness

If A is a worker for a service provider, it is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the service provider was not providing treatment or support services to the person who has a cognitive impairment or mental illness.

Notes

- 1 The reference to A in this section is a reference to the same A referred to in the offence provisions in this Subdivision.
- 2 The prosecution is required to prove that A is a worker for a service provider—see sections 52B, 52C, 52D and 52E.

S. 52K
inserted by
No. 47/2016
s. 16.

52K No defence of mistaken but honest and reasonable belief of certain matters

- (1) It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—
 - (a) for an offence against section 52B(1), 52C(1) or 52D(1)—A did not provide treatment or support services to B or was not a worker for a service provider; or
 - (b) for an offence against section 52E(1)—A did not provide treatment or support services to C or was not a worker for a service provider.

- (2) It is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that—
- (a) for an offence against section 52C(1)—
the touching was not—
 - (i) sexual; or
 - (ii) contrary to community standards of acceptable conduct; or
 - (b) for an offence against section 52D(1)—
 - (i) the activity was not sexual; or
 - (ii) engaging in the activity in the presence of B was not contrary to community standards of acceptable conduct; or
 - (c) for an offence against section 52E(1)—
 - (i) the activity was not sexual; or
 - (ii) A's causing or allowing C to be present when B engages in the activity was not contrary to community standards of acceptable conduct.

Note

References to A, B and C in this section are references to the same A, B and C referred to in sections 52B, 52C, 52D and 52E.

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

Pt 1 Div. 1
Subdiv.
(8EAA)
(Heading and
ss 60AB–
60AE)
inserted by
No. 20/2004
s. 3,
repealed by
No. 47/2016
s. 16.

* * * * *

Pt 1 Div. 1
Subdiv. (8EA)
(Heading and
s. 60B)
inserted by
No. 129/1993
s. 10,
amended by
Nos 90/1995
s. 86, 22/1996
s. 7, 48/1997
s. 60(1)(Sch. 1
item 38),
69/1997
s. 22(4),
65/1998 s. 3,
67/2000
s. 7(1)(2),
56/2005 s. 7,
63/2010
s. 81(Sch.
item 4),
80/2011
s. 79(Sch.
item 3),
repealed by
No. 47/2016
s. 16.

* * * * *

(8F) *Sexual servitude*

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,
amended by
Nos 81/1997
s. 6, 76/2006
s. 3, 14/2015
s. 79,
substituted as
Pt 1 Div. 1
Subdiv. (8F)
(Heading and
ss 53A–53G)
by
No. 47/2016
s. 16.

53A Definitions

S. 53A
inserted by
No. 47/2016
s. 16.

In this Subdivision—

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;

Example

A brothel manager may have reasonable grounds to threaten to dismiss a sex worker who is regularly late for work.

use, in relation to a debt or purported debt, includes impose, arrange, negotiate or refer to the debt or purported debt.

S. 53B
inserted by
No. 47/2016
s. 16.

53B Using force, threat etc. to cause another person to provide commercial sexual services

- (1) A person (A) commits an offence if—
- (a) A—
- (i) uses force against another person (B) or any other person; or
 - (ii) makes a threat to, or against, B or any other person; or
 - (iii) unlawfully detains B or any other person; or
 - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or any other person; or
 - (v) uses a manifestly excessive debt owed, or purportedly owed, by B or any other person; and

- (b) A, by engaging in the conduct referred to in paragraph (a), causes B—
- (i) to provide, or to continue to provide, commercial sexual services; or
 - (ii) to not be free to leave the place or area where B provides commercial sexual services; and
- (c) A—
- (i) intends that engaging in the conduct referred to in paragraph (a) will cause B—
 - (A) to provide, or to continue to provide, commercial sexual services; or
 - (B) to not be free to leave the place or area where B provides commercial sexual services; or
 - (ii) knows that engaging in the conduct referred to in paragraph (a) will, or probably will, cause B—
 - (A) to provide, or to continue to provide, commercial sexual services; or
 - (B) to not be free to leave the place or area where B provides commercial sexual services.
- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

S. 53C
inserted by
No. 47/2016
s. 16.

53C Causing another person to provide commercial sexual services in circumstances involving sexual servitude

- (1) A person (A) commits an offence if—
- (a) A causes or induces another person (B) to provide, or to continue to provide, commercial sexual services; and
 - (b) B is not free to stop providing those services, or to leave the place or area where B provides those services, because A or another person (C)—
 - (i) uses force against B or another person (D); or
 - (ii) makes a threat to, or against, B or D; or
 - (iii) unlawfully detains B or D; or
 - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or D; or
 - (v) uses a manifestly excessive debt owed, or purportedly owed, by B or D; and
 - (c) A knows that engaging in the conduct referred to in paragraph (b) will, or probably will, cause B—
 - (i) to provide, or to continue to provide, commercial sexual services; or
 - (ii) to not be free to leave the place or area where B provides commercial sexual services.
- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

53D Conducting a business in circumstances involving sexual servitude

S. 53D
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A conducts a business that involves the provision of commercial sexual services by another person (B); and
 - (b) B is not free to stop providing those services, or to leave the place or area where B provides those services, because A or another person (C)—
 - (i) uses force against B or another person (D); or
 - (ii) makes a threat to, or against, B or D; or
 - (iii) unlawfully detains B or D; or
 - (iv) engages in fraud or misrepresentation (including by omission) in relation to B or D; or
 - (v) uses a manifestly excessive debt, or purported debt, owed by B or D; and
 - (c) A knows that engaging in the conduct referred to in paragraph (b) will, or probably will, cause B—
 - (i) to provide, or to continue to provide, commercial sexual services; or
 - (ii) to not be free to leave the place or area where B provides commercial sexual services.
- (2) A person who commits an offence against subsection (1) is liable to level 4 imprisonment (15 years maximum).

- (3) For the purposes of subsection (1), 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. 53E
inserted by
No. 47/2016
s. 16.

53E Aggravated sexual servitude

- (1) A person (A) commits an offence if—
- (a) A commits an offence against section 53B(1), 53C(1) or 53D(1); and
 - (b) the person against whom the offence is committed (B) is under the age of 18 years; and
 - (c) A knows that B is, or probably is, under the age of 18 years.
- (2) A person who commits an offence against subsection (1) is liable to level 3 imprisonment (20 years maximum).

S. 53F
inserted by
No. 47/2016
s. 16.

53F Deceptive recruiting for commercial sexual services

- (1) A person (A) commits an offence if—
- (a) A deceives another person (B) about the fact that an engagement will involve the provision of commercial sexual services by B; and
 - (b) A intends to induce B to enter into an engagement to provide commercial sexual services.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

53G Aggravated deceptive recruiting for commercial sexual services

S. 53G
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if—
- (a) A commits an offence against section 53F(1); and
 - (b) the person against whom the offence is committed (B) is under the age of 18 years; and
 - (c) A knows that B is, or probably is, under the age of 18 years.
- (2) A person who commits an offence against subsection (1) is liable to level 5 imprisonment (10 years maximum).

(8FA) *Other sexual offences*

Pt 1 Div. 1
Subdiv. (8FA)
(Heading and
ss 54A–54C)
inserted by
No. 47/2016
s. 16.

54A Bestiality

S. 54A
inserted by
No. 47/2016
s. 16.

- (1) A person (A) commits an offence if A intentionally—
- (a) sexually penetrates an animal; or
 - (b) causes or allows an animal to sexually penetrate A.
- (2) A person who commits an offence against subsection (1) is liable to level 6 imprisonment (5 years maximum).

Notes

- 1 See section 35A(3) for the meaning of sexual penetration of an animal.
- 2 See section 35A(4) for the meaning of sexual penetration by an animal.
- 3 An exception applies to this offence—see section 54B.

S. 54B
inserted by
No. 47/2016
s. 16.

54B Exception—veterinary, agricultural or scientific research

A does not commit an offence against section 54A(1) if A's conduct occurs in the course of a procedure being carried out by A in good faith for veterinary or agricultural purposes or scientific research purposes.

Note

The reference to A in this section is a reference to the same A referred to in section 54A.

S. 54C
inserted by
No. 47/2016
s. 16.

54C Abolition of common law offence of wilful exposure

The offence of wilful exposure at common law is abolished.

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 touching that is sexual (with or without aggravating circumstances) by another person.
- (3) A reference in this section to sexual penetration means sexual penetration as defined by section 35A.

S. 62(2)
substituted by
No. 10233
s. 10,
amended by
No. 74/2014
s. 7(6).

S. 62(3)
repealed by
No. 8/1991
s. 6(c), new
s. 62(3)
inserted by
No. 74/2014
s. 7(7),
amended by
No. 47/2016
s. 17.

(9) *Child stealing*

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.

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)).

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)).

- (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).

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

(9A) Kidnapping

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).

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).

Note to s. 63A
inserted by
No. 65/2016
s. 20(18).

Note

An offence against this section is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

(10) *Bigamy*

64 Bigamy

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.

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).

(11) *Attempts to procure abortion*

65 Abortion performed by unqualified person

- (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

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.

(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.

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.

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.

(12) Concealing the birth of a child³

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).

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)).

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

Pt 1 Div. 1
Subdiv. (13)
(Heading and
ss 68, 69)
amended by
No. 7577 s. 3,
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,
amended by
Nos 22/1996
s. 8, 48/1997
s. 60(1)(Sch. 1
items 45–47),
108/1997
s. 151, 67/2000
s. 6, 69/2001
s. 20, 52/2003
s. 52(Sch. 1
item 2),
20/2004
ss 4–6, 6/2005
ss 12–13(3),
68/2009
s. 97(Sch.
item 40.5),
77/2013
ss 15, 16,
37/2014
s. 10(Sch.
items 36.5,
36.6), 74/2014
s. 8, 42/2015
ss 3–7,
54/2016 s. 27,
repealed by
No. 47/2016
s. 18.

* * * * *

* * * * *

Pt 1 Div. 1
Subdiv. (14)
(Heading and
s. 70)
repealed by
No. 9509 s. 6,
new Pt 1 Div.
1 Subdiv. (14)
(Heading and
ss 70AB,
70AC)
inserted by
No. 20/2004
s. 7,
repealed by
No. 47/2016
s. 18.

Division 1A—Piracy

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

70A Piracy with violence

(1837) 7
William IV and
1 Vict.
c. LXXXVIII
s. 2.

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—

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)).

- (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.

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

70B Piratical acts

(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.

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

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

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).

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).

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

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

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

- (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).

- (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

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

- (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;

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.

(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.

S. 73(15)
inserted by
No. 20/2015
s. 22.

(15) In this section—

motor vehicle includes vessel, whether or not the vessel is powered by a motor;

vessel has the same meaning as in the **Marine Safety Act 2010**.

Theft, robbery, burglary, &c.

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

74 Theft

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).

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

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

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

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.

S. 74AA
inserted by
No. 44/2015
s. 9.

74AA Theft of firearm

- (1) A person must not steal a firearm.
Penalty: 1800 penalty units or 15 years imprisonment.
- (2) For the purposes of subsection (1)—
firearm has the same meaning as in section 3(1) of the **Firearms Act 1996**.

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

75 Robbery

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

- (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(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).

- (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. 75A
inserted by
No. 9048 s. 2.

75A Armed robbery

- (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).

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

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).

Note

An offence against this section is a category 2 offence under the **Sentencing Act 1991** if—

Note to s. 75A
inserted by
No. 48/2018
s. 88.

- (a) the offender has with him or her a firearm at the time of the offence; or
- (b) a victim of the offence has suffered injury as a direct result of the offence; or
- (c) the offence was committed by the offender in company with one or more other persons.

See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

76 Burglary

(1) A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent—

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

- (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).

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

77 Aggravated burglary

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

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.

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

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;

S. 77(1A)
inserted by
No. 48/1997
s. 54.

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.

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

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).

77A Home invasion

- (1) A person commits a home invasion if—
- (a) the person enters a home as a trespasser with intent—
- (i) to steal anything in the home; or
- (ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—
- (A) involving an assault to a person in the home; or
- (B) involving any damage to the home or to property in the home; and

S. 77A
inserted by
No. 50/2016
s. 3.

- (b) the person enters the home in company with one or more other persons; and
- (c) either—
 - (i) at the time the person enters the home, the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or
 - (ii) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.
- (2) For the purpose of subsection (1)(c)(ii), it is immaterial whether or not the person knew that there was, or would be, another person present in the home.
- (3) A person who commits a home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).
- (4) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.
- (5) In this section—
 - explosive, firearm, imitation explosive, imitation firearm, and offensive weapon* have the same meanings as in section 77;
 - home* means any building, part of a building or other structure intended for occupation as a dwelling and includes the following—
 - (a) any part of commercial or industrial premises that is used as residential premises;

- (b) a motel room or hotel room or other temporary accommodation provided on a commercial basis;
- (c) a rooming house within the meaning of the **Residential Tenancies Act 1997**;
- (d) a room provided to a person as accommodation in a residential care service, hospital or any other premises involved in the provision of health services to the person;
- (e) a caravan within the meaning of the **Residential Tenancies Act 1997** or any vehicle or vessel used as a residence.

Note

An offence against this section is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to s. 77A
inserted by
No. 48/2018
s. 89.

77B Aggravated home invasion

(1) A person commits an aggravated home invasion if—

- (a) the person enters a home as a trespasser with intent—
 - (i) to steal anything in the home; or
 - (ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—
 - (A) involving an assault to a person in the home; or
 - (B) involving any damage to the home or to property in the home; and

S. 77B
inserted by
No. 50/2016
s. 3.

- (b) the person enters the home in company with 2 or more other persons; and
 - (c) at the time the person enters the home—
 - (i) the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; and
 - (ii) the person knows or is reckless as to whether there is or will be another person (other than a person referred to in paragraph (b)) present in the home while the person is present in the home; and
 - (d) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.
- (2) A person who commits an aggravated home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).
- (3) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.
- (4) In this section—
explosive, firearm, imitation explosive, imitation firearm, and *offensive weapon* have the same meanings as in section 77;
home has the same meaning as in section 77A.

Notes

Note 1AA
to s. 77B
inserted by
No. 48/2018
s. 90(a).

1AA An offence against this section is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

- 1 Section 10AC of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 77B and that a non-parole period of not less than 3 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.

* * * * *

Note 2
to s. 77B
amended by
No. 48/2018
s. 90(b),
repealed by
No. 23/2020
s. 15.

77C Alternative verdict for charge of aggravated home invasion

S. 77C
inserted by
No. 50/2016
s. 3.

If on the trial of a person charged with an offence against section 77B (aggravated home invasion) the jury are not satisfied that the person is guilty of the offence charged but are satisfied that the person is guilty of an offence against section 77A (home invasion), the jury may acquit the person of the offence charged and find the person guilty of the offence against section 77A and the person is liable to punishment accordingly.

78 Removal of articles from places open to the public

S. 78
substituted by
No. 8425
s. 2(1)(b).

- (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,
new s. 79
inserted by
No. 50/2016
s. 4.

79 Carjacking

- (1) A person (A) commits a carjacking if—
 - (a) A steals a vehicle; and
 - (b) immediately before or at the time of doing so, and in order to do so, A—
 - (i) uses force on another person; or
 - (ii) puts or seeks to put another person (B) in fear that B or anyone else will then and there be subjected to force.

(2) A person who commits a carjacking commits an offence and is liable to level 4 imprisonment (15 years maximum).

(3) In this section—

vehicle includes—

- (a) a motor vehicle;
- (b) a vessel within the meaning of the **Marine Safety Act 2010**.

Note

An offence against this section is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to s. 79
inserted by
No. 48/2018
s. 91.

79A Aggravated carjacking

(1) A person commits an aggravated carjacking if the person commits a carjacking and—

- (a) at the time the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or
- (b) in the course of the carjacking the person causes injury to another person.

(2) A person who commits an aggravated carjacking commits an offence and is liable to level 2 imprisonment (25 years maximum).

(3) In this section—

explosive, firearm, imitation explosive, imitation firearm, and *offensive weapon* have the same meanings as in section 77;

injury has the same meaning as in section 15.

Notes

S. 79A
inserted by
No. 50/2016
s. 4.

Note 1AA
to s. 79A
inserted by
No. 48/2018
s. 92(a).

1AA An offence against this section is a category 1 offence under the **Sentencing Act 1991**. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.

1 Section 10AD of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 79A and that a non-parole period of not less than 3 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.

Note 2
to s. 79A
amended by
No. 48/2018
s. 92(b),
repealed by
No. 23/2020
s. 16.

* * * * *

S. 80
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 9576
s. 11(1).

80 Unlawfully taking control of an aircraft

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)).

(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(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).

Fraud and blackmail

Heading
preceding
s. 80A
inserted by
No. 8425
s. 2(1)(b).
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).

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).

- (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).
- (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*—
 - (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

S. 81(4)
substituted by
No. 36/1988
s. 6.

(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).

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).

(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—

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.

83A Falsification of documents

S. 83A
inserted by
No. 36/1988
s. 7.

- (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.

S. 83A(1)
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).

- (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.

S. 83A(2)
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).

- (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.

S. 83A(3)
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(4)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (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.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(5)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (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.

Penalty: Level 5 imprisonment (10 years maximum).

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).

- (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.

Penalty: Level 5 imprisonment (10 years maximum).

(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.

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).

Penalty: Level 5 imprisonment (10 years maximum).

(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.

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).

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

- (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

- (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.

- (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.

S. 83B
inserted by
No. 25/1989
s. 6.

83B Abolition of common law offences of forgery and uttering

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**.

S. 84
substituted by
No. 8425
s. 2(1)(b).

84 Liability of company officers for certain offences by company

- (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.

85 False statements by company directors etc.

S. 85
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b).

- (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.

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).

86 Suppression etc. of documents

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).

- (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.

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

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).

Offences relating to goods stolen, &c.

Heading
preceding
s. 88
inserted by
No. 8425
s. 2(1)(b).

88 Handling stolen goods

- (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

S. 88
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 70/1987
s. 5(a)(b).

S. 88(1)
amended by
No. 59/2004
s. 3.

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.

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).

(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(3)
inserted by
No. 9073
s. 2(a).

(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. 88A
(Heading)
amended by
No. 68/2009
s. 97(Sch.
item 40.6)

88A Alternative charges of theft and handling stolen goods

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
- (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.

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. 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).

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

S. 90
amended by
No. 8181
s. 2(1)
(Sch. item 33),
substituted by
No. 8425
s. 2(1)(b).

- (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.

Heading preceding s. 91 inserted by No. 8425 s. 2(1)(b).

Possession of housebreaking implements, &c.

S. 91 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b).

91 Going equipped for stealing etc.

S. 91(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 67(a)).

- (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.

(2) A person guilty of an offence under this section shall be liable to level 7 imprisonment (2 years maximum).

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)).

(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.

(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. 91(4)
substituted by
No. 10249
s. 13.

92 Search for stolen goods

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)).

(1) If a magistrate is satisfied by evidence on oath or by affirmation 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.

S. 92(1)
substituted by
No. 25/2009
s. 3(1),
amended by
No. 6/2018
s. 68(Sch. 2
item 35.1).

S. 92(1A)
inserted by
No. 25/2009
s. 3(1).

(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(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.7).

- (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.

S. 92(3)
substituted by
No. 25/2009
s. 3(2).

(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.

(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**.

S. 92(5)
inserted by
No. 25/2009
s. 3(3).

(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.

93 Procedure and evidence

S. 93
substituted by
No. 8425
s. 2(1)(b).

- (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(1)
amended by
No. 68/2009
s. 97(Sch.
item 40.8).

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).

* * * * *

Heading
 preceding
 s. 95
 inserted by
 No. 8425
 s. 2(1)(b).

General and consequential provisions

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(2)
 amended by
 No. 19/1987
 s. 27(a),
 repealed by
 No. 69/2009
 s. 37.

* * * * *

S. 95(3)
 amended by
 No. 9848
 s. 18(1),
 repealed by
 No. 19/1987
 s. 27(b).

* * * * *

Ss 96–174
 repealed.⁴

* * * * *

Secret commissions prohibition

Heading
preceding
s. 175
amended by
No. 8425
s. 2(1)(d).

175 Definitions⁵

No. 6103
s. 175.

(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;

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;

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).

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;

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 2019** or attorney under an enduring power of attorney under the **Powers of Attorney Act 2014** 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;

S. 175(1)
def. of
trustee
amended by
Nos 25/1989
s. 20(c),
52/1998
s. 311(Sch. 1
item 17),
57/2014 s. 149,
13/2019
s. 221(Sch. 1
item 11).

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.

No. 6103
s. 176.

176 Receipt or solicitation of secret commission by an agent an indictable offence⁶

- (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.

177 Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent⁷

No. 6103
s. 177.

(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(1)
amended by
No. 48/1997
s. 62(3).

(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.

S. 177(2)
amended by
No. 74/2000
s. 3(Sch. 1
item 30.2).

178 Giving or receiving false or misleading receipt or account an indictable offence⁸

No. 6103
s. 178.

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—

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).

(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.

No. 6103
s. 179.

179 Gift or receipt of secret commission in return for advice given⁹

S. 179(1)
amended by
No. 9576
s. 11(1).

(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—

(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.

(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—

S. 179(2)
amended by
No. 9576
s. 11(1).

(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.

(3) Any person on conviction of an indictable offence under any of the provisions of this section shall—

S. 179(3)
amended by
No. 9576
s. 11(1).

(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)(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).

* * * * *

S. 179(3)(b)
repealed by
No. 36/1988
s. 8(c)(iii).

No. 6103
s. 180.
S. 180
amended by
Nos 9576
s. 11(1),
57/1989
s. 3(Sch.
item 42.5).

180 Secret commission to trustee in return for substituted appointment¹⁰

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—

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).

- (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. 180(b)
repealed by
No. 36/1988
s. 8(d)(iii).

* * * * *

181 Aiding and abetting offences within or outside Victoria¹¹

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. 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).

182 Liability of directors etc. acting without authority¹²

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—

No. 6103
s. 182.
S. 182
amended by
No. 9576
s. 11(1).

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).

(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(b)
repealed by
No. 36/1988
s. 8(f)(iii).

* * * * *

S. 183
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * * *

No. 6103
s. 184.

184 Protection of witness giving answers crinating himself ¹³

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—

S. 184(a)
amended by
No. 57/1989
s. 3(Sch.
item 42.6).

(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

(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.

S. 184(b)
amended by
No. 57/1989
s. 3(Sch.
item 42.6).

185 Stay of proceedings against such witness¹⁴

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. 185.
S. 185
amended by
No. 57/1989
s. 3(Sch.
item 42.7).

186 Custom of itself no defence¹⁵

- (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.

No. 6103
s. 186.

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

S. 186(3) repealed by No. 7546 s. 5.	*	*	*	*	*
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)).	*	*	*	*	*

Heading
preceding
s. 187
substituted by
No. 8425
s. 2(1)(e) (as
amended by
No. 9019
s. 2(1)(Sch.
item 257)).

Fraudulently inducing persons to invest

Ss 187–190 repealed by No. 8425 s. 2(1)(f).	*	*	*	*	*
--	---	---	---	---	---

No. 6103
s. 191.

191 Fraudulently inducing persons to invest money

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).

- (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—

- (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.

S. 191(3)
amended by
No. 6716
s. 2(Sch. 1).

(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).
*	*	*	*	*	Pt 1 Div. 2 Subdiv. (21) (Heading and ss 194, 195) repealed by No. 8425 s. 2(1)(f).

Division 2AA—Identity crime

Pt 1 Div. 2AA
(Heading and
ss 192A–192E)
inserted by
No. 22/2009
s. 3.

192A Definitions

S. 192A
inserted by
No. 22/2009
s. 3.

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 themselves 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.

S. 192B
inserted by
No. 22/2009
s. 3.

192B Making, using or supplying identification information

- (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

(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.

192C Possession of identification information

S. 192C
inserted by
No. 22/2009
s. 3.

- (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.

- (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.

S. 192D
inserted by
No. 22/2009
s. 3.

**192D Possession of equipment used to make etc.
identification documentation**

- (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.

S. 192E
inserted by
No. 22/2009
s. 3.

**192E Not an offence to attempt to commit an identity
crime offence**

It is not an offence to attempt to commit an offence against section 192B, 192C or 192D.

Division 2A—Money laundering etc.

Pt 1 Div. 2A
(Heading and
ss 193–195A)
inserted by
No. 104/2003
s. 3.

193 Definitions

New s. 193
inserted by
No. 104/2003
s. 3.

(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.

New s. 194
inserted by
No. 104/2003
s. 3.

194 Dealing with proceeds of crime

- (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).

(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.

195 Dealing with property suspected of being proceeds of crime

New s. 195
inserted by
No. 104/2003
s. 3.

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).

195A Dealing with property which subsequently becomes an instrument of crime

S. 195A
inserted by
No. 104/2003
s. 3.

- (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.

- (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.

Pt 1 Div. 2B
(Heading and
ss 195B–
195F)
inserted by
No. 20/2013
s. 3.

Division 2B—Cheating at gambling

S. 195B
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

- (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—

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

S. 195C
inserted by
No. 20/2013
s. 3.

A person must not 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 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).

195D Facilitating conduct that corrupts or would corrupt a betting outcome of event or event contingency

S. 195D
inserted by
No. 20/2013
s. 3.

(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).

S. 195E
inserted by
No. 20/2013
s. 3.

195E Concealing conduct, agreement or arrangement

- (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

S. 195E(2)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 36.8).

- (c) any other authority of a kind prescribed by regulation.

195F Use of corrupt conduct information for betting purposes

S. 195F
inserted by
No. 20/2013
s. 3.

- (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 2C—Offences against public order

Pt 1 Div. 2C
(Heading and
ss 195G–195I)
inserted by
No. 32/2017
s. 8.

S. 195G
inserted by
No. 32/2017
s. 8.

195G Abolition of certain common law offences against public order

The offences at common law of affray, rout and riot are abolished.

S. 195H
inserted by
No. 32/2017
s. 8.

195H Affray

- (1) A person who uses or threatens unlawful violence and whose conduct would cause a person of reasonable firmness present at the scene to be terrified commits an offence and is liable to—
- (a) level 6 imprisonment (5 years maximum); or
 - (b) imprisonment for 7 years if, at the time of committing the offence, the person is wearing a face covering used primarily—
 - (i) to conceal the person's identity; or
 - (ii) to protect the person from the effects of a crowd-controlling substance.

Example of unlawful violence

Engaging in unlawful fighting with another person.

- (2) A person is guilty of an offence under subsection (1) only if the person intends to use or threaten violence or is reckless as to whether the person's conduct involves the use of violence or threatens violence.
- (3) For the purposes of subsection (1), a threat of unlawful violence must involve more than words alone.
- (4) An offence under subsection (1) may be committed—
- (a) in private as well as public places; and

- (b) whether or not a person of reasonable firmness is present at the scene.
- (5) For the purpose of subsection (1), if 2 or more persons use or threaten unlawful violence—
 - (a) it is the conduct of them taken together that must be considered; and
 - (b) it is immaterial whether or not those persons use or threaten unlawful violence simultaneously.

195I Violent disorder

S. 195I
inserted by
No. 32/2017
s. 8.

- (1) Violent disorder occurs where 6 or more persons (the *participants*) who are present together use or threaten unlawful violence with a common goal or intention and the conduct of them, taken together, causes injury to another person or causes damage to property.
- (2) For the purposes of subsection (1)—
 - (a) violent disorder may occur in private as well as public places; and
 - (b) it is immaterial whether or not the participants use or threaten unlawful violence simultaneously; and
 - (c) the common goal or intention may be inferred from the conduct of the participants.
- (3) A participant in violent disorder commits an offence and is liable to—
 - (a) level 5 imprisonment (10 years maximum);
or
 - (b) level 4 imprisonment (15 years maximum) if, at the time of committing the offence, the participant is wearing a face covering used primarily—

- (i) to conceal the participant's identity; or
 - (ii) to protect the participant from the effects of a crowd-controlling substance.
- (4) A person is guilty of an offence under subsection (3) only if the person intends to use or threaten violence or is reckless as to whether the person's conduct involves the use of violence or threatens violence.
- (5) Subsection (4) does not affect the determination for the purposes of subsection (1) of the number of persons who are engaging in the conduct referred to in subsection (1).

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).

- (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).

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)).

(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).

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)).

(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).

(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.

Note

An offence against this section is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to s. 197A inserted by No. 65/2016 s. 20(19).

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. 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).

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).

* * * * *

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
 - (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

S. 201
repealed by
No. 9228
s. 2(1)(c),
new s. 201
inserted by
No. 9228
s. 2(1)(d).

- (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.

S. 201A
inserted by
No. 10/2003
s. 4.

201A Intentionally or recklessly causing a bushfire

- (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.
- (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.

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. 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)).

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

S. 203 repealed by No. 9228 s. 2(1)(c).	*	*	*	*	*
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).	*	*	*	*	*
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).	*	*	*	*	*
New Pt 1 Div. 3 Subdiv. (2) (Heading) inserted by No. 9228 s. 2(1)(e).	(2) <i>Injuries to buildings &c. by rioters and forcible entries and detainers</i>				

206 Rioters demolishing buildings¹⁶

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 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(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)).

(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).

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)).

No. 6103
 s. 207.

207 Forcible entry

S. 207(1)
 repealed by
 No. 44/1997
 s. 3.

* * * * *

(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.

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)).

(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.

Pt 1 Div. 3
 Subdivs (4)(5)
 (Headings
 and
 ss 208–210)
 repealed by
 No. 9228
 s. 2(1)(c).

* * * * *

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).

* * * * *

*	*	*	*	*	Pt 1 Div. 3 Subdiv. (8) (Heading and ss 223, 224) repealed by No. 9228 s. 2(1)(c).
(3) <i>Interference with mines, sea banks &c., railways and navigation aids</i>					New Pt 1 Div. 3 Subdiv. (3) (Heading) inserted by No. 9228 s. 2(1)(f).
225 Conveying water into a mine					No. 6103 s. 225.
<p>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.</p>					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).
*	*	*	*	*	S. 226 repealed by No. 9228 s. 2(1)(c).
*	*	*	*	*	Pt 1 Div. 3 Subdiv. (9) (Heading and s. 227) repealed by No. 9228 s. 2(1)(c).

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).

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).

Pt 1 Div. 3
 Subdivs
 (10)(11)
 (Headings
 and
 ss 229–231)
 repealed by
 No. 9228
 s. 2(1)(c).

* * * * *

Pt 1 Div. 3
 Subdiv. (12)
 (Heading)
 repealed by
 No. 9228
 s. 2(1)(c).

* * * * *

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).

232 Placing things on railways to obstruct or overturn engine etc.¹⁷

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

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 railway¹⁸

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).

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).

* * * * *

Pt 1 Div. 3
 Subdiv. (15)
 (Heading and
 ss 239–243)
 repealed by
 No. 9228
 s. 2(1)(c).

* * * * *

No. 6103
 s. 244.

244 Altering signals or exhibiting false ones

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).

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).

No. 6103
 s. 245.

245 Removing buoy etc.

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).

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. 246 repealed by No. 9228 s. 2(1)(c).
*	*	*	*	*	Pt 1 Div. 3 Subdiv. (15A) (Heading) inserted by No. 7088 s. 2(d), repealed by No. 9228 s. 2(1)(c).

(4) *Injuries to aircraft*

New Pt 1
Div. 3
Subdiv. (4)
(Heading)
inserted by
No. 9228
s. 2(1)(g).

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. 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).

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).

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).

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).

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. 246D
inserted by
No. 7088
s. 2(d).

246D Dangerous goods on 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).

- (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—

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.

- (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).

S. 246F inserted by No. 7088 s. 2(d), substituted by No. 9155 s. 4(b), repealed by No. 9228 s. 2(1)(c).

(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

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).

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).

(6) *Computer offences*

Pt 1 Div. 3
Subdiv. (6)
(Heading and
ss 247A–247I)
inserted by
No. 10/2003
s. 5.

247A Interpretation

S. 247A
inserted by
No. 10/2003
s. 5.

(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

- (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.

247B Unauthorised access, modification or impairment with intent to commit serious offence

S. 247B
inserted by
No. 10/2003
s. 5.

- (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.

- (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.

S. 247C
inserted by
No. 10/2003
s. 5.

247C Unauthorised modification of data to cause impairment

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).

247D Unauthorised impairment of electronic communication

S. 247D
inserted by
No. 10/2003
s. 5.

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).

247E Possession of data with intent to commit serious computer offence

S. 247E
inserted by
No. 10/2003
s. 5.

(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.

S. 247F
inserted by
No. 10/2003
s. 5.

247F Producing, supplying or obtaining data with intent to commit serious computer offence

(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.

247G Unauthorised access to or modification of restricted data

S. 247G
inserted by
No. 10/2003
s. 5.

- (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.

247H Unauthorised impairment of data held in computer disk, credit card or other device

S. 247H
inserted by
No. 10/2003
s. 5.

- (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.

S. 247I
inserted by
No. 10/2003
s. 5.

247I Extra-territorial operation of offences

- (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.

Pt 1 Div. 3
Subdiv. (7)
(Heading and
ss 247J–247L)
inserted by
No. 10/2003
s. 6.

(7) Sabotage

S. 247J
inserted by
No. 10/2003
s. 6.

247J Interpretation

- (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.

S. 247K
inserted by
No. 10/2003
s. 6.

247K Sabotage

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).

S. 247L
inserted by
No. 10/2003
s. 6.

247L Threats to sabotage

(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).

- (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.

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.

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.

(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.

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—

- (a) public alarm or anxiety; or
- (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

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

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).

S. 249(a)
amended by
No. 66/2005
s. 3(2)(b).

S. 249(b)
amended by
No. 66/2005
s. 3(2)(b).

Note to s. 249
inserted by
No. 80/2001
s. 7(1).

S. 250
(Heading)
inserted by
No. 66/2005
s. 4(1).

New s. 250
inserted by
No. 65/1998
s. 5.

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(1)
amended by
No. 66/2005
s. 4(2)(a).

(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)(a)
amended by
No. 66/2005
s. 4(2)(b).

(a) public alarm or anxiety; or

S. 250(1)(b)
amended by
No. 66/2005
s. 4(2)(a)(b).

(b) economic loss through public awareness of the threat.

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 to s. 250
inserted by
No. 80/2001
s. 7(2).

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.

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

S. 251
(Heading)
inserted by
No. 66/2005
s. 5(1).
New s. 251
inserted by
No. 65/1998
s. 5.

- (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

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. 251
inserted by
No. 80/2001
s. 7(3).

New s. 252
inserted by
No. 65/1998
s. 5,
amended by
No. 66/2005
s. 6(a).

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—

S. 252(a)
amended by
No. 66/2005
s. 6(b).

(a) public alarm or anxiety in Victoria; or

S. 252(b)
amended by
No. 66/2005
s. 6(b).

(b) economic loss in Victoria through public awareness of the contamination.

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.

Division 5—Destruction of evidence

New s. 253
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

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.

New s. 254
inserted by
No. 6/2006
s. 3.

254 Destruction of evidence

- (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

Note 1 to
s. 254(1)
substituted by
No. 69/2009
s. 40.

- 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.

**255 Corporate criminal responsibility for offence
against section 254**

New s. 255
inserted by
No. 6/2006
s. 3.

- (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.

- (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.

- (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 5A—Intimidation and reprisals relating to witnesses, etc.

Pt 1 Div. 5A
(Heading and new ss 256, 257) inserted by No. 34/2016 s. 40.

256 Interpretation

New s. 256 inserted by No. 34/2016 s. 40.

- (1) For the purposes of this Division, a person is involved in a criminal investigation if the person is—
- (a) a witness of an alleged crime or crimes being investigated; or
 - (b) a victim of an alleged crime or crimes being investigated; or
 - (c) involved in the investigation in any other capacity.
- (2) For the purposes of this Division, a person is involved in a criminal proceeding if the person is—
- (a) a witness in that proceeding; or
 - (b) a juror in that proceeding; or
 - (c) involved in the proceeding in any other capacity.
- (3) In this Division—
- detriment***, to a person, includes—
- (a) loss or damage to a person's property or business;

- (b) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, business, trade, profession or enterprise.

New s. 257
inserted by
No. 34/2016
s. 40.

257 Intimidation or reprisals relating to involvement in criminal investigation or criminal proceeding

- (1) A person (the offender) must not—

- (a) use or procure the use of intimidation towards a person (the victim); or
- (b) cause or procure any physical harm or detriment of any kind to a person (the victim)—

because the offender knows or believes that the victim or another person is, was, may be or may become involved in a criminal investigation or a criminal proceeding.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) For the purposes of subsection (1)(a), a person uses intimidation towards a victim if—

- (a) the person engages in conduct that could reasonably be expected to arouse apprehension or fear in the victim for the safety of the victim or another person or of detriment to the victim or another person; and
- (b) either—
 - (i) the person knows that engaging in that conduct would be likely to arouse that apprehension or fear; or

- (ii) in all the particular circumstances, the person ought to have known that engaging in that conduct would be likely to arouse that apprehension or fear.
- (3) Subsection (2) applies whether or not the conduct arouses apprehension or fear in the victim.
- (4) Subsection (1) 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 public revenue—that, but for this subsection, would constitute an offence against subsection (1).
- (5) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the 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 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.

- (6) For the purposes of this section, it is immaterial that—
- (a) some or all of the 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; or
 - (b) the victim was outside Victoria at the time at which some or all of the conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria; or
 - (c) some or all of the conduct constituting an offence against subsection (1) occurred outside Victoria and the victim was outside Victoria at the relevant time or times, so long as the relevant criminal investigation or criminal proceeding is occurring, occurred, will occur or may occur in Victoria.

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 or affidavit of some or any person, any person who in any such case takes or makes any oath or affirmation so required or authorized and who knowingly wilfully and corruptly upon such oath or affirmation deposes swears to or affirms or makes any false statement as to any such fact matter or thing, and any person who knowingly wilfully and corruptly upon oath or by affirmation 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 or affidavit as to any such fact matter or thing, such statement affirmation or affidavit being untrue wholly or in part, or who knowingly wilfully and corruptly omits from any such affirmation 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 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.

Note

Making a false statutory declaration is a separate offence under section 36 of the **Oaths and Affirmations Act 2018**.

S. 314(3)
amended by
No. 6/2018
ss 63,
68(Sch 2
item 35.2).

Note to
s. 314(3)
inserted by
No. 6/2018
s. 68(Sch. 2
item 35.4).

No. 6103
s. 315.

S. 315
amended by
No. 6/2018
s. 68(Sch. 2
item 35.5).

315 All evidence material with respect to perjury

All evidence and proof whatsoever, whether given or made orally or by or in any affidavit examination statutory 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

No. 6103
s. 316.

316 Unlawful oaths to commit treason, murder etc.

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)).

(1) Every person who—

S. 316(1)(a)
amended by
No. 9019
s. 2(1)(Sch.
item 38).

- (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
- (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).

(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;
 - (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

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)).

S. 316(2)(a)(ii)
amended by
No. 9019
s. 2(1)(Sch.
item 39).

(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).

S. 316(3)
amended by
Nos 57/1989
s. 3(Sch.
item 42.14),
68/2009
s. 97(Sch.
item 40.10).

(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(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 substances¹⁹**

317 Offences connected with explosive substances

No. 6103
s. 317.

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

explosive substance includes—

S. 317(1)
def. of
*explosive
substance*
amended by
No. 25/2009
s. 4(1)(a).

- (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;

public place has the same meaning as it has in section 3 of the **Summary Offences Act 1966**;

S. 317(1)
def. of
public place
inserted by
No. 25/2009
s. 4(1)(b).

vehicle includes motor vehicle, aircraft and vessel.

S. 317(1)
def. of
vehicle
inserted by
No. 25/2009
s. 4(1)(b).

- (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).

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)).

- (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).

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)).

- (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(5)
amended by
No. 9576
s. 11(1),
repealed by
No. 63/2014
s. 7(5).

* * * * *

S. 317(6)
repealed by
No. 9848
s. 18(1).

* * * * *

- (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(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).
- (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(8) amended by No. 68/2009 s. 97(Sch. item 40.12).
- (9) (a) If a magistrate is satisfied by the evidence on oath or by affirmation 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
- 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), 6/2018 s. 68(Sch. 2 item 35.3).

an offence under this Division has been, is being, or is about to be committed.

S. 317(9)(b)
amended by
Nos 25/2009
s. 4(3),
37/2014
s. 10(Sch.
item 36.9).

- (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.

S. 317(9)(c)
amended by
Nos 8731
s. 173, 57/1989
s. 3(Sch.
item 42.16(b)).

- (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 elsewhere²⁰.

S. 317A
inserted by
No. 95/1994
s. 6.

317A Bomb hoaxes

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.

- (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.

S. 317A(2)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 88),
69/1997
s. 22(7).

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 8A—Driving offences connected with
emergency workers, custodial officers, youth justice
custodial workers and emergency service vehicles**

Pt 1 Div. 8A
(Heading)
amended by
No. 65/2017
s. 4.

Pt 1 Div. 8A
(Heading and
ss 317AB–
317AG)
inserted by
No. 65/2017
s. 3.

S. 317AB
inserted by
No. 65/2017
s. 3.

317AB Interpretation

(1) In this Division—

custodial officer has the same meaning as
in section 10AA(8) of the **Sentencing
Act 1991**;

S. 317AB(1)
def. of
*emergency
worker*
amended by
No. 65/2017
s. 5(1)(a).

emergency worker has the same meaning as
in section 10AA(8) of the **Sentencing
Act 1991**;

S. 317AB(1)
def. of *youth
justice
custodial
worker*
inserted by
No. 65/2017
s. 5(1)(b).

youth justice custodial worker has the same
meaning as in section 10AA(8) of the
Sentencing Act 1991.

(2) For the purposes of this Division—

(a) an emergency worker is on duty if they
would be on duty for the purposes of section
10AA(9) of the **Sentencing Act 1991**; and

- (b) a custodial officer is on duty if they would be on duty for the purposes of section 10AA(10) of the **Sentencing Act 1991**; and S. 317AB(2)(b) amended by No. 65/2017 s. 5(2)(a).
- (c) a youth justice custodial worker is on duty if they would be on duty for the purposes of section 10AA(11) of the **Sentencing Act 1991**. S. 317AB(2)(c) inserted by No. 65/2017 s. 5(2)(b).
- 317AC Intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving** S. 317AC (Heading) amended by No. 65/2017 s. 6.
- (1) A person who— S. 317AC inserted by No. 65/2017 s. 3.
- (a) drives a motor vehicle in the vicinity of another person who is an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty; and S. 317AC(1)(a) amended by No. 65/2017 s. 7(1).
- (b) knows that, or is reckless as to whether, the other person is an emergency worker, a custodial officer or a youth justice custodial worker; and S. 317AC(1)(b) amended by Nos 65/2017 s. 7(2), 3/2019 s. 5(1).
- (c) without lawful excuse, drives the motor vehicle and intends to expose the other person to a risk to safety—
- is guilty of an offence and liable to level 3 imprisonment (20 years maximum).
- (2) For the purposes of subsection (1), the person is taken to know that the other person is an emergency worker, a custodial officer or a youth justice custodial worker (as the case may be) if— S. 317AC(2) amended by Nos 65/2017 s. 7(2), 3/2019 s. 5(1).
- (a) the other person has identified themselves as an emergency worker, a custodial officer or a youth justice custodial worker; or S. 317AC(2)(a) amended by Nos 65/2017 s. 7(2), 3/2019 s. 5(1).

(b) the other person is inside or in the vicinity of a vehicle which—

(i) bears the livery or insignia of an emergency service; or

(ii) is displaying a flashing blue or red light (whether or not it is displaying other lights); or

(iii) is sounding an alarm; or

S. 317AC(2)(c) amended by Nos 65/2017 s. 7(2)(3), 3/2019 s. 5(2).

(c) the fact that the other person is an emergency worker, a custodial officer or a youth justice custodial worker is reasonably apparent, having regard to all the circumstances, including the conduct and manner of the emergency worker, custodial officer or youth justice custodial worker.

S. 317AC(3) amended by No. 65/2017 s. 7(3).²¹

(3) A person may be found guilty of an offence under subsection (1) irrespective of whether the emergency worker, custodial officer or youth justice custodial worker was injured by the conduct of the person driving the motor vehicle.

Notes to s. 317AC(3) amended by Nos 65/2017 s. 7(4), 48/2018 s. 93, repealed by No. 23/2020 s. 17(1).

* * * * *

Notes to s. 317AC inserted by No. 23/2020 s. 17(2).

Notes

- 1 An offence against this section is a category 1 offence under the **Sentencing Act 1991** if an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty was injured in the commission of the offence. See section 5(2G) and (2GA) of that Act for the requirement to impose a custodial order or other specified order for this offence if committed in those circumstances.
- 2 See section 10AE(1) of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an

offence against section 317AC and that a non-parole period of not less than 2 years be fixed under section 11 of that Act if an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty was injured in the commission of the offence unless the court finds under section 10A of that Act that a special reason exists.

- 3 Section 16(3D) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

317AD Aggravated offence of intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving

S. 317AD
(Heading)
amended by
No. 65/2017
s. 8.

S. 317AD
inserted by
No. 65/2017
s. 3.

- (1) A person is guilty of the aggravated offence of intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving if the person commits an offence against section 317AC and any of the following apply—

S. 317AD(1)
amended by
No. 65/2017
s. 9(1).

- (a) the motor vehicle driven by the person in the commission of the offence against section 317AC is stolen and the person knows that, or is reckless as to whether, the motor vehicle is stolen;
- (b) the person commits the offence against section 317AC in connection with an offence committed by that person against section 317AG;

- (c) the person commits the offence against section 317AC in connection with another indictable offence committed by that person, punishable by 10 years imprisonment or more.
- (2) For the purposes of subsection (1)(b) and (c), the offences are connected if—
- (a) there is a close connection in time; or
 - (b) there is a close connection in place; or
 - (c) in the case of subsection (1)(c), the purpose of the commission of the offence against section 317AC is to avoid apprehension for the other indictable offence.
- (3) A person guilty of the aggravated offence of intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum).

S. 317AD(3)
amended by
No. 65/2017
s. 9(1).

Notes to
s. 317AD
amended by
Nos 65/2017
s. 9(2),
48/2018 s. 94,
substituted by
No. 23/2020
s. 18.

Notes

- 1 An offence against this section is a category 1 offence under the **Sentencing Act 1991** if an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty was injured in the commission of the offence. See section 5(2G) and (2GA) of that Act for the requirement to impose a custodial order or other specified order for this offence if committed in those circumstances.
- 2 An offence against this section (other than a category 1 offence referred to in note 1) is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.
- 3 See section 10AE(1) of the **Sentencing Act 1991** for the requirement that a term of imprisonment be imposed for an offence against section 317AD and that a non-parole period of not less than 2 years be fixed under section 11 of that Act if an emergency worker on duty, a custodial officer on duty or

a youth justice custodial worker on duty was injured in the commission of the offence unless the court finds under section 10A of that Act that a special reason exists.

- 4 Section 16(3D) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

317AE Recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving

(1) A person who—

- (a) drives a motor vehicle in the vicinity of another person who is an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty; and
- (b) knows that, or is reckless as to whether, the other person is an emergency worker, custodial officer or youth justice custodial worker; and
- (c) without lawful excuse, drives the motor vehicle and recklessly exposes the other person to a risk to safety—

is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

S. 317AE
(Heading)
amended by
No. 65/2017
s. 10.

S. 317AE
inserted by
No. 65/2017
s. 3.

S. 317AE(1)(a)
amended by
No. 65/2017
s. 11(1).

S. 317AE(1)(b)
amended by
No. 65/2017
s. 11(2).

S. 317AE(2)
amended by
No. 65/2017
s. 11(2).

(2) For the purposes of subsection (1), the person is taken to know that the other person is an emergency worker, custodial officer or youth justice custodial worker (as the case may be) if—

S. 317AE(2)(a)
amended by
No. 65/2017
s. 11(2).

(a) the other person has identified themselves as an emergency worker, custodial officer or youth justice custodial worker; or

(b) the other person is inside or in the vicinity of a vehicle which—

(i) bears the livery or insignia of an emergency service; or

(ii) is displaying a flashing blue or red light (whether or not it is displaying other lights); or

(iii) is sounding an alarm; or

S. 317AE(2)(c)
amended by
No. 65/2017
s. 11(2)(3).

(c) the fact that the other person is an emergency worker, custodial officer or youth justice custodial worker is reasonably apparent, having regard to all the circumstances, including the conduct and manner of the emergency worker, custodial officer or youth justice custodial worker.

S. 317AE(3)
amended by
No. 65/2017
s. 11(3).

(3) A person may be found guilty of an offence under subsection (1) irrespective of whether the emergency worker, custodial officer or youth justice custodial worker was injured by the conduct of the person driving the motor vehicle.

Note

Section 16(3D) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

317AF Aggravated offence of recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving

S. 317AF
(Heading)
amended by
No. 65/2017
s. 12.

S. 317AF
inserted by
No. 65/2017
s. 3.

(1) A person is guilty of the aggravated offence of recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving if the person commits an offence against section 317AE and any of the following apply—

S. 317AF(1)
amended by
No. 65/2017
s. 13.

- (a) the motor vehicle driven by the person in the commission of the offence against section 317AE is stolen and the person knows that, or is reckless as to whether, the motor vehicle is stolen;
- (b) the person commits the offence against section 317AE in connection with an offence committed by that person against section 317AG;
- (c) the person commits the offence against section 317AE in connection with another indictable offence committed by that person, punishable by 10 years or more imprisonment.

(2) For the purposes of subsection (1)(b) and (c), the offences are connected if—

- (a) there is a close connection in time; or
- (b) there is a close connection in place; or

(c) in the case of subsection (1)(c), the purpose of the commission of the offence against section 317AE is to avoid apprehension for the other indictable offence.

S. 317AF(3)
amended by
No. 65/2017
s. 13.

- (3) A person guilty of the aggravated offence of recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

Notes

- 1 An offence against this section is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.
- 2 Section 16(3D) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

S. 317AG
inserted by
No. 65/2017
s. 3.

317AG Damaging an emergency service vehicle

- (1) A person must not, without lawful excuse, recklessly drive a motor vehicle so that damage is caused to an emergency service vehicle.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) To be guilty of an offence under subsection (1), the person must know that, or be reckless as to whether, the other vehicle is an emergency service vehicle.

- (3) For the purposes of subsection (2), the person is taken to know that the other vehicle is an emergency service vehicle if—
- (a) the motor vehicle bears the livery or insignia of an emergency service; or
 - (b) the motor vehicle is displaying a flashing blue or red light (whether or not it is displaying other lights); or
 - (c) the motor vehicle is sounding an alarm; or
 - (d) the fact that the motor vehicle is an emergency service vehicle is reasonably apparent, having regard to all of the circumstances, including the manner in which the emergency service vehicle is being driven.

- (4) In this section, *emergency service vehicle* means a motor vehicle that, at a particular time—

S. 317AG(4)
amended by
No. 65/2017
s. 14(2).

- (a) is being used by an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty; or

S. 317AG(4)(a)
amended by
No. 65/2017
s. 14(1).

- (b) is ordinarily used by an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty—

S. 317AG(4)(b)
amended by
No. 65/2017
s. 14(1).

regardless of whether it is occupied by an emergency worker, a custodial officer or a youth justice custodial worker at that time.

Note

Section 16(3D) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for an offence against this section must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

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—

S. 317B(1) def.
of *drive*
substituted by
No. 8/2018
s. 14.

drive, in relation to a motor vehicle, has the same meaning as it has in the **Road Safety Act 1986** and includes to 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;

S. 317B(1)
def. of *vessel*
amended by
No. 65/2010
s. 420(Sch. 3
item 3).

vessel has the same meaning as in the **Marine Safety Act 2010**.

(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.

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.

- (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.

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).

Note

An offence against this subsection is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to
s. 318(1)
inserted by
No. 48/2018
s. 95.

- (1A) The standard sentence for an offence under subsection (1) is 8 years.

Note

See sections 5A and 5B of the **Sentencing Act 1991** as to standard sentences.

S. 318(1A)
inserted by
No. 52/2014
s. 16,
repealed by
No. 34/2017
s. 14, new
s. 318(1A)
inserted by
No. 34/2017
s. 35.

S. 318(2)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.4).

- (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.

S. 318(2A)
inserted by
No. 59/2004
s. 5.

- (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. S. 318(3) amended by Nos 9576 s. 11(1), 68/2009 s. 97(Sch. item 40.13).
- (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. S. 318(4) amended by No. 9576 s. 11(1).
- (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 charged in the same indictment with an indictable offence under this section. S. 318(5) amended by Nos 9576 s. 11(1), 68/2009 s. 97(Sch. item 40.14).
- (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(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.
- (7) **Drug** means a drug within the meaning of the **Road Safety Act 1986**. S. 318(7) substituted by Nos 8338 s. 4, 78/1987 s. 4(2).

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).

Note to
s. 319(1)
inserted by
No. 48/2018
s. 96.

Note

An offence against this subsection is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

S. 319(1A)
inserted by
No. 7/2008
s. 5(2).

- (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).

(1B) In a proceeding for an offence against subsection (1) or (1A), it is to be presumed, in the absence of evidence to the contrary, that the accused drove the motor vehicle in a manner that was dangerous to the public having regard to all the circumstances of the case if the prosecution proves that the accused, at the time of the driving, was knowingly or recklessly in contravention of section 18 or 30 of the **Road Safety Act 1986**.

S. 319(1B)
inserted by
No. 48/2018
s. 19A.

(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(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—

* * * * *

S. 319A def. of
control
repealed by
No. 20/2015
s. 23(a).

dangerous dog has the same meaning as in
section 3(1) of the **Domestic Animals
Act 1994**;

failure to keep under control, in relation to a
dangerous dog, menacing dog or restricted
breed dog, includes a failure to comply with
any of the requirements under sections 26(1),
28, 29, 38, 39, 40, 41, 41E, 41F(1)(a), 41G,
41H, 41HA and 41I of the **Domestic
Animals Act 1994**;

S. 319A def. of
*failure to keep
under control*
inserted by
No. 20/2015
s. 23(b).

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;

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).

S. 319C(1)
amended by
No. 8/2014
s. 34(1).

(2) A person (other than the owner of a dangerous dog, menacing dog or restricted breed dog) who—

S. 319C(2)
amended by
No. 8/2014
s. 34(2).

(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—

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

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 affirmation 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.

S. 319E(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.3).

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
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.

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.

Pt 1 Div. 9A
 (Heading and
 s. 320)
 inserted by
 No. 48/1997
 s. 56.

New s. 320
 inserted by
 No. 48/1997
 s. 56,
 amended by
 No. 8/2008
 s. 13.

S. 320 (Table)
 amended by
 Nos 47/2016
 s. 19, 32/2017
 s. 10.

Division 9A—Penalties for certain common law offences

320 Maximum term of imprisonment for certain common law offences

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>
*	* * *
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)

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

<i>Column 1</i>	<i>Column 2</i>
<i>Common law offence</i>	<i>Maximum Term of Imprisonment</i>
Perverting the course of justice	Level 2 imprisonment (25 years maximum)
Public nuisance	Level 6 imprisonment (5 years maximum)
*	* * *
*	* * *
Unlawful assembly	Level 6 imprisonment (5 years maximum)
*	* * *

Note

The offence of kidnapping at common law is a category 2 offence under the **Sentencing Act 1991**. See subsection (2H) of section 5 of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that subsection exist.

Note to s. 320 inserted by No. 65/2016 s. 20(20).

320A Maximum term of imprisonment for common assault in certain circumstances

S. 320A inserted by No. 3/2019 s. 4.

- (1) Despite section 320, the maximum term of imprisonment for common assault is level 5 imprisonment (10 years maximum) if—
- (a) at the time of the assault, the person who commits the assault (the *offender*) has an offensive weapon readily available; and
 - (b) the person assaulted (the *victim*) is a police officer on duty or a protective services officer on duty; and
 - (c) the offender knows or is reckless as to whether the victim is a police officer or a protective services officer; and

- (d) the offender—
 - (i) enables the victim to see the offensive weapon or the general shape of the offensive weapon; or
 - (ii) tells or suggests to the victim that the offender has an offensive weapon or a firearm readily available; and
- (e) the offender—
 - (i) knows that engaging in conduct referred to in subsection (1)(d) would be likely to arouse apprehension or fear; or
 - (ii) in all the particular circumstances, the person ought to have known that engaging in conduct referred to in subsection (1)(d) would be likely to arouse that apprehension or fear.

Notes

- 1 A common assault referred to in this subsection if committed in certain circumstances is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that section exist.
- 2 Section 16(3E) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for a common assault at common law if committed in certain circumstances must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

- (2) Despite section 320, the maximum term of imprisonment for common assault is level 4 imprisonment (15 years maximum) if—
- (a) at the time of the assault, the person who commits the assault (the *offender*) has a firearm or an imitation firearm readily available; and
 - (b) the person assaulted (the *victim*) is a police officer on duty or a protective services officer on duty; and
 - (c) the offender knows or is reckless as to whether the victim is a police officer or a protective services officer; and
 - (d) the offender—
 - (i) enables the victim to see the firearm or the imitation firearm or the general shape of the firearm or the imitation firearm; or
 - (ii) tells or suggests to the victim that the offender has a firearm or an imitation firearm readily available; and
 - (e) the offender—
 - (i) knows that engaging in conduct referred to in subsection (2)(d) would be likely to arouse apprehension or fear; or
 - (ii) in all the particular circumstances, the person ought to have known that engaging in conduct referred to in subsection (2)(d) would be likely to arouse that apprehension or fear.

Notes

- 1 A common assault referred to in this subsection if committed in certain circumstances is a category 2 offence under the **Sentencing Act 1991**. See section 5(2H) of that Act for the requirement to impose a custodial order for this offence unless the circumstances set out in paragraphs (a) to (e) of that section exist.
 - 2 Section 16(3E) of the **Sentencing Act 1991** requires that every term of imprisonment imposed on a person for a common assault at common law if committed in certain circumstances must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.
- (3) For the purposes of subsections (1) and (2), a person has an offensive weapon, a firearm or an imitation firearm readily available if the offensive weapon, the firearm or the imitation firearm is—
- (a) in the person's hand; or
 - (b) on the person's body; or
 - (c) within the person's reach.
- (4) In this section—
- firearm* has the same meaning as it has in the **Firearms Act 1996**;
- imitation firearm* has the same meaning as in section 77(1A);
- offensive weapon* means any article (other than a firearm or an imitation firearm) made or adapted for use for causing injury to or incapacitating a person, or which at the time of an assault the person having it with them intends or threatens to use for such a purpose;

police officer on duty means a police officer who is performing any duty or exercising any power as such an officer;

protective services officer on duty means a protective services officer who is performing any duty or exercising any power as such an officer.

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.

S. 321(4)
inserted by
No. 10233
s. 9(a),
amended by
No. 68/2009
s. 97(Sch.
item 40.15).

- (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.
- (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.

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 are 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.

(See R. v. Darby (1982) 40 ALR 594).
S. 321B inserted by No. 10079 s. 7(2).

321C Penalties for conspiracy

(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—

S. 321C inserted by No. 10079 s. 7(2).

(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;
- S. 321C(1)(c)
amended by
No. 41/1993
s. 22(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
- 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—
- (i) level 6 imprisonment (5 years maximum); or
- 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)).
- (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. 321C(1)
(d)(ii)
substituted by
No. 49/1991
s. 119(1)
(Sch. 2
item 62(b)(iii)).
- 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—

- (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)(a) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 62(c)(i)), 48/1997 s. 60(1)(Sch. 1 item 91).

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.

S. 321E inserted by No. 10079 s. 7(2).

(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
 - (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

S. 321G
inserted by
No. 10079
s. 7(2).

- (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—
 - (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.

S. 321H
inserted by
No. 10079
s. 7(2),
amended by
No. 25/1989
s. 20(g).

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. 321I
inserted by
No. 10079
s. 7(2).

321I Penalties for incitement

- (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;
 - (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)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 92(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. 321(1)(ba) inserted by No. 41/1993 s. 23(a), amended by No. 48/1997 s. 60(1)(Sch. 1 item 92(b)(i)).
- (i) level 1 imprisonment (life); or
- S. 321(1)(ba)(i) substituted by No. 48/1997 s. 60(1)(Sch. 1 item 92(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 maximum penalty or the accumulated maximum penalties, as the case may be; or
- S. 321(1)(c) amended by No. 41/1993 s. 23(b).
- (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. 321(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. 321(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)).

S. 321I(1)(d)(ii)
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 63(a)(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 321G of incitement to commit an offence or offences against a law in force only in a place outside Victoria—

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).

(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)(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.

321K Limitations on prosecution

S. 321K
inserted by
No. 10079
s. 7(2).

- (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 11A—Recruiting a child to engage in criminal activity

Pt 1 Div. 11A
(Heading and
ss 321LA–
321LD)
inserted by
No. 43/2017
s. 4.

321LA Definitions

In this Division—

child means a person aged under 18 years;

S. 321LA
inserted by
No. 43/2017
s. 4.

criminal activity means conduct that constitutes an offence punishable on first conviction with imprisonment for life or for a term of 5 years or more;

recruit means incite, direct or induce.

S. 321LB
inserted by
No. 43/2017
s. 4.

321LB Recruiting a child to engage in criminal activity

- (1) An adult aged 21 years or more must not recruit another person to engage in criminal activity, knowing that the other person is a child.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) For an adult to be guilty of an offence under subsection (1), the adult must know that it is likely the child will engage in the criminal activity that is the subject of the recruiting.
- (3) For the purposes of subsection (1), the ages of the adult and the child are to be ascertained at the time of the recruitment.

S. 321LC
inserted by
No. 43/2017
s. 4.

321LC Child need not engage in conduct or be prosecuted or found guilty of an offence

A person may be found guilty of the offence referred to in section 321LB(1) whether or not the child referred to in that section—

- (a) engages in criminal activity; or
(b) is prosecuted for, or is found guilty of, any offence.

S. 321LD
inserted by
No. 43/2017
s. 4.

321LD Limitation on prosecution

A person is not liable to be convicted in respect of the same conduct of both—

- (a) an offence under section 321LB(1); and
(b) an offence under section 321G(1).

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

(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) subject to subsection (2A), 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.

S. 321N
inserted by
No. 10233 s. 4.

S. 321N(2)(b)
amended by
No. 6/2017
s. 13(1).

(2A) For the purposes of subsection (2)(b), in the case of an attempt to commit an offence against section 38 (rape), section 39 (rape by compelling sexual penetration), section 40 (sexual assault) or section 41 (sexual assault by compelling sexual touching), instead of the element of the offence referred to in section 38(1)(c), 39(1)(c), 40(1)(d) or 41(1)(d), it must be proved that at the time of the attempt the person (A) does not reasonably believe that the person against whom the offence

S. 321N(2A)
inserted by
No. 6/2017
s. 13(2).

is to be committed (B) would consent to the penetration or the touching (as the case requires).

- (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
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

- (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:

S. 321P(1)
substituted by
No. 49/1991
s. 119(1)
(Sch. 2
item 64).

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)

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

<i>Column 1</i>	<i>Column 2</i>
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)
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)

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

<i>Column 1</i>	<i>Column 2</i>
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. 321P(1)(c)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 94(b)).

- (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(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.

321Q Limitations on prosecution

S. 321Q
inserted by
No. 10233 s. 4.

- (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.
- (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.

S. 321R
inserted by
No. 10233 s. 4.

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.
- (2) The preceding provisions of this Division do not apply to an attempt—

S. 321R(2)(a)
substituted by
No. 63/2014
s. 7(6).

(a) to be involved in 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.

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

- (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. 322D
inserted by
No. 9576 s. 2.

- (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 IC—Self-defence, duress, sudden or extraordinary emergency and intoxication

Division 1—General

322G Application of Part

This Part applies to any offence, whether against any enactment or at common law.

322H Definitions

In this Part—

evidence of family violence has the meaning given in section 322J;

really serious injury includes serious sexual assault.

322I Onus of proof

- (1) The accused has the evidential onus of raising self-defence, duress or sudden or extraordinary emergency by presenting or pointing to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish self-defence, duress or sudden or extraordinary emergency (as the case may be).
- (2) If the accused satisfies the evidential onus referred to in subsection (1), the prosecution has the legal onus of proving beyond reasonable doubt that the accused did not carry out the conduct in self-defence, under duress or in circumstances of sudden or extraordinary emergency (as the case may be).

322J Evidence of family violence

- (1) Evidence of family violence, in relation to a person, includes evidence of any of the following—

Pt 1C
(Headings
and ss 322G–
322T)
inserted by
No. 63/2014
s. 4.

S. 322G
inserted by
No. 63/2014
s. 4.

S. 322H
inserted by
No. 63/2014
s. 4.

S. 322I
inserted by
No. 63/2014
s. 4.

S. 322J
inserted by
No. 63/2014
s. 4.

- (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.
- (2) 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; or
- (b) sexual abuse; or
- (c) psychological abuse (which need not involve actual or threatened physical or sexual abuse), including but not limited to the following—
 - (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.
- (3) Without limiting the definition of *violence* in subsection (2)—
- (a) a single act may amount to abuse for the purposes of that definition; and
- (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.

Division 2—Self-defence

322K Self-defence

S. 322K
inserted by
No. 63/2014
s. 4.

- (1) A person is not guilty of an offence if the person carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if—
- (a) the person believes that the conduct is necessary in self-defence; and
- (b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) This section only applies in the case of murder if the person believes that the conduct is necessary to defend the person or another person from the infliction of death or really serious injury.

Notes

- 1 See section 322M as to belief in circumstances where family violence is alleged.
- 2 The circumstances in which a person may carry out conduct in self-defence include—
- the defence of the person or another person;

- the prevention or termination of the unlawful deprivation of the liberty of the person or another person;
- the protection of property.

322L Self-defence does not apply to a response to lawful conduct

S. 322L
inserted by
No. 63/2014
s. 4.

Section 322K does not apply if—

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

322M Family violence and self-defence

S. 322M
inserted by
No. 63/2014
s. 4.

- (1) Without limiting section 322K, for the purposes of an offence in circumstances where self-defence in the context of family violence is in issue, a person may believe that the person's conduct is necessary in self-defence, and the conduct may be a reasonable response in the circumstances as the person perceives them, even if—
 - (a) the person is responding to a harm that is not immediate; or
 - (b) the 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 self-defence in the context of family violence is in issue, evidence of family violence may be relevant in determining whether—
 - (a) a person has carried out conduct while believing it to be necessary in self-defence;
or
 - (b) the conduct is a reasonable response in the circumstances as a person perceives them.

S. 322N
inserted by
No. 63/2014
s. 4.

322N Abolition of self-defence at common law

Self-defence at common law is abolished.

Division 3—Duress

S. 322O
inserted by
No. 63/2014
s. 4.

322O Duress

- (1) A person is not guilty of an offence in respect of conduct carried out by the person under duress.
- (2) A person carries out conduct under duress if—
 - (a) the person reasonably believes that—
 - (i) subject to subsection (3), a threat of harm has been made that will be carried out unless an offence is committed; and
 - (ii) carrying out the conduct is the only reasonable way that the threatened harm can be avoided; and
 - (b) the conduct is a reasonable response to the threat.
- (3) 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 person believes that the threat is to inflict death or really serious injury.

S. 322P
inserted by
No. 63/2014
s. 4.

322P Family violence and duress

Without limiting the evidence that may be adduced, in circumstances where duress in the context of family violence is in issue, evidence of family violence may be relevant in determining whether a person has carried out conduct under duress.

322Q Abolition of duress at common law

The defence at common law of duress is abolished.

S. 322Q
inserted by
No. 63/2014
s. 4.

Division 4—Sudden or extraordinary emergency

322R Sudden or extraordinary emergency

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

S. 322R
inserted by
No. 63/2014
s. 4.

322S Abolition of necessity at common law

The defence at common law of necessity is abolished.

S. 322S
inserted by
No. 63/2014
s. 4.

Division 5—Intoxication

322T Intoxication

- (1) In this section—

defence includes self-defence, duress and sudden or extraordinary emergency;

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

S. 322T
inserted by
No. 63/2014
s. 4.

- (2) If any part of a defence to an 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.
- (3) If any part of a defence to an 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 a defence to an offence relying on reasonable 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
 - (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

S. 322T(5)(ca)
inserted by
No. 20/2016
s. 145(1)(a),
repealed by
No. 34/2019
s. 47(1)(a).

* * * * *

S. 322T(5)(d)
amended by
Nos 20/2016
s. 145(1)(b),
34/2019
s. 47(1)(b).

- (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.

S. 322T(6)
amended by
Nos 20/2016
s. 145(2),
34/2019
s. 47(2).

Part II—Offenders

Pt 2 Div. 1
(Heading)
substituted by
No. 9576
s. 4(1).

Division 1—Abettors, accessories and concealers of offences

Pt 2 Div. 1
Subdiv. (1)
(Heading and
s. 323)
substituted by
No. 9576
s. 4(1),
amended by
No. 68/2009
s. 97(Sch.
item 40.20),
substituted by
No. 63/2014
s. 6.

(1) *Complicity in commission of offences*

S. 323
substituted by
No. 63/2014
s. 6.

323 Interpretation

- (1) For the purposes of this Subdivision, a person is involved in the commission of an offence if the person—
 - (a) intentionally assists, encourages or directs the commission of the offence; or
 - (b) intentionally assists, encourages or directs the commission of another offence where the person was aware that it was probable that the offence charged would be committed in the course of carrying out the other offence; or
 - (c) enters into an agreement, arrangement or understanding with another person to commit the offence; or
 - (d) enters into an agreement, arrangement or understanding with another person to commit another offence where the person was aware that it was probable that the offence charged

would be committed in the course of carrying out the other offence.

- (2) In determining whether a person has encouraged the commission of an offence, it is irrelevant whether or not the person who committed the offence in fact was encouraged to commit the offence.

Note

A person who committed an offence may include 2 or more persons who entered into an agreement, arrangement or understanding to commit the offence.

- (3) A person may be involved in the commission of an offence, by act or omission—
- (a) even if the person is not physically present when the offence, or an element of the offence, is committed; and
 - (b) whether or not the person realises that the facts constitute an offence.

324 Person involved in commission of offence taken to have committed the offence

New s. 324
inserted by
No. 63/2014
s. 6.

- (1) Subject to subsection (3), if an offence (whether indictable or summary) is committed, a person who is involved in the commission of the offence is taken to have committed the offence and is liable to the maximum penalty for that offence.
- (2) Despite subsection (1), a person is not taken to have committed an offence if the person withdraws from the offence.

Note

The common law recognises that in certain circumstances a person may withdraw from an offence in which the person would otherwise be complicit: for example, *White v Ridley* [1978] HCA 38; (1978) 140 CLR 342; *R v Tietie, Tulele and Bolamatu* (1988) 34 A Crim R 438; *R v Jensen and Ward* [1980] VicRp 24; [1980] VR 194.

- (3) Nothing in this section imposes liability on a person for an offence that, as a matter of policy, is intended to benefit or protect that person.

S. 324A
inserted by
No. 63/2014
s. 6.

324A Other offenders need not be prosecuted or found guilty

A person who is involved in the commission of an offence may be found guilty of the offence whether or not any other person is prosecuted for or found guilty of the offence.

S. 324B
inserted by
No. 63/2014
s. 6.

324B Offender's role need not be determined

A person may be found guilty of an offence by virtue of section 324 if the trier of fact is satisfied that the person is guilty either as the person who committed the offence or as a person involved in the commission of the offence but is unable to determine which applies.

S. 324C
inserted by
No. 63/2014
s. 6.

324C Abolition of certain aspects of complicity at common law

- (1) The law of complicity at common law in relation to aiding, abetting, counselling or procuring the commission of an offence is abolished.
- (2) The doctrines at common law of acting in concert, joint criminal enterprise and common purpose (including extended common purpose) are abolished.

Note

The common law concerning the circumstances in which a person may withdraw from an offence in which the person would otherwise be complicit is not abolished by this section.

* * * * *

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),
repealed by
No. 63/2014
s. 6.

(3) Accessories

Pt 2 Div. 1
Subdiv. (3)
(Heading)
inserted by
No. 9576
s. 4(1).

325 Accessories

S. 325
substituted by
No. 9576
s. 4(1).

- (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).

S. 325(3)
amended by
No. 68/2009
s. 97(Sch.
item 40.21).

(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.

(4) A person convicted of an offence against subsection (1) shall be liable—

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)).

(a) if the principal offence is one for which the penalty is level 1 imprisonment (life) to level 3 imprisonment (20 years maximum);
or

(b) in any other case, to imprisonment for a term which is neither—

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)).

(i) more than 5 years in length; nor

(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.

(4) Concealers of offences

Pt 2 Div. 1
Subdiv. (4)
(Heading)
inserted by
No. 9576
s. 4(1).

326 Concealing offences for benefit

S. 326
substituted by
No. 9576
s. 4(1).

- (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—

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)).

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.

New s. 327
inserted by
No. 36/2014
s. 4.

327 Failure to disclose sexual offence committed against child under the age of 16 years

- (1) In this section—

interests includes reputation, legal liability and financial status;

organisation includes a body corporate or an unincorporated body or association, whether the body or association—

- (a) is based in or outside Australia; or
(b) is part of a larger organisation;

sexual offence means—

- (a) an offence committed under Subdivision (8A), (8B), (8C), (8E), (8F) or (8FA) of Division 1 of Part I on or after 1 July 2017; or
(b) an offence committed under Subdivision (8D) of Division 1 of Part I on or after 1 July 2017 other than an offence that only relates to child

S. 327(1) def.
of *sexual
offence*
substituted by
No. 5/2018
s. 6.

abuse material of a kind described in paragraph (a)(i)(A) of the definition of ***child abuse material*** in section 51A(1), where the torture, cruelty or abuse is not sexual; or

Example

An offence committed under Subdivision (8D) of Division 1 of Part I that relates to child abuse material that depicts or describes a child as a victim of sexual abuse.

- (c) an offence committed before 1 July 2017 under Subdivision (8A), (8B), (8C), (8D), (8E) or (8EAA) as then in force; or
 - (d) an attempt to commit an offence referred to in paragraph (a), (b) or (c); or
 - (e) an assault with intent to commit an offence referred to in paragraph (a), (b) or (c).
- (2) Subject to subsections (5) and (7), a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a police officer as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

S. 327(2)
amended by
No. 36/2014
s. 7(1)(a).

Penalty: 3 years imprisonment.

- (3) For the purposes of subsection (2) and without limiting that subsection, a person has a reasonable excuse for failing to comply with that subsection if—

- (a) the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the sexual offence) were the person to disclose the information to police (irrespective of whether the fear arises because of the fact of disclosure or the information disclosed) and the failure to disclose the information to police is a reasonable response in the circumstances; or
- (b) the person believes on reasonable grounds that the information has already been disclosed to police by another person and the firstmentioned person has no further information.

Example

A person may believe on reasonable grounds that the information has already been disclosed to police by another person if the person has made a report disclosing all of the information in his or her possession in compliance with mandatory reporting obligations under the **Children, Youth and Families Act 2005**.

- (4) For the purposes of subsection (2) and without limiting that subsection, a person does not have a reasonable excuse for failing to comply with that subsection only because the person is concerned for the perceived interests of—
 - (a) the person reasonably believed to have committed, or to have been involved in, the sexual offence; or
 - (b) any organisation.

- (5) A person does not contravene subsection (2) if—
- (a) the information forming the basis of the person's belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and
 - (b) the victim was of or over the age of 16 years at the time of providing that information to any person; and
 - (c) the victim requested that the information not be disclosed.
- (6) Subsection (5) does not apply if—
- (a) at the time of providing the information, the victim of the alleged sexual offence—
 - (i) has an intellectual disability (within the meaning of the **Disability Act 2006**); and
 - (ii) does not have the capacity to make an informed decision about whether or not the information should be disclosed; and
 - (b) the person to whom the information is provided is aware, or ought reasonably to have been aware, of those facts.
- (7) A person does not contravene subsection (2) if—
- (a) the person comes into possession of the information referred to in subsection (2) when a child; or
 - (b) the information referred to in subsection (2) would be privileged under Part 3.10 (other than section 127) of Chapter 3 of the **Evidence Act 2008**; or

S. 327(7)(b)
amended by
No. 30/2019
s. 16.

S. 327(7)(e)
amended by
No. 36/2014
s. 7(1)(b).

- (c) the information referred to in subsection (2) is a confidential communication within the meaning of section 32B of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (d) the person comes into possession of the information referred to in subsection (2) solely through the public domain or forms the belief referred to in subsection (2) solely from information in the public domain; or
- (e) the person is a police officer acting in the course of his or her duty in respect of the victim of the alleged sexual offence; or
- (f) the victim of the alleged sexual offence has attained the age of 16 years before the commencement of section 4 of the **Crimes Amendment (Protection of Children) Act 2014**.

S. 327(8)
inserted by
No. 19/2017
s. 54.

- (8) A prosecution for an offence under subsection (2) must not be commenced without the consent of the Director of Public Prosecutions.

S. 327(9)
inserted by
No. 19/2017
s. 54.

- (9) In determining whether to consent to a prosecution for an offence under subsection (2), the Director of Public Prosecutions must consider whether the alleged offender has been subjected to family violence (within the meaning of the **Family Violence Protection Act 2008**) that is relevant to the circumstances in which the offence is alleged to have been committed.

New s. 328
inserted by
No. 36/2014
s. 4.

328 Protection of those who disclose under section 327

A disclosure made under section 327(2) in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
 - (i) section 141 of the **Health Services Act 1988**; or
 - (ii) section 346 of the **Mental Health Act 2014**.

S. 328(c)(ii)
substituted by
No. 36/2014
s. 8.

329 Evidence and legal proceedings

New s. 329
inserted by
No. 36/2014
s. 4.

- (1) In any legal proceeding evidence may be given as to the information contained in a disclosure under section 327(2).
- (2) However in a legal proceeding evidence that a particular matter is contained in information disclosed under section 327(2) or evidence that identifies the person who made that disclosure, or is likely to lead to the identification of that person is only admissible in the proceeding if—
 - (a) the court or tribunal grants leave for the evidence to be given; or
 - (b) the person who made the disclosure consents in writing to the admission of that evidence.
- (3) A witness appearing in a legal proceeding must not be asked and, if asked, is entitled to refuse to answer—
 - (a) any question to which the answer would or might identify the person who made a disclosure under section 327(2) or would or might lead to the identification of that person; or

(b) any question as to whether a particular matter is contained in information disclosed under section 327(2)—

unless the court or tribunal grants leave for the question to be asked or the person who made the disclosure has consented in writing to the question being asked.

(4) A court or tribunal may only grant leave under subsection (2) or (3) if it is satisfied that the interests of justice require that the evidence be given.

New s. 330
inserted by
No. 36/2014
s. 4.

330 Confidentiality

S. 330(1)
amended by
No. 36/2014
s. 7(2).

(1) If a disclosure is made under section 327(2), a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a police officer or the Secretary (within the meaning of the **Children, Youth and Families Act 2005**) or any other person to the extent reasonably required for law enforcement purposes—

(a) the name of the person who made the disclosure; or

(b) any information that is likely to lead to the identification of the person who made the disclosure.

Penalty: Level 8 imprisonment (1 year maximum).

S. 330(1A)
inserted by
No. 47/2016
s. 20.

(1A) An offence against subsection (1) is a summary offence.

(2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 329.

(3) Part 4.4 of Chapter 4 of the **Children, Youth and Families Act 2005** applies to information disclosed under subsection (1) to the Secretary (within the meaning of that Act) as if it were a report under Division 2 of that Part.

*	*	*	*	*	Ss 327–332 repealed. ²²
*	*	*	*	*	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).

Division 3—Criminal liability of married persons

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.

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.

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.

New s. 339
inserted by
No. 9073
s. 2(b).

(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.

S. 339(3)
amended by
No. 9576
s. 11(1).

(3) Nothing in subsection (2) shall affect the liability of a married person as a principal offender in any offence except conspiracy or incitement.

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).

New s. 342
inserted by
No. 70/1987
s. 4.

342 Authority conferred by and other incidents of a search warrant

S. 342(1)
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.

S. 342(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

(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.

S. 342(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

(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.

S. 342(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.11).

(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.

New s. 345
inserted by
No. 70/1987
s. 4,
amended by
No. 10/1999
s. 31(5)(a).

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.

Part III—Procedure and punishment

Division 1—Pleading procedure, proof &c.

*	*	*	*	*	Pt 3 Div. 1 Subdiv. (1) (Heading and ss 351–356) repealed. ²³
*	*	*	*	*	Pt 3 Div. 1 Subdiv. (2) (Heading) repealed by No. 25/1989 s. 20(h)(i).
*	*	*	*	*	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).
*	*	*	*	*	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)).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

<p>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).</p>	*	*	*	*	*
<p>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)).</p>	*	*	*	*	*
<p>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)).</p>	*	*	*	*	*
<p>S. 359 repealed²⁴</p>	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

* * * * *

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 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)).	*	*	*	*	*
Pt 3 Div. 1 Subdiv. (5) (Heading and s. 360) repealed. ²⁵	*	*	*	*	*
Pt 3 Div. 1 Subdiv. (6) (Heading and s. 361) repealed. ²⁶	*	*	*	*	*
Pt 3 Div. 1 Subdiv. (7) (Heading) repealed by No. 9902 s. 2(1)(Sch. item 53).	*	*	*	*	*
S. 362 amended by No. 8338 s. 7(a), repealed by No. 9008 s. 2(1)(Sch. item 2(e)).	*	*	*	*	*
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)).	*	*	*	*	*

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

*	*	*	*	*	
					Pt 3 Div. 1 Subdiv. (9) (Heading and ss 364–387) repealed. ²⁷
*	*	*	*	*	
					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)).
*	*	*	*	*	
					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)).
*	*	*	*	*	
					Pt 3 Div. 1 Subdiv. (12) (Heading and ss 390–396) repealed. ^{28 29}

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

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 8731
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

*	*	*	*	*	<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

<p>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)).</p>	*	*	*	*	*
<p>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.</p>	*	*	*	*	*
<p>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)).</p>	*	*	*	*	*

* * * * *

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.

404 Proof of marriage on trial for bigamy

No. 6103
s. 404.

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.

No. 6103
s. 405.

405 Meaning of term *official record*

- (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.³⁰

* * * * *

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 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
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

*	*	*	*	*	<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).³¹

* * * * *

cf. [1792] 32
George III
c. LX s. 1.

420A Where person charged with unlawful publication of defamatory matter

S. 420A
inserted by
No. 9407
s. 2(e).

On the trial of a person charged with the unlawful publication of defamatory matter—

- (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.

S. 421
substituted by
No. 9576 s. 6.

421 Alternative verdicts on charge of murder

S. 421(1)
amended by
No. 68/2009
s. 97(Sch.
item 40.24).

(1) On an indictment for murder a person found not guilty of murder may be found guilty of—

S. 421(1)(ab)
inserted by
No. 7/2008
s. 7(3)(c).

- (a) manslaughter;
- (ab) child homicide;

S. 421(1)(ac)
inserted by
No. 16/2020
s. 7.

(ac) homicide by firearm;

- (b) any offence of which he may be found guilty under an enactment specifically so providing;
- (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)).

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.

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.

- (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.

S. 422A
inserted by
No. 59/2004
s. 7.

422A Alternative verdict for certain charges relating to driving

- (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).

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

*	*	*	*	*	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).
*	*	*	*	*	No. 6103 s. 424. S. 424 amended by No. 9576 s. 11(1), repealed by No. 68/2009 s. 97(Sch. item 40.28).
*	*	*	*	*	S. 425 substituted by Nos 7577 s. 4, 9509 s. 8, 8/1991 s. 5, amended by Nos 65/1991 s. 4, 81/1991 s. 10(Sch. items 1.2, 1.3), 67/2000 s. 7(4)–(6), 68/2009 s. 97(Sch. item 40.29), 74/2014 s. 7(8), 47/2016 s. 21, repealed by No. 5/2018 s. 7.

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).

S. 435
substituted by
No. 9576
s. 11(1).

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 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

*	*	*	*	*	<p>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)).</p>
*	*	*	*	*	<p>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)).</p>

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

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)).

* * * * *

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)).

* * * * *

Pt 3 Div. 1
Subdiv. (25)
(Heading and
ss 446–450)
repealed.³²

* * * * *

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

*	*	*	*	*	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)).
*	*	*	*	*	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)).
*	*	*	*	*	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)).

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)).

* * * * *

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
Nos 37/2014
s. 10(Sch.
item 36.12(a)),
45/2017
s. 15(1).

- (1) A police officer or a protective services officer on duty at a designated place may request a person to state his or her name and address if the police officer or the protective services 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.

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

- (2) A police officer or a protective services 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.
- (3) A person who, in response to a request made by a police officer or a protective services 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 or a protective services officer under subsection (1) to state his or her name and address may request the officer to state, orally or in writing, his or her name, rank and place of duty.
- (5) A police officer or a protective services officer who, in response to a request under subsection (4)—
- (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 or the protective services officer's ordinary place of duty; or

S. 456AA(2)
amended by
Nos 37/2014
s. 10(Sch.
item 36.12(b)),
45/2017
s. 15(2).

S. 456AA(3)
amended by
Nos 69/1997
s. 22(13),
37/2014
s. 10(Sch.
item 36.12(b)),
45/2017
s. 15(3).

S. 456AA(4)
amended by
Nos 37/2014
s. 10(Sch.
item 36.12(c)),
45/2017
s. 15(4).

S. 456AA(5)
amended by
Nos 69/1997
s. 22(13),
37/2014
s. 10(Sch.
item
36.12(d)(i)),
45/2017
s. 15(5).

S. 456AA(5)(c)
amended by
Nos 37/2014
s. 10(Sch.
item
36.12(d)(ii)),
45/2017
s. 15(6).

(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).

S. 456AA(6)
inserted by
No. 45/2017
s. 15(7).

(6) A protective services officer may only exercise
the power under this section in relation to a person
who is at, or in the vicinity of, a designated place.

S. 456AA(7)
inserted by
No. 45/2017
s. 15(7).

(7) In this section—

designated place has the same meaning as in the
Victoria Police Act 2013.

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.

**458 Person found committing offences may be arrested
without warrant by any person**

S. 458
substituted by
No. 8247 s. 2,
amended by
No. 57/1989
s. 3(Sch.
item 42.47).

(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—

S. 458(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.13).

(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—

(i) to ensure the attendance of the offender before a court of competent jurisdiction;

S. 458(1)(a)(i)
amended by
No. 68/2009
s. 97(Sch.
item 40.30).

(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

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)).

(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.

S. 458(3)
amended by
Nos 9008
s. 2(1)(Sch.
item 2(k)),
68/2009
s. 97(Sch.
item 40.31).

(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 issued against him or a notice to appear has been served on him with respect to the offence alleged.

S. 458(4)
inserted by
No. 68/2009
s. 97(Sch.
item 40.32).

(4) In subsection (3), *notice to appear* has the same meaning as in the **Criminal Procedure Act 2009**.

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).

Note

There is a presumption in favour of proceeding by summons if an accused is a child—see section 345 of the **Children, Youth and Families Act 2005**.

Note to
s. 459(1)
inserted by
No. 1/2016
s. 22(1).

(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.

S. 459(2)
inserted by
No. 43/2011
s. 17(3),
amended by
No. 37/2014
s. 10(Sch.
item 36.15(a)).

S. 459(2A)
inserted by
No. 45/2017
s. 52.

(2A) A protective services officer may only exercise the power to apprehend without warrant under this section in relation to a person who is at, or in the vicinity of, a designated place.

S. 459(3)
inserted by
No. 43/2011
s. 17(3),
amended by
No. 37/2014
s. 10(Sch.
item 36.15(b)).

(3) In this section, *designated place* has the same meaning as it has in the **Victoria Police Act 2013**.

S. 459A
inserted by
No. 9576
s. 7(a).

459A Entry and search of premises

S. 459A(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.16).

(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.

S. 459A(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.16).

(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.

(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(l)), substituted by No. 10076 s. 4(1), amended by No. 16/1986 s. 30, repealed by No. 37/1988 s. 4.

461 Arrest on reasonable grounds not to be taken to be unlawful

S. 461 amended by No. 7546 s. 11, substituted by No. 8247 s. 2.

(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.

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).

(3) In subsection (2) *notice to appear* has the same meaning as in the **Criminal Procedure Act 2009**.

S. 461(3) inserted by No. 68/2009 s. 97(Sch. item 40.35).

S. 462
substituted by
No. 8247 s. 2.

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. 462A
inserted by
No. 9576
s. 7(b).

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.

Example to
s. 462A
inserted by
No. 32/2018
s. 131.

Example

A police officer or protective services officer uses lethal force on a person to prevent that person from committing an indictable offence that involves causing really serious injury or death because the officer believes on reasonable grounds that it is necessary to use that force for that purpose. The police officer or protective services officer may do so before that offence is committed.

S. 463
repealed by
No. 8247 s. 2.

* * * * *

S. 463A
inserted by
No. 7088
s. 2(e),
amended by
No. 57/1989
s. 3(Sch.
item 42.55).

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 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.

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. 463B
inserted by
No. 7546 s. 3.

* * * * *

S. 464
repealed by
No. 8425
s. 2(1)(h).

(30A) *Custody and investigation*

Pt 3 Div. 1
Subdiv. (30A)
(Heading and
ss 464–464.J)
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

New s. 464
inserted by
No. 37/1988
s. 5.

- (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—

S. 464(2)
def. of
Aboriginal person
inserted by
No. 48/2018
s. 16.

Aboriginal person means a person who—

- (a) is descended from an Aboriginal person or Torres Strait Islander; and
- (b) identifies as an Aboriginal person or Torres Strait Islander; and
- (c) is accepted as an Aboriginal person or Torres Strait Islander by an Aboriginal or Torres Strait Islander community;

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)).

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
approved mental health service
inserted by
No. 81/1997
s. 16(a),
repealed by
No. 26/2014
s. 455(Sch.
item 7.2(a)).

Australian Crime Commission means
the Australian Crime Commission
(by whatever name described) established by
the Australian Crime Commission Act 2002
of the Commonwealth;

S. 464(2)
def. of
Australian Crime Commission
inserted by
No. 54/2016
s. 28(a).

authorised person means a person appointed as an
authorised person under subsection (3);

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).

compulsory procedure means the taking of an
intimate or non-intimate sample or the
conduct of a physical examination;

S. 464(2)
def. of
compulsory procedure
inserted by
No. 129/1993
s. 6(a).

S. 464(2)
def. of
corresponding 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;

S. 464(2)
def. of
CrimTrac
inserted by
No. 32/2007
s. 4(2),
repealed by
No. 54/2016
s. 28(b).

* * * * *

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

- (a) to practise in the dental profession as a dentist (other than as a student);
- (b) in the dentists division of that profession;

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)).

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—

- (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
destruction
inserted by
No. 72/2013
s. 3(b).

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)),
3/2019
s. 52(2).

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 a prisoner in a prison or a person detained in a police gaol who is transferred from the prison or police gaol to a facility or an institution referred to in section 56AB(1) of the **Corrections Act 1986**; or
- (ba) is a forensic patient or a forensic resident within the meaning of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- (c) is a security resident within the meaning of the **Disability Act 2006**; or
- (d) a compulsory patient or a security 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;

S. 464(2)
def. of
*DNA
database
system*
inserted by
No. 16/2002
s. 5.

DNA database system means a database
(whether in computerised or other form
and however described) containing—

- (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;

DNA person means—

- (a) a person who is of or above the age of 18 years who—
- (i) is suspected of having committed or attempted to commit an indictable offence; or
 - (ii) has been charged with an indictable offence; or
 - (iii) has been summonsed to answer to a charge for an indictable offence;
or

S. 464(2)
def. of
DNA person
inserted by
No. 3/2019
s. 52(1).

- (b) a child of or above the age of 15 years but under the age of 18 years who—
 - (i) is suspected of having committed or attempted to commit a DNA sample offence; or
 - (ii) has been charged with a DNA sample offence; or
 - (iii) has been summonsed to answer to a charge for a DNA sample offence;

S. 464(2)
def. of
DNA profile sample
inserted by
No. 3/2019
s. 52(1).

DNA profile sample means a sample taken for the purpose of deriving a DNA profile that is—

- (a) a blood sample;
- (b) a sample of hair, other than pubic hair, including the root if required;
- (c) a sample of saliva;
- (d) a scraping taken from the mouth;

S. 464(2)
def. of
DNA sample offence
inserted by
No. 3/2019
s. 52(1).

DNA sample offence means any indictable offence specified in Schedule 9;

S. 464(2)
def. of
fingerprints
inserted by
No. 38/1988
s. 5(a).

fingerprints includes finger, palm, toe and sole prints;

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.

forensic material means any material—

S. 464(2)
def. of
forensic material
inserted by
No. 16/2002
s. 5.

(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;

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 or a DNA profile sample;

S. 464(2)
def. of
forensic procedure
inserted by
No. 129/1993
s. 6(b),
amended by
No. 3/2019
s. 52(3).

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)),
amended by
No. 59/2015
s. 25(b).

*held in a prison, police gaol, youth justice centre
or youth residential centre* means—

- (a) deemed by section 6A of the **Corrections Act 1986** to be in the custody of the Secretary within the meaning of that Act; or
- (b) deemed by section 6D 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 *IBAC*
inserted by
No. 3/2019
s. 52(1).

IBAC has the same meaning as in the
**Independent Broad-based Anti-corruption
Commission Act 2011**;

S. 464(2)
def. of
*intimate part
of the body*
inserted by
No. 129/1993
s. 6(c).

intimate part of the body means the genital or
anal region of a male or female or the breast
of a female;

intimate sample means—

- (a) a blood sample;
- (b) a sample of pubic hair, including the root if required;
- (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
*intimate
sample*
inserted by
No. 129/1993
s. 6(c).

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
*investigating
official*
amended by
No. 37/2014
s. 10(Sch.
item
36.18(a)(ii)).

* * * * *

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);

S. 464(2)
def. of
mental impairment
inserted by
No. 23/1991
s. 4(a).

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

S. 464(2)
def. of
midwife
inserted by
No. 13/2010
s. 51(Sch.
item 17.3(d)).

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. 464(2)
def. of
missing persons index
inserted by
No. 16/2002
s. 5.

missing persons index means an index of DNA profiles, derived from forensic material, of—

- (a) persons who are missing; and
- (b) volunteers who are relatives by blood of missing persons;

<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>
<p><i>non-intimate sample</i> means—</p> <p>(a) a sample of hair, other than pubic hair, including the root if required;</p> <p>(b) a sample of matter taken from under a fingernail or toenail;</p> <p>(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;</p>	<p>S. 464(2) def. of <i>non-intimate sample</i> inserted by No. 129/1993 s. 6(e).</p>

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;

S. 464(2)
def. of *police custody officer*
inserted by
No. 59/2015
s. 25(a).

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

police gaol has the same meaning as in the **Corrections Act 1986**;

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)).

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**;

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

* * * * *

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—

S. 464(2)
def. of
*related
material and
information*
inserted by
No. 81/1997
s. 16(e),
amended by
Nos 27/2006
ss 3(a), 17(1),
25/2017 s. 50,
3/2019
s. 52(4).

- (a) in relation to any DNA profile sample or any sample taken in a forensic procedure conducted in accordance with sections 464R to 464ZA or section 464ZF, 464ZFAAA or 464ZTAB, means notes and audiovisual recordings made of the taking of the DNA profile sample or the conduct of the forensic procedure and any information which may identify the person contained in any record of or report relating to the DNA profile sample or the forensic procedure and in any copy of the 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 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)).

senior police officer authorisation means an authorisation under section 464ZFAFAC;

S. 464(2)
def. of ***senior police officer authorisation***
inserted by
No. 3/2019
s. 52(1).

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, amended
by No. 3/2019
s. 52(5).

- (a) offenders in accordance with section 464ZFF, or under a corresponding law of a participating jurisdiction; and
- (ab) registrable offenders in accordance with section 464ZFAB; and
- (ac) offenders in accordance with section 464ZFAC(2)(a)(i); and
- (b) suspects who have been convicted of—
 - (i) an offence and an order has been made under section 464ZFB(1); or
 - (ia) an offence and to which section 464ZFB(1AA) applies; or
 - (ii) an offence in respect of which a forensic procedure may be conducted under a corresponding law of a participating jurisdiction;

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

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(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;

<p><i>suspects index</i> means an index of DNA profiles derived from forensic material taken from suspects in accordance with section 464R, 464T or 464U, DNA profile samples taken in accordance with section 464SC or 464SE 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 or section 464ZFAC(2)(a)(ii);</p>	<p>S. 464(2) def. of <i>suspects index</i> inserted by No. 16/2002 s. 5, amended by Nos 27/2006 s. 3(b), 3/2019 s. 52(6).</p>
<p>* * * * *</p>	<p>S. 464(2) def. of <i>tape recording</i> repealed by No. 27/2006 s. 3(c).</p>
<p><i>unknown deceased persons index</i> means an index of DNA profiles of deceased persons whose identities are unknown where the DNA profile is derived from forensic material;</p>	<p>S. 464(2) def. of <i>unknown deceased persons index</i> inserted by No. 16/2002 s. 5.</p>
<p><i>Victorian DNA database</i> means the DNA database system kept under section 464ZFD;</p>	<p>S. 464(2) def. of <i>Victorian DNA database</i> inserted by No. 32/2007 s. 4(2).</p>
<p><i>volunteer</i> means a person who volunteers to give a sample under section 464ZGB;</p>	<p>S. 464(2) def. of <i>volunteer</i> inserted by No. 16/2002 s. 5.</p>
<p><i>volunteers (limited purposes) index</i> 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</p>	<p>S. 464(2) def. of <i>volunteers (limited purposes) index</i> inserted by No. 16/2002 s. 5.</p>

of the material may be used only for a limited purpose that is specified by the volunteer and noted on the index;

S. 464(2)
def. of
volunteers
(*unlimited purposes*)
index
inserted by
No. 16/2002
s. 5.

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
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.

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. 464AA
inserted by
No. 27/2006
s. 4.

464AAB Investigating official to ask whether person in custody is an Aboriginal person

If a person is taken into custody, an investigating official must ask the person whether they are an Aboriginal person—

- (a) as soon as practicable after the person is taken into custody; and
- (b) in any event, before any questioning or investigation under section 464A(2) commences.

S. 464AAB
inserted by
No. 48/2018
s. 17.

Note

Section 464FA requires that the Victorian Aboriginal Legal Service be notified if an Aboriginal person is taken into custody.

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

S. 464A
inserted by
No. 37/1988
s. 5.

S. 464A(1)(c)
amended by
No. 57/1989
s. 5(1)(a)(i).

(c) brought before a bail justice or the
Magistrates' Court—

within a reasonable time of being taken into
custody.

Note to
s. 464A(1)
inserted by
No. 26/2017
s. 21.

Note

Section 10 of the **Bail Act 1977** applies at the expiration of
the reasonable time referred to in subsection (1).

(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.

S. 464A(3)
amended by
No. 129/1993
s. 5.

(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.

(4) In determining what constitutes a reasonable time
for the purposes of subsection (1) the following
matters may be considered—

S. 464A(4)(a)
amended by
No. 57/1989
s. 5(1)(a)(ii).

(a) the period of time reasonably required to
bring the person before a bail justice or the
Magistrates' Court;

(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.

Note to s. 464A inserted by No. 25/2014 s. 14.

Note

Section 78D of the **Corrections Act 1986** provides for the application of section 464A in relation to persons detained under that Act.

S. 464B inserted by No. 37/1988 s. 5.

464B Questioning or investigation of person already held for another matter

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).

- (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)(a) substituted by No. 86/2000 s. 4(1)(b).

- (a) who is—

(i) held in a prison or police gaol; or

S. 464B(1)(a)(ii) amended by No. 23/2006 s. 236(5).

(ii) a forensic resident or a security resident within the meaning of the **Disability Act 2006**; or

S. 464B(1)(a)(iii) substituted by No. 26/2014 s. 455(Sch. item 7.3).

(iii) a forensic patient or a security patient within the meaning of the **Mental Health Act 2014**; and

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 elsewhere, other than the offence for which he or she is being held—
- S. 464B(1)(b)
amended by
Nos 86/2000
s. 4(1)(c),
72/2013
s. 4(1).
- 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—
- S. 464B(2)(c)
amended by
No. 86/2000
s. 4(2)(a).
- (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)(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).
- S. 464B(3)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.6),
86/2000
s. 4(3).
- (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.

S. 464B(4A)
inserted by
No. 86/2000
s. 4(4).

(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(4B)
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)—

(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.

S. 464B(4C)
inserted by
No. 86/2000
s. 4(4).

(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(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).

(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.

- (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.
- (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.
- (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) or (iii) unless—
- (a) having considered any known likely psychological effect of the questioning on the person; and

S. 464B(5A)
inserted by
No. 86/2000
s. 4(4).

S. 464B(5B)
inserted by
No. 86/2000
s. 4(4).

S. 464B(5C)
inserted by
No. 86/2000
s. 4(4),
amended by
No. 29/2020
s. 9(1).

(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.

S. 464B(5D)
inserted by
No. 86/2000
s. 4(4).

(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.

S. 464B(5E)
inserted by
No. 86/2000
s. 4(4),
amended by
No. 29/2020
s. 9(1).

(5E) On making an order under subsection (5) in respect of a person referred to in subsection (1)(a)(ii) or (iii), 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

(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.

(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(5F)
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—

S. 464B(5G)
inserted by
No. 86/2000
s. 4(4).

(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

S. 464B(5G)(b)
amended by
No. 41/2004
s. 9(1)(a).

(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)(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.

S. 464B(6)
amended by
No. 86/2000
s. 4(5).

- (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).

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).

- (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

S. 464B(8)(b)
amended by
No. 86/2000
s. 4(6)(b).

(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(8A) 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.
- (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.
- (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(9A) inserted by No. 41/2004 s. 9(2).**

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;

S. 464B(10)
def. of
*investigating
official*
inserted by
No. 72/2013
s. 4(2)(b).

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—

- (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—

S. 464B(11)
inserted by
No. 72/2013
s. 4(3).

- (a) the investigating official is satisfied that the person is not incapable of giving informed consent by reason of mental impairment; and
- (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.

(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) unless subsection (16) applies.

S. 464B(12)
inserted by
No. 72/2013
s. 4(3),
amended by
No. 29/2020
s. 9(2).

Note

Questioning or investigations involving removal from prison or police gaol may be authorised by a court order under subsection (5).

(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—

S. 464B(13)
inserted by
No. 72/2013
s. 4(3).

- (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.

S. 464B(14)
inserted by
No. 72/2013
s. 4(3).

(14) A person may exercise any applicable right under section 464C, 464D or 464F before deciding whether or not to consent to be questioned.

S. 464B(15)
inserted by
No. 72/2013
s. 4(3).

(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.
- (16) An investigating official may remove a person being held in a police gaol for the purpose of questioning under subsection (11) if—
- S. 464B(16) inserted by No. 29/2020 s. 9(3).**
- (a) the police gaol is located in the same building as a police station; and
 - (b) the person is to be removed to a room in the police station; and
 - (c) the person is not to be taken outside the building; and
 - (d) the person consents to being removed to a room in the police station; and
 - (e) the officer in charge of the police gaol gives approval under subsection (17).
- (17) An officer in charge of a police gaol may approve the removal of a person to a room in a police station under subsection (16) if satisfied that the use of the room—
- S. 464B(17) inserted by No. 29/2020 s. 9(3).**
- (a) is in the best interests of the person to be questioned, having regard to privacy and confidentiality; or
 - (b) enables an audiovisual recording required by subsection (15) to be made; or
 - (c) for any other reason is preferable to conducting the questioning in the police gaol.
- (18) A person removed under subsection (16) from a police gaol to a room in a police station is in the custody of the investigating official.
- S. 464B(18) inserted by No. 29/2020 s. 9(3).**
- (19) The removal of a person from a police gaol to another part of the same building under subsection (16) has effect as a suspension of a direction in a warrant of commitment to deliver the person to
- S. 464B(19) inserted by No. 29/2020 s. 9(3).**

the place of detention specified in the warrant or to hold the person in that place.

S. 464B(20)
inserted by
No. 29/2020
s. 9(3).

- (20) At the cessation of questioning, the investigating official must deliver the person to the police gaol from which the person was removed.

Note to
s. 464B
inserted by
No. 25/2014
s. 15.

Note

Section 78D of the **Corrections Act 1986** provides for the application of section 464B in relation to persons detained under that Act.

S. 464C
inserted by
No. 37/1988
s. 5.

464C Right to communicate with friend, relative and legal practitioner

- (1) Before any questioning or investigation under section 464A(2) commences, an investigating official must inform the person in custody that he or she—
- (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)—

S. 464C(1)(b)
amended by
No. 72/2013
s. 5(1).

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.
- (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),

S. 464D
inserted by
No. 37/1988
s. 5.

S. 464D(2)
amended by
No. 72/2013
s. 6.

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. 464E
(Heading)
inserted by
No. 72/2004
s. 27(1).

464E Persons under 18 years

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. 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. 464FA
inserted by
No. 48/2018
s. 18.

464FA Victorian Aboriginal Legal Service to be notified if Aboriginal person taken into custody

- (1) If an Aboriginal person is taken into custody, an investigating official must notify VALS—
- (a) within one hour of the person being taken into custody; or
 - (b) if it is not practicable to do so within one hour, as soon as it is practicable to do so.
- (2) For the purposes of subsection (1)—
- (a) a person may be considered to be an Aboriginal person if the investigating official who took the person into custody is of the opinion that the person is such a person; and
 - (b) an investigating official, in considering whether a person is an Aboriginal person, must have regard to any statement made by the person (whether or not in response to a question asked by an investigating official) as to whether they are an Aboriginal person.

Note

Section 464AAB requires that an investigating official who takes a person into custody must ask the person whether they are an Aboriginal person.

(3) As soon as practicable after VALS is notified, an investigating official must inform the Aboriginal person of that notification.

(4) In this section—

VALS means the Victorian Aboriginal
Legal Service Co-operative Ltd
(ABN 45 926 675 900).

464G Recording of information required to be given to person in custody

S. 464G
(Heading)
inserted by
No. 27/2006
s. 17(3).

S. 464G
inserted by
No. 37/1988
s. 5,
amended by
No. 86/2000
s. 8(1) (ILA
s. 39B(1)).

(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.

S. 464G(1)
amended by
No. 27/2006
s. 17(4).

(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

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).

(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—

S. 464H(1)(c)
amended by
No. 27/2006
s. 17(6)(a).

(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

S. 464H(1)(d)
amended by
No. 27/2006
s. 17(6)(a).

(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

S. 464H(1)(e)
amended by
Nos 86/2000
s. 6(1)(a),
27/2006
s. 17(6)(a).

(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

confirmed by the person questioned and the confirmation was recorded by audio recording or audiovisual recording; or

- (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—

S. 464H(1)(f)
inserted by
No. 86/2000
s. 6(1)(b),
amended by
No. 27/2006
s. 17(6)(b).

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.

- (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)
amended by
No. 86/2000
s. 6(2)(a).

- (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

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).

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).

(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

S. 464H(3)(c)
inserted by
No. 87/2009
s. 3(2).

(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.

S. 464H(3A)
inserted by
No. 87/2009
s. 3(3).

(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).

S. 464H(4)
amended by
Nos 86/2000
s. 6(3),
27/2006
s. 17(8).

(4) Nothing in this section prevents the use of an audio recording or audiovisual recording in a proceeding for a summary offence.

S. 464I
inserted by
No. 37/1988
s. 5,
amended by
No. 86/2000
s. 8(2).

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. 464J
inserted by
No. 37/1988
s. 5,
amended by
No. 84/1989
s. 6.

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 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

(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

S. 464J(ba)
inserted by
No. 69/2009
s. 50.

(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.

464JA Offences in relation to recordings

S. 464JA
inserted by
No. 87/2009
s. 4.

(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**;

(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 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—

S. 464JA(3)(a)
substituted by
No. 64/2010
s. 3(2).

- (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

S. 464JA(3)(c)
amended by
No. 37/2014
s. 10(Sch.
item 36.19(b)).

- (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

- (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**.

S. 464JA(6)
amended by
No. 64/2010
s. 3(3).

- (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.

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.

464JB Court may give directions in relation to a recording

S. 464JB
inserted by
No. 87/2009
s. 4.

(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.

464JC Retention of copy of recording

S. 464JC
inserted by
No. 87/2009
s. 4.

(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.

(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.

S. 464JC(2)
amended by
Nos 64/2010
s. 4(2)(3),
37/2014
s. 10(Sch.
item 36.20).

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).

(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.

S. 464JC(2B)
inserted by
No. 64/2010
s. 4(4).

(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.

S. 464JC(3)
amended by
No. 64/2010
s. 4(5).

(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—

S. 464JC(5)(a)
amended by
No. 64/2010
s. 4(6)(a).

(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

S. 464JC(5)(b)
amended by
No. 64/2010
s. 4(6)(b).

(b) the court has given the suspect and the Chief Commissioner of Police or the Department Head a reasonable opportunity to be heard.

464JD Use of recordings for training, teaching or testing purposes

S. 464JD
inserted by
No. 87/2009
s. 4.

(1) In this section—

prescribed person means—

S. 464JD(1)
def. of
*prescribed
person*
amended by
Nos 64/2010
s. 5(1),
37/2014
s. 10(Sch.
item 36.21).

- (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.

S. 464K(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

- (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.

S. 464K(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(a)).

- (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

- (d) that if the person refuses to give his or her fingerprints voluntarily, a police officer may use reasonable force to obtain them; and **S. 464K(2)(d) amended by No. 37/2014 s. 10(Sch. item 36.22(a)).**
- (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.
- (3) Subject to subsection (4), the police officer who informs a person of the matters in subsection (2) must— **S. 464K(3) amended by No. 37/2014 s. 10(Sch. item 36.22(a)).**
- (a) record (whether by audio recording or audiovisual recording); or **S. 464K(3)(a) substituted by No. 27/2006 s. 17(9).**
- (b) record in writing signed by the person—the giving of that information and the person's responses, if any.
- (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(4) amended by No. 27/2006 s. 17(10).**
- (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— **S. 464K(5) amended by Nos 27/2006 s. 17(11)(a), 37/2014 s. 10(Sch. item 36.22(a)).**

S. 464K(5)(a)
amended by
No. 27/2006
s. 17(11)(b).

(a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and

S. 464K(5)(b)
amended by
No. 27/2006
s. 17(11)(c).

(b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable.

S. 464K(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(b)).

(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.

S. 464K(7)
amended by
No. 37/2014
s. 10(Sch.
item 36.22(c)).

(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.

S. 464K(8)
amended by
No. 72/2004
s. 28.

(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

S. 464K(8)(b)
amended by
No. 27/2006
s. 17(12).

(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.

464L Fingerprinting of children aged 14 or under

(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.

(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).

(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

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.

S. 464L(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(a)).

S. 464L(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.23(a)).

- (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).

- (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.
- (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(6) amended by No. 27/2006 s. 17(14).**
- (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—
- (a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and **S. 464L(7)(a) amended by No. 27/2006 s. 17(15)(b).**
- (b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable. **S. 464L(7)(b) amended by No. 27/2006 s. 17(15)(c).**
- (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. **S. 464L(8) amended by No. 37/2014 s. 10(Sch. item 36.23(b)).**

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.

S. 464M(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.24).

S. 464M(2)(a)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.3).

- (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 affirmation 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—
- (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.

S. 464M(8)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

(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
- (b) a police officer may use reasonable force to take the fingerprints; and
- (c) the taking of the fingerprints must be recorded by audiovisual recording, if practicable, or otherwise by audio recording.

S. 464M(9)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.24).

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
- (c) the person who took the fingerprints must give a copy of the order so endorsed to the child.

S. 464M(10)(b)
amended by
No. 27/2006
s. 17(17).

(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.
- (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).

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.

464N Taking of fingerprints

S. 464N(1)
inserted by
No. 41/2004
s. 4(1).

- (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(2)
amended by
Nos 41/2004
s. 4(2),
37/2014
s. 10(Sch.
item 36.24).

- (2) If—
- (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.

S. 464NA
inserted by
No. 35/2002
s. 3.

464NA Fingerscanning for identification purposes

S. 464NA(1)
repealed by
No. 41/2004
s. 5(1).

* * * * *

- (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, or cause to be taken by an authorised person, a fingerscan of the person for the purpose only of identifying the person.
- (3) A police officer intending to fingerscan a person under this section 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.
- (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—
- (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 of or above the rank of sergeant; and
 - (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(2)
amended by
Nos 37/2014
s. 10(Sch.
item 36.25(a)),
59/2015
s. 26(1).

S. 464NA(3)
amended by
Nos 37/2014
s. 10(Sch.
item 36.25(a)),
59/2015
s. 26(2).

S. 464NA(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.25
(b)(i)).

S. 464NA(4)(a)
amended by
Nos 37/2014
s. 10(Sch.
item
36.25(b)(ii)),
20/2015 s. 49.

S. 464NA(4)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.25
(b)(i)).

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.

S. 464NA(7)
amended by
No. 41/2004
s. 5(3).

(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. 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.

464O Destruction of records

(1) In this section—

S. 464O(1)
def. of
destroy
inserted by
No. 35/2002
s. 4.

destroy, in relation to a fingerscan, means permanently de-identify information—

- (a) which identifies the person from whom the fingerscan was taken; or
- (b) from which the person's identity may be ascertained;

S. 464O(1)
def. of
fingerprints
inserted by
No. 35/2002
s. 4,
amended by
No. 41/2004
s. 6.

fingerprints includes fingerscan taken under section 464NA or any other provision of this Subdivision;

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.

S. 464O(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

- (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.

S. 464O(7)
amended by
No. 69/1997
s. 22(14).

- (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).

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.

S. 464P(2)
amended by
Nos 77/2005
s. 8(3)(c),
7/2008
s. 7(3)(e),
63/2014
s. 3(4),
substituted by
No. 5/2018
s. 8.

- (2) Subsection (1) does not apply to fingerprints retained as a result of a finding of guilt of an offence if—
- (a) the offence is—
 - (i) an offence against this Act; or
 - (ii) an offence at common law the maximum penalty for which is specified by this Act; and
 - (b) the offence is punishable by level 4 imprisonment (15 years maximum) or more (however the penalty is described).

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.

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.

Forensic procedures and DNA profile samples

Heading preceding s. 464R inserted by No. 16/2002 s. 4(b), amended by No. 3/2019 s. 53.

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.

- (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

S. 464R(1) amended by No. 37/2014 s. 10(Sch. item 36.26).

S. 464R(2)(b)
amended by
No. 41/2004
s. 10(a).

(b) the Magistrates' Court makes an order under section 464T(3) or 464V(5); or

S. 464R(2)(c)
inserted by
No. 41/2004
s. 10(b).

(c) a senior police officer gives an authorisation under section 464SA.

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.

464S Informed consent³³

S. 464S(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(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

S. 464S(1)(c)
amended by
Nos 81/1997
s. 19(1),
13/2010
s. 51(Sch.
item 17.4).

- (ea) that information obtained from analysis of forensic material obtained by the procedure 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 Subdivision or under a corresponding law of a participating jurisdiction; and **S. 464S(1)(ea) inserted by No. 16/2002 s. 6.**
- (f) that the person may refuse to undergo the procedure; and
- (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)(g) amended by No. 41/2004 s. 11(a).**
- (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(1)(h) inserted by No. 41/2004 s. 11(b).**
- (2) A police officer who informs a person of the matters in subsection (1)— **S. 464S(2) amended by No. 37/2014 s. 10(Sch. item 36.26).**
- (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 **S. 464S(2)(a) amended by No. 27/2006 s. 17(18)(a).**
- (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.

S. 464S(3)
amended by
No. 48/2006
s. 42(Sch.
item 9.3),
substituted by
No. 3/2019
s. 54.

- (3) A person is taken as having refused consent if—
 - (a) the person is—
 - (i) held in a prison, police gaol or youth justice centre; or
 - (ii) a prisoner in a prison or a person detained in a police gaol who is transferred from the prison or police gaol to a facility or an institution referred to in section 56AB(1) of the **Corrections Act 1986**; and
 - (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.

S. 464SA
inserted by
No. 41/2004
s. 12.

464SA Senior police officer may authorise non-intimate compulsory procedure for certain adults

- (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—
- (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.

S. 464SA(2)(b)
amended by
No. 72/2004
s. 29.

- (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).

S. 464SB
inserted by
No. 41/2004
s. 12.

464SB Making or refusing authorisation

- (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 after the authorisation is made and, in any event, before the conduct of the compulsory procedure. **S. 464SB(3) 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) 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—
- (a) record, or cause to be recorded, the giving of that information by audio recording or audiovisual recording; and **S. 464SB(5)(a) amended by No. 27/2006 s. 17(19)(a).**
- (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 **S. 464SB(5)(b) amended by No. 27/2006 s. 17(19)(b).**

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—

S. 464SB(6)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(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.

S. 464SB(7)
amended by
No. 37/2014
s. 10(Sch.
item 36.26).

(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).

S. 464SC
inserted by
No. 3/2019
s. 55.

464SC DNA profile sample from DNA person

(1) A police officer may request a DNA person who is an adult to give a DNA profile sample only if the police officer is satisfied that the taking of the sample is justified in all of the circumstances, and the DNA person—

(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 police officer may request a DNA person who is a child to give a DNA profile sample only if the police officer is satisfied that the taking of the sample is justified in all of the circumstances, and the DNA person—

- (a) is believed on reasonable grounds of having committed the DNA sample offence; or
 - (b) has been charged with the DNA sample offence; or
 - (c) has been summonsed to answer to a charge for the DNA sample offence.
- (3) A DNA profile sample may be taken from—
- (a) a DNA person who is an adult if—
 - (i) the adult gives informed consent; or
 - (ii) a senior police officer gives an authorisation under section 464SE; or
 - (b) a DNA person who is a child if—
 - (i) the child and a parent or guardian of the child give informed consent; or
 - (ii) a senior police officer gives an authorisation under section 464SE.

464SD Informed consent—DNA person and their parent or guardian

S. 464SD
inserted by
No. 3/2019
s. 55.

- (1) In this section—

parent or guardian means a parent or guardian of a DNA person who is a child.

- (2) A DNA person or a parent or guardian gives informed consent to a request for the DNA person to give a DNA profile sample if the DNA person or the parent or guardian consents to the request after a police officer informs the DNA person or the parent or guardian in language likely to be understood by the DNA person or the parent or guardian—
- (a) of the purpose for which the sample is required; and

- (b) of the nature of the procedure sought to be conducted to take the sample; and
- (c) for a DNA person who is an adult, of the indictable 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
- (d) for a DNA person who is a child, of the DNA sample offence which the child is believed on reasonable grounds of having committed or with which the child has been charged or for which the child has been summonsed to answer to a charge; and
- (e) for a DNA person who is a child, that for the child to give informed consent both the child and the child's parent or guardian must consent to the taking of the sample; and
- (f) that the taking of the sample could produce evidence to be used in a court; and
- (g) that information obtained from analysis of forensic material obtained by the taking of the sample 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 Subdivision or under a corresponding law of a participating jurisdiction; and
- (h) that if a sample is taken from the DNA person and—
 - (i) the person has not been charged with an indictable offence or a DNA sample offence (as the case requires) at the end of 12 months after the taking of the sample; or

- (ii) the person has been so charged but the charge is not proceeded with or the DNA person is not found guilty of the offence whether on appeal or otherwise before the end of that period—
the sample taken will be destroyed; and
 - (i) that the DNA person or the parent or guardian may refuse to consent to the taking of the sample; and
 - (j) that if the DNA person or the parent or guardian refuses to consent to the taking of the sample, that a senior police officer may authorise the taking of the sample.
- (3) A police officer who informs a DNA person or a parent or guardian of the matters in subsection (2)—
- (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 the person's legal practitioner or the parent or guardian of the child if the child's legal practitioner is not known, without charge—
 - (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 as soon as practicable.
- (4) A DNA person is taken as having refused consent if—
- (a) the DNA person is—
 - (i) held in a prison, police gaol or youth justice centre; or
 - (ii) a prisoner in a prison or a person detained in a police gaol who is transferred from the prison or police gaol to a facility or an institution referred to in section 56AB(1) of the **Corrections Act 1986**; and
 - (b) within 24 hours after the giving of the information referred to in subsection (2) the DNA person fails to consent to the request to take the sample.
- (5) A parent or guardian is taken as having refused consent if the parent or guardian is not capable of giving informed consent by reason of mental impairment.

S. 464SE
inserted by
No. 3/2019
s. 55.

464SE Senior police officer may authorise the taking of a DNA profile sample from DNA person

- (1) A senior police officer who is not involved in investigating the offence for which the taking of a sample is required may authorise the taking of a DNA profile sample from a DNA person if the senior police officer is satisfied that—
- (a) the person is a DNA person 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 or the Children's Court (as the case requires) 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 incapable of giving informed consent by reason of mental impairment; and
 - (c) for a DNA person who is an adult, the person has refused to give consent to a request under section 464SC(1); and
 - (d) for a DNA person who is a child, both the child and the child's parent or guardian have refused to give consent to a request under section 464SC(2); and
 - (e) for a DNA person who is an adult, there are reasonable grounds to believe the person has committed the indictable offence in respect of which the authorisation is sought; and
 - (f) for a DNA person who is a child, the person is believed on reasonable grounds of having committed the DNA sample offence in respect of which the authorisation is sought; and
 - (g) the taking of the sample without the consent of the person is justified in all of the circumstances.

- (2) A senior police officer must not give an authorisation for the taking of a DNA profile sample from a DNA person if—
 - (a) an application to a court for an order under section 464T, 464U or 464V 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.
- (3) An authorisation given in contravention of subsection (2) is void.
- (4) Nothing in subsection (2) prevents a later application for an order under section 464T, 464U or 464V or an authorisation under this section on different or further grounds.
- (5) An authorisation under this section must be given to a police officer.

S. 464SF
inserted by
No. 3/2019
s. 55.

464SF Making or refusing authorisation—DNA profile sample

- (1) Before a senior police officer gives or refuses to give an authorisation under section 464SE, the senior police officer must allow a reasonable opportunity, if practicable in person, for the following persons to inform the senior police officer whether there is any reason why the DNA profile sample should not be taken—
 - (a) the DNA person;
 - (b) the parent or guardian of the DNA person if the DNA person is a child;
 - (c) the DNA person's legal practitioner, if any.

- (2) An authorisation under section 464SE must be given in writing, be 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.

Note

The **Electronic Transactions (Victoria) Act 2000** applies to enable an authorisation to be given electronically, including facsimile transmission and email, in accordance with that Act.

- (3) The senior police officer must give, or cause another police officer to give, to the DNA person a copy of the authorisation as soon as practicable after the authorisation is made and, in any event, before the taking of the DNA profile sample.
- (4) Before the DNA profile sample is taken, a police officer must inform the DNA person orally and in person of the following—
- (a) that an authorisation under section 464SE has been given;
 - (b) the matters referred to in subsection (2)(a) and (b);
 - (c) that a police officer may use reasonable force to enable the DNA profile sample to be taken.
- (5) The person who gives the information required to be given by subsection (4) must—
- (a) record, or cause to be recorded, the giving of that information by audio recording or audiovisual recording; and

- (b) give or send by registered post, or cause to be given or sent by registered post without charge, a copy of the recording as soon as practicable, but not more than 7 days after the taking of the DNA profile sample to—
 - (i) the DNA person or their legal practitioner; or
 - (ii) the parent or guardian of a DNA person who is a child if the child's legal practitioner is not known.
- (6) If a senior police officer refuses to give an authorisation under section 464SE in respect of a DNA person, the senior police officer must—
 - (a) inform, or cause another police officer to inform, the DNA person orally of the decision as soon as practicable after the refusal; and
 - (b) give written notice of the decision to the DNA person within 7 days after the refusal and to the parent or guardian of a DNA person who is a child.
- (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

S. 464T
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 7(c),
substituted by
No. 129/1993
s. 7.

(1) If—

S. 464T(1)
amended by
No. 37/2014
s. 10(Sch.
item
36.27(a)(ii)).

- (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 suspect³⁴; and
- (d) a police officer believes on reasonable grounds that the person has committed the offence in respect of which the procedure was requested—

S. 464T(1)(d)
amended by
No. 37/2014
s. 10(Sch.
item 36.27
(a)(i)).

the police officer may apply to the Magistrates' Court for an order directing the person to undergo the compulsory procedure.

(2) An application under subsection (1)—

- (a) must be in writing supported by evidence on oath or by affirmation 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.

S. 464T(2)(a)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.3).

S. 464T(3)(c)
amended by
No. 81/1997
s. 17(1).

- (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 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 **S. 464T(3)(c)(ii)(B) amended by No. 81/1997 s. 17(2).**
- (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 **S. 464T(3)(c)(iii) inserted by No. 81/1997 s. 17(3).**
- (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 **S. 464T(3)(c)(iv) inserted by No. 81/1997 s. 17(3).**
- (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 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
 - (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

S. 464T(6)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

- (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)).**
- (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)
(i)(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).

S. 464U(4)(a)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.3).

- (4) An application under subsection (3)—
- (a) must be in writing supported by evidence on oath or by affirmation or by affidavit; and
 - (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 on³⁵—
- (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

S. 464U(7)
amended by
No. 72/2004
s. 30(2).

- (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 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.
- (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).

S. 464U(9)(d)
amended by
No. 37/2014
s. 10(Sch.
item 36.28).

- (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
 - (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

S. 464V
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
ss 7(1)(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(4)
amended by
Nos 37/2014
s. 10(Sch.
item 36.29(b)),
33/2018
s. 86(1).

- (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.
- (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 audio link or audio visual link 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 affirmed, or unsworn or not affirmed, 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 **S. 464V(5)(b) amended by No. 6/2018 s. 68(Sch. 2 item 35.6).**
 - (c) on an application by audio link or audio visual link, 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. **S. 464V(5)(c) amended by No. 33/2018 s. 86(2).**
- (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 audio link or audio visual link; and **S. 464V(6)(c) amended by No. 33/2018 s. 86(3).**
 - (d) the person on whom the compulsory procedure is conducted must attend the further hearing³⁶.

- (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.

S. 464W
(Heading)
inserted by
No. 33/2018
s. 87(1).

464W Application by audio link or audio visual link for interim order

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
Nos 37/2014
s. 10(Sch.
item 36.30(a)),
33/2018
s. 87(2).

S. 464W(2)
amended by
Nos 37/2014
s. 10(Sch.
item 36.30(b)),
6/2018
s. 68(Sch. 2
item 35.7).

- (1) A police officer making an application by audio link or audio visual link for an interim order must make the application in accordance with this section.
- (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 or affirmed.

- (3) If transmission by facsimile machine or other electronic communication is available, the police officer must transmit a copy of the affidavit, even if the affidavit is not sworn or affirmed, to the magistrate or Children's Court magistrate constituting the court that is to hear the application. **S. 464W(3) amended by Nos 37/2014 s. 10(Sch. item 36.30(b)), 6/2018 s. 68(Sch. 2 item 35.8), 33/2018 s. 87(3).**
- (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 audio link or audio visual link, 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. **S. 464W(5) amended by No. 33/2018 s. 87(4).**
- (6) If transmission by facsimile machine or other electronic communication is available, the court must transmit a copy of its order to the applicant. **S. 464W(6) amended by No. 33/2018 s. 87(5).**
- (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 audio link or audio visual link, the applicant must—
- (a) if a copy of the order has not been transmitted by facsimile machine or other electronic communication, complete a form of order in the terms indicated by the court under subsection (5) and must write on it the **S. 464W(8) amended by No. 33/2018 s. 87(6)(a).**
- S. 464W(8)(a) amended by No. 33/2018 s. 87(6)(b).**

S. 464W(8)(b)
amended by
No. 33/2018
s. 87(6)(b).

- 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 or other electronic communication, 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.

S. 464W(8)
(c)(ii)
amended by
No. 37/2014
s. 10(Sch.
item 36.30(c)).

- (9) A police officer who informs a person of the matters in subsection (8)(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).

- (a) must record the giving of the information 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—
- (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 audio link or audio visual link, 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 or affirmed to the magistrate or Children's Court magistrate who constituted the court that heard the application.
- (11) In section 464V and this section—
- audio link* means facilities (including telephone) that enable audio communication between persons at different places;
- audio visual link* means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.
- (12) Nothing in section 464V or this section engages the provisions of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**.

S. 464W(9)
(b)(i)
amended by
No. 27/2006
s. 17(20)(b).

S. 464W(10)
amended by
Nos 6/2018
s. 68(Sch. 2
item 35.9),
33/2018
s. 87(7).

S. 464W(11)
inserted by
No. 33/2018
s. 87(8).

S. 464W(12)
inserted by
No. 33/2018
s. 87(8).

S. 464X
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464X Warrants

- (1) If an application is made to³⁷—
 - (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 or taking of a DNA profile sample

S. 464Y
(Heading)
inserted by
No. 3/2019
s. 56(1).

S. 464Y
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 8(c),
substituted by
No. 129/1993
s. 7.

- (1) Immediately before a DNA profile sample is taken in accordance with section 464SC, 464SE, 464ZFAC or 464ZFAE or 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 taking the sample or conducting the procedure but that anything the person does say may be given in evidence.

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),
3/2019
s. 56(2).

- (2) A police officer who informs a person of the matters in subsection (1)—

S. 464Y(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.31).

- (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

S. 464Y(2)(a)
amended by
No. 27/2006
s. 17(21)(a).

refuses to sign, by an independent person, if present; and

S. 464Y(2)(b)
amended by
No. 3/2019
s. 56(3).

- (b) must give or send by registered post to the person or his or her legal practitioner or the parent or guardian of a DNA person who is a child if the child's legal practitioner is not known, 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.

S. 464Z(1)
amended by
No. 3/2019
s. 57(1).

- (1) The Chief Commissioner of Police may authorise a person or a class of persons to take non-intimate samples or to conduct physical examinations of a non-intimate part of the body for the purposes of this Subdivision.

- (1A) The Chief Commissioner of Police may authorise a police officer or police custody officer, or a class of police officers or police custody officers, to supervise for the purposes of subsection (3A) or (3AC)—
- (a) the taking of scrapings from the mouth; or
- (b) the taking of a DNA profile sample that is a scraping from the mouth.
- (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.
- (2A) The taking of a DNA profile sample or the conduct of a forensic procedure in accordance with this Subdivision, must be taken or conducted by the least intrusive and least painful method practicable in the circumstances.
- (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;

S. 464Z(1A)
inserted by
No. 16/2002
s. 7(1),
amended by
Nos 37/2014
s. 10(Sch.
item 36.32(a)),
59/2015
s. 27(1),
substituted by
No. 3/2019
s. 57(2).

S. 464Z(2)
amended by
No. 16/2002
s. 7(2).

S. 464Z(2A)
inserted by
No. 3/2019
s. 57(3).

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)).

- (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(3AAA)
inserted by
No. 3/2019
s. 57(4).

(3AAA) For the purposes of a DNA profile sample taken in accordance with this Subdivision—

- (a) a sample may only be taken by a medical practitioner or nurse of the same sex, if practicable, as the person from whom the sample is to be taken; and
- (b) if the sample is to be taken from a child the sample must be taken in the presence of 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.

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.

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

- (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(3AB) inserted by No. 41/2004 s. 13(1), amended by No. 27/2006 s. 17(22).
- (3AC) Despite subsection (3AAA), a person from whom a DNA profile sample is to be taken in accordance with this Subdivision may elect to provide instead a scraping taken by the person from their mouth if a police officer authorised in accordance with subsection (1A) considers that it is appropriate for the person to take the scraping. S. 464Z(3AC) inserted by No. 3/2019 s. 57(5).
- (3AD) An election made by a person under subsection (3AC) must be recorded by audio recording or audiovisual recording or in writing signed by the person. S. 464Z(3AD) inserted by No. 3/2019 s. 57(5).
- (3A) Nothing in subsection (3) or (3AAA) 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 or police custody officer authorised in accordance with subsection (1A) if—
- (a) the police officer or police custody officer considers it appropriate for the person to do so; and S. 464Z(3A)(a) amended by Nos 37/2014 s. 10(Sch. item 36.32(c)(ii)), 59/2015 s. 27(2), 3/2019 s. 57(6).
- (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. S. 464Z(3A)(b) amended by No. 27/2006 s. 17(23).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

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)),
59/2015
s. 27(3),
3/2019
s. 57(7).

(3B) The police officer referred to in subsection (3AA) or (3AC), or the police officer or police custody officer referred to in subsection (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—

S. 464Z(3B)(a)
amended by
Nos 41/2004
s. 13(2)(b)(i)(ii),
27/2006
s. 17(24).

(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

S. 464Z(3B)(b)
amended by
No. 41/2004
s. 13(2)(c).

(b) if the election or consent is recorded in writing, a copy of the record forthwith.

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)).

(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.

S. 464Z(5)
amended by
Nos 81/1997
s. 19(4),
13/2010
s. 51(Sch.
item 17.6(d)).

(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(5)(b) amended by No. 81/1997 s. 19(4).**
- (6) A sample must be taken or a physical examination must be conducted—
- (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)(a) amended by Nos 81/1997 s. 21(a), 13/2010 s. 51(Sch. item 17.6(e)).**
- (ab) in the presence of a police officer or police custody 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 **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)), 59/2015 s. 27(4).**
- (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—
- (i) a police officer or police custody officer required by paragraph (ab) to be present; and **S. 464Z(6)(c)(i) amended by Nos 81/1997 s. 21(c), 37/2014 s. 10(Sch. item 36.32(d)), 59/2015 s. 27(4).**
- (ii) a person required by section 464ZA to be present; and
- (iii) a person referred to in subsection (5); and **S. 464Z(6)(c)(iii) amended by No. 16/2002 s. 7(5)(b).**

S. 464Z(6)
(c)(iv)
inserted by
No. 16/2002
s. 7(5)(b).
amended by
Nos 37/2014
s. 10(Sch.
item 36.32(d)),
59/2015
s. 27(4).

(iv) a police officer or police custody officer referred to in subsection (3A).

(7) A blood sample for the purposes of this Subdivision must not exceed 10 millilitres.

S. 464Z(7A)
inserted by
No. 41/2004
s. 13(4).

(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—

(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.

S. 464Z(8)
amended by
Nos 81/1997
s. 19(5),
13/2010
s. 51(Sch.
item 17.6(f)).

(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(9)
inserted by
No. 16/2002
s. 7(6).

(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.

464ZA Execution of authorisation, direction or order

S. 464ZA
(Heading)
inserted by
No. 41/2004
s. 14(1),
amended by
No. 25/2017
s. 51(1).

S. 464ZA
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

(1) If—

(a) a senior police officer gives an authorisation under section 464SA for the conduct of a non-intimate compulsory procedure; or

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)),
3/2019
s. 58(2)(c).

(ab) a senior police officer gives an authorisation under section 464SE for the taking of a DNA profile sample; or

S.
464ZA(1)(ab)
inserted by
No. 3/2019
s. 58(1).

(ac) a senior police officer gives an authorisation under section 464ZFAE for the taking of a DNA profile sample from a person; or

S.
464ZA(1)(ac)
inserted by
No. 3/2019
s. 58(1).

(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; or

S. 464ZA(1)(c)
amended by
Nos 27/2006
s. 6(a).
25/2017
s. 51(2)(a).

S. 464ZA(1)(d)
inserted by
No. 25/2017
s. 51(2)(b),
amended by
No. 3/2019
s. 58(2)(a).

(d) a police officer directs that a DNA profile sample be taken from a person under section 464ZFAB; or

S. 464ZA(1)(e)
inserted by
No. 3/2019
s. 58(2)(b).

(e) a senior police officer authorises the taking of a DNA profile sample from a person under section 464ZFAC or 464ZFAE—

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 take the sample or conduct the procedure.

S. 464ZA(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.33(b)).

(2) If practicable, a police officer acting in accordance with subsection (1) and any person assisting the police officer—

S. 464ZA(2)(a)
amended by
No. 3/2019
s. 58(3).

(a) must be of the same sex as the person from whom the sample is to be taken or on whom the procedure is to be conducted; and

(b) must not be involved in investigating the offence for which the procedure is required.

(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.

S. 464ZA(3A)
inserted by
No. 3/2019
s. 58(4).

(3A) The taking of a DNA profile sample (other than a scraping from the person's mouth taken by that person)—

(a) must be recorded by audiovisual recording, if practicable; or

- (b) must be witnessed by an independent medical practitioner or independent nurse.
- (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, 464SE, 464ZFAC or 464ZF AE or an order under section 464T(3), 464U(7), 464V(5), 464ZF or 464ZF AAA or a direction under section 464ZF AB 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), 25/2017 s. 51(3), 3/2019 s. 58(5)(a).

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)),
3/2019
s. 58(5)(b).

(a) if the taking of the sample or 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),
3/2019
s. 58(5)(c).

(b) if an independent medical practitioner, nurse, midwife, dentist or other person witnessed the taking of the sample or 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)),
3/2019
s. 58(6).

(6A) A police officer must give a copy of the authorisation or order so endorsed to the person from whom the sample was taken or 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),
substituted by
No. 3/2019
s. 58(7).

(7) If a DNA profile sample taken in accordance with an authorisation or a direction, or a compulsory procedure or a 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, direction or order must—

(a) without charge; and

(b) as soon as practicable but not more than 7 days after the procedure was conducted or the sample was taken—

give or send by registered post a copy of the audiovisual recording to the person from whom the sample was taken or on whom the procedure was conducted or to the person's legal practitioner.

(8) If the person referred to in subsection (7) from whom the sample was taken or on whom the procedure was conducted was a child, the applicant for the authorisation or order must also give or send by registered post a copy of the audiovisual recording to the parent or guardian of the child if the child's legal practitioner is not known.

S. 464ZA(8)
inserted by
No. 3/2019
s. 58(7).

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,

S. 464ZB
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

after the date of publication of the notice in the
Government Gazette.

S. 464ZC
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464ZC Analysis of material found at scene of offence etc.

S. 464ZC(1)
amended by
No. 81/1997
s. 23 (ILA
s. 39B(1)).

- (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
 - (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.

(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.

(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.

S. 464ZC(3)
inserted by
No. 81/1997
s. 23.

S. 464ZC(4)
inserted by
No. 81/1997
s. 23.

464ZD Forensic reports to be made available

(1) 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.

(2) If a DNA profile sample has been taken from a DNA person in accordance with section 464SC or 464SE, a copy of every forensic report must be

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,
3/2019 s. 59
(ILA s. 39B(1)).

S. 464ZD(2)
inserted by
No. 3/2019
s. 59.

given or sent by registered post as soon as practicable to—

- (a) that person or the person's legal practitioner;
and
 - (b) if that person is a child, also to the child's parent or guardian.
- (3) If a DNA profile sample has been taken from a person in accordance with section 464ZFAB, a senior police officer authorisation or an authorisation under section 464ZFAE, a copy of every forensic report must be given or sent by registered post as soon as practicable to that person or the person's legal practitioner.

S. 464ZD(3)
inserted by
No. 3/2019
s. 59.

S. 464ZE
(Heading)
inserted by
No. 3/2019
s. 60(1).

464ZE Evidence relating to forensic procedures or DNA profile samples³⁸

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 DNA profile sample taken from a person or 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,
3/2019
s. 60(2)(a).

S. 464ZE(1)(a)
amended by
No. 81/1997
s. 24(1)(b).

- (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

- (ab) a copy of a forensic report relating to the taking of the sample or 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 taking of the sample or 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 taking of the sample or 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, 464ZFAC, 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
(1)(ab)
inserted by
No. 80/1998
s. 3(b),
amended by
No. 3/2019
s. 60(2)(b).

S. 464ZE(1)(b)
amended by
No. 3/2019
s. 60(2)(c).

S. 464ZE(1)(d)
amended by
Nos 81/1997
s. 24(1)(c),
27/2006 s. 8,
3/2019
s. 60(2)(d)(ii).

S.
464ZE(1)(d)(i)
amended by
No. 3/2019
s. 60(2)(d)(i).

S. 464ZE(2)
amended by
Nos 81/1997
s. 24(2)(a),
80/1998
s. 3(c), 3/2019
s. 60(2)(e).

(2) A court may admit evidence obtained as a result of the taking of a DNA profile sample or 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—

S. 464ZE(2)(a)
amended by
No. 81/1997
s. 24(2)(b).

- (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.

S. 464ZE(2A)
inserted by
No. 81/1997
s. 24(3),
amended by
No. 80/1998
s. 3(c).

(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—

S. 464ZE
(2A)(b)
amended by
No. 80/1998
s. 3(c).

- (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.
- (3) The probative value of the evidence does not by itself justify the reception of the evidence. **S. 464ZE(3) substituted by No. 81/1997 s. 24(3).**
- (4) If the taking of a DNA profile sample or 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 sample to be taken or 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. **S. 464ZE(4) amended by Nos 27/2006 s. 17(29), 3/2019 s. 60(2)(f). S. 464ZE(4)(a) amended by No. 3/2019 s. 60(2)(g).**
- (5) If evidence obtained as a result of a DNA profile sample taken from a person or 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. **S. 464ZE(5) amended by No. 3/2019 s. 60(2)(h).**
- (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—

S. 464ZF(1)
def. of
child
amended by
No. 72/2004
s. 31(1).

child means a child aged 10 years or more but under 18 years;

S. 464ZF(1)
def. of
forensic sample offence
amended by
No. 72/2013
s. 9(1).

forensic sample offence means any indictable offence or any offence specified in Schedule 8.

S. 464ZF(2)
amended by
Nos 14/2006
s. 13(1)(a),
37/2014
s. 10(Sch.
item 36.34).

(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)(a)
amended by
No. 72/2013
s. 9(2).

(a) a forensic sample offence (within the meaning of that term as then in force); or

(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)—

(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

(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).

(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.

(3) If—

(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

S. 464ZF(2AA)
inserted by
No. 35/2002
s. 28(Sch.
item 3.3),
amended by
No. 14/2006
s. 13(1)(b).

S. 464ZF(2A)
inserted by
No. 16/2002
s. 10.

S. 464ZF(3)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

S. 464ZF(3)(a)
amended by
No. 72/2013
s. 9(3).

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.

S. 464ZF(4)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

- (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(5)
substituted by
No. 41/2004
s. 16,
amended by
No. 72/2004
s. 31(2).

- (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—
- (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
 - (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).
- (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(5B)
inserted by
No. 41/2004
s. 16.
- (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—
- S. 464ZF(6)
amended by
No. 14/2006
s. 13(1)(c)(i)(ii).
- (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—
- S. 464ZF(6)(b)
amended by
No. 14/2006
s. 13(1)(c)(ii).
- whichever is the later.

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.

S. 464ZF(6B)
inserted by
No. 14/2006
s. 13(2).

- (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—

S. 464ZF
(6B)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

- (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

S. 464ZF
(6B)(b)
amended by
No. 68/2009
s. 97(Sch.
item 40.36).

- (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.

S. 464ZF(7)
amended by
No. 68/2009
s. 97(Sch.
item 40.36).

- (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 by affirmation or otherwise as it considers desirable.

S. 464ZF(8)(c)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.11).

- (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.

S. 464ZF(9)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

- (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(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

(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.

S. 464ZFAAA
(2)(a)
amended by
No. 72/2013
s. 10(2).

(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.

(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 by affirmation or otherwise as it considers desirable.

**S. 464ZFAAA
(5)(c)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.11).**

(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.

S. 464ZFAAA
(10)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

- (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 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—

S. 464ZFAAA
(14)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.34).

- (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. 464ZFAA
inserted by
No. 16/2002
s. 11.

464ZFAA Notice to attend for forensic procedure

S. 464ZFAA(1)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(a)).

- (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
 - (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.
- (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.

S. 464ZFAA
(2)(f)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(b)).

S. 464ZFAA(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.35(c)).

- (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).

S. 464ZFAA(7)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.10).

- (7) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affirmation or 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—

- (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).

**464ZFAB DNA profile sample from registrable offenders
under the Sex Offenders Registration Act 2004**

S. 464ZFAB
(Heading)
amended by
No. 3/2019
s. 61(1).

S. 464ZFAB
inserted by
No. 25/2017
s. 52.

(1) In this section—

initial period means the period of 3 years commencing on the day on which section 52 of the **Sex Offenders Registration Amendment (Miscellaneous) Act 2017** comes into operation;

S. 464ZFAB(1)
def. of *initial period*
inserted by
No. 25/2017
s. 53(1).

registrable offender has the same meaning as in section 3 of the **Sex Offenders Registration Act 2004**.

(2) A police officer may, at any time, direct that a DNA profile sample be taken from a person if, at the time that the direction is given—

S. 464ZFAB(2)
amended by
No. 3/2019
s. 61(2)(a).

(a) the person is a registrable offender; and

(b) the Chief Commissioner of Police does not have a sample from the person that may be retained indefinitely.

S.
464ZFAB(2)(b)
amended by
No. 3/2019
s. 61(2)(b).

(3) A senior police officer may serve, or may cause to be served, a notice on a person referred to in subsection (2) directing the person to attend at a police station specified in the notice to have the DNA profile sample taken within 28 days after service of the notice.

S. 464ZFAB(3)
amended by
No. 3/2019
s. 61(3).

- (4) A notice under subsection (3) must—
- (a) state that if the person fails to comply with the notice, an application for a warrant to arrest the person may be made without further notice to the person; and
 - (b) state that the person may wish to seek legal advice as to the effect of the notice; and
 - (c) state the name, rank and telephone number of the senior police officer serving the notice or causing the notice to be served; and
 - (d) contain the prescribed information, if any.
- (5) A notice under subsection (3) must be served by delivering a true copy of the notice to the person personally.
- (6) Section 464ZFAA(6), (7) and (8) apply to a notice served under subsection (3) as if it were a notice served under that section.
- (7) If a DNA profile sample is taken from a person under this section, the sample taken and any related material and information may be retained indefinitely.
- (8) Subsection (7) does not apply if, on appeal against conviction, the finding of guilt of the registrable offender in respect of an offence is quashed or set aside and, but for that offence, the person would not be a registrable offender.
- (9) Subject to subsection (10), a police officer may give a direction under subsection (2) to a registrable offender whose reporting obligations under the **Sex Offenders Registration Act 2004**—
- (a) have been suspended under Division 6 of Part 3 of that Act; or

S. 464ZFAB(7)
amended by
No. 3/2019
s. 61(4).

S. 464ZFAB(9)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).

(b) have been suspended under section 32(1)(b) of that Act; or

(c) have expired under section 34(1) of that Act—

only if a notice under subsection (3) has been served on the registrable offender.

(10) A registrable offender referred to in subsection (9) may refuse to have a DNA profile sample taken and to attend at a police station in compliance with a notice under subsection (3) if the registrable offender demonstrates to the reasonable satisfaction of the senior police officer referred to in subsection (3)—

**S. 464ZFAB
(10)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).**

(a) if the registrable offender was a registrable offender on the commencement of the initial period, that the registrable offender has been resident in Victoria for not less than 2 years and 6 months in aggregate during the initial period; or

(b) that the registrable offender has been resident in Victoria for a continuous period of 12 months at any time after the expiry of the initial period and was a registrable offender during the whole of that period of 12 months.

(11) A person serving a notice under subsection (3) on a registrable offender referred to in subsection (9) must inform the registrable offender, in a manner likely to be understood by the offender, of the following matters—

**S. 464ZFAB
(11)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).**

(a) that the offender may refuse to comply with the notice;

(b) the grounds on which the offender may refuse to comply; and

(c) that the offender may wish to seek legal advice as to the effect of the notice.

S. 464ZFAB
(12)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).

(12) A senior police officer referred to in subsection (10) must take into account any information provided by the registrable offender.

S. 464ZFAB
(13)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).

(13) Before a registrable offender referred to in subsection (9) has a DNA profile sample taken, a police officer must, in a manner likely to be understood by the offender—

(a) inform the offender of the grounds on which the offender may refuse to have the DNA profile sample taken; and

(b) ask the offender whether the offender wishes to refuse.

S. 464ZFAB
(14)
inserted by
No. 25/2017
s. 53(2) (as
amended by
No. 3/2019
s. 80).

(14) If a registrable offender does not have a knowledge of the English language that is sufficient to enable the person to understand the matters referred to in subsection (11) or (13), the person informing the offender must arrange for the presence of a competent interpreter and defer the giving of the information until the interpreter is present.

S. 464ZFAC
inserted by
No. 3/2019
s. 62.

464ZFAC Senior police officer authorisation—to take DNA profile sample from certain adults

(1) In this section—

DNA offence means—

(a) an indictable offence or an offence specified in Schedule 8; or

(b) any offence of conspiracy to commit, incitement to commit or attempting to commit an indictable offence or an offence specified in Schedule 8.

- (2) A senior police officer may authorise the taking of a DNA profile sample from a person if—
- (a) the person—
 - (i) is found guilty of a DNA offence; or
 - (ii) is found not guilty of a DNA offence, other than an offence heard and determined summarily, because of mental impairment under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; and
 - (b) it is not more than 6 months after—
 - (i) the final determination of an appeal against the conviction or the verdict of not guilty because of mental impairment (as the case requires); or
 - (ii) the expiration of any appeal period; and
 - (c) the person is not under the age of 18 years at the time—
 - (i) the finding of guilt for the DNA offence is made; or
 - (ii) the finding of not guilty for the DNA offence because of mental impairment is made; and
 - (d) the Chief Commissioner of Police does not have a sample from the person that may be retained indefinitely.
- (3) An authorisation given for a sample to be taken from a person referred to in subsection (2)(a)(i) before the appeal period in relation to a conviction for the DNA offence has expired or an appeal against the conviction (if any) has been finally determined (whichever is the later), must not be carried out unless—
- (a) the appeal period expires; or

- (b) an appeal against conviction (if any) is finally determined and the conviction for the DNA offence is upheld.
- (4) An authorisation given for a sample to be taken from a person referred to in subsection (2)(a)(ii) 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 carried out unless—
- (a) the appeal period expires; or
 - (b) an appeal against the verdict is dismissed.
- (5) If leave to appeal against a verdict of not guilty because of mental impairment in respect of a DNA offence is sought after the expiry of the appeal period in relation to the verdict, an authorisation for a sample to be taken from a person referred to in subsection (2)(a)(ii) before leave to appeal is sought, if not carried out before that leave is sought, must not be carried out 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.
- (6) If leave to appeal against a conviction for a DNA offence is sought after the expiry of the appeal period in relation to the conviction, an authorisation for a sample to be taken from a person referred to in subsection (2)(a)(i) before leave to appeal is sought, if not carried out before that leave is sought, must not be carried out 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 DNA offence is upheld.
- (7) If an authorisation for a sample to be taken from a person referred to in subsection (2)(a) has been carried out after the expiry of the appeal period in relation to the conviction for the DNA offence or the verdict of not guilty for the DNA offence because of mental impairment and leave to appeal against the conviction or the verdict (as the case requires) 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 must not be used for any purpose pending the final determination of the appeal against the conviction or the verdict; and
- (b) if, on appeal, the conviction or 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.
- (8) If on appeal a conviction for the DNA offence or the verdict of not guilty for the DNA offence because of mental impairment (as the case requires) is set aside, an authorisation for a sample to be taken from a person in respect of the DNA offence ceases to have effect.
- (9) An authorisation given under this section must be in writing signed by the senior police officer giving it.

S. 464ZFAD
inserted by
No. 3/2019
s. 62.

464ZFAD Notice to attend—to take DNA profile sample from certain adults

(1) In this section—

relevant person means a person other than a person who is a detained or protected person.

(2) If a senior police officer authorisation for a DNA profile sample to be taken from a relevant person is given, a notice to attend must be attached to the authorisation and served on the person, that requires the person to attend a police station specified in the notice to have the DNA profile sample taken, within 28 days after the expiry of the period referred to in section 464ZFAC(3) or (4) (as the case requires) or the date of service of the notice (whichever is the later).

(3) A notice under subsection (2) must state—

- (a) the date on which the senior police officer authorisation was given; and
- (b) the kind of DNA profile sample that is to be taken from the person; and
- (c) the name, rank and telephone number of the senior police officer who gave the senior police officer authorisation; and
- (d) the Chief Commissioner of Police does not have a sample from the person that may be retained indefinitely; and
- (e) that if the person fails to comply with the notice, an application for a warrant to arrest the person may be made without further notice to the person; and
- (f) that the person may wish to seek legal advice as to the effect of the notice; and

- (g) the name, rank and telephone number of the police officer serving the notice or causing the notice to be served; and
 - (h) that a police officer may use reasonable force to enable the sample to be taken.
- (4) A notice under subsection (2) must be served in accordance with section 464ZFAA(4) and (5).
 - (5) Section 464ZFAA(6), (7) and (8) apply to a notice served under subsection (2) as if it were a notice served under that section.
 - (6) If a notice under subsection (2) is not served within the period referred to in section 464ZFAC(2)(b), a police officer may, within 28 days of the expiry of that period, apply to a magistrate or registrar of the Magistrates' Court for a warrant under subsection (7).
 - (7) On an application referred to in subsection (6) being made a magistrate or a registrar may, if satisfied by evidence on oath or by affidavit that the notice was not served on the relevant person, 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 relevant person named in the warrant is suspected to be; and
 - (b) to arrest the relevant person; and
 - (c) to detain the relevant person for as long as reasonably permits for the DNA profile sample to be taken.
 - (8) A magistrate or a registrar must not issue a warrant under subsection (7) unless satisfied by evidence on oath or by affidavit that—
 - (a) reasonable attempts have been made to serve the notice on the relevant person; and

(b) the DNA profile sample has not been taken from the relevant person.

(9) 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).

S. 464ZFAE
inserted by
No. 3/2019
s. 62.

464ZFAE Senior police officer may authorise taking a DNA profile sample from certain adults and children who have previously provided a sample

(1) A senior police officer, on request from a police officer, may authorise the taking of a DNA profile sample from a person if the senior police officer is satisfied that—

(a) a sample for the purpose of deriving a DNA profile was previously taken from the person—

(i) in accordance with an order made by a court under section 464T, 464U, 464V, 464ZF or 464ZFAAA; or

(ii) in accordance with section 464SC, an authorisation given under section 464SE, a direction given under section 464ZFAB or a senior police officer authorisation; and

(b) a forensic scientist has not derived a DNA profile from the sample taken from the person.

(2) A senior police officer may serve, or may cause to be served, a notice on a person referred to in subsection (1) directing the person to attend at a police station specified in the notice within 28 days after service of the notice to take a DNA profile sample.

(3) A notice under subsection (2) must state—

(a) the date on which the senior police officer authorisation was given; and

- (b) the kind of DNA profile sample that is to be taken from the person; and
 - (c) the name, rank and telephone number of the senior police officer who gave the authorisation; and
 - (d) that the Chief Commissioner of Police does not have a DNA profile of the person; and
 - (e) that a DNA profile was not able to be derived by a forensic scientist from the sample given by the person—
 - (i) in accordance with an order made by a court under section 464T, 464U, 464V, 464ZF or 464ZFAAA; or
 - (ii) in accordance with section 464SC, an authorisation given under section 464SE, a direction given under section 464ZFAB or a senior police officer authorisation; and
 - (f) 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; and
 - (g) that the person may wish to seek legal advice as to the effect of the notice; and
 - (h) the name, rank and telephone number of the police officer serving the notice or causing the notice to be served; and
 - (i) that a police officer may use reasonable force to enable the DNA profile sample to be taken.
- (4) A notice under subsection (2) must be served by delivering a true copy of the notice to the person personally.

(5) Section 464ZFAA(6), (7) and (8) apply to a notice served under subsection (2) as if it were a notice served under that section.

S. 464ZFA
(Heading)
inserted by
No. 27/2006
s. 10(1).

464ZFA Warrants issued for forensic procedures under section 464ZF or 464ZFAAA

S. 464ZFA
inserted by
No. 81/1997
s. 25.

S. 464ZFA(1)
substituted by
No. 27/2006
s. 10(2),
amended by
No. 48/2006
s. 42(Sch.
item 9.3).

(1) If—

S. 464ZFA
(1)(a)
amended by
No. 26/2014
s. 455(Sch.
item 7.5).

- (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 464ZFAAA(2) for an order directing the person to undergo a forensic procedure—

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.
- (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).
- (1B) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affirmation or 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.
- (2) A warrant issued under subsection (1) or (1B) may be directed to—
- (a) a named police officer; or
- 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)).
- S. 464ZFA(1B)**
inserted by
No. 16/2002
s. 12(1),
amended by
Nos 27/2006
s. 10(4),
6/2018
s. 68(Sch. 2
item 35.10).
- S. 464ZFA(2)**
amended by
No. 16/2002
s. 12(2)(a).
- S. 464ZFA**
(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.36
(b)(i)).

S. 464ZFA
(2)(b)
amended by
No. 37/2014
s. 10(Sch.
item
36.36(b)(iii)).

(b) generally all police officers.

S. 464FA(3)
amended by
Nos 16/2002
s. 12(2)(b),
37/2014
s. 10(Sch.
item 36.36(c)).

(3) A warrant issued under subsection (1) or (1B) directed to a named police officer may be executed by any police officer.

S. 464ZFA(4)
amended by
No. 16/2002
s. 12(2)(c)(i).

(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)(a)
amended by
No. 16/2002
s. 12(2)(c)(ii).

(a) give reasons for the decision; and

(b) cause a note of the reasons to be entered in the records of the court.

S. 464ZFA(5)
amended by
No. 16/2002
s. 12(2)(d)(i)(ii).

(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(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).

- (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) inserted by No. 16/2002 s. 12(3), amended by No. 37/2014 s. 10(Sch. item 36.36(d)(i)).

S. 464ZFA (7)(b) amended by No. 37/2014 s. 10(Sch. item 36.36(d)(ii)).

S. 464ZFB
(Heading)
inserted by
No. 27/2006
s. 11(1).

**464ZFB Retention of information following finding of
guilt etc.**

S. 464ZFB
inserted by
No. 81/1997
s. 26.

S. 464ZFB
(1AA)
inserted by
No. 72/2013
s. 11(1).

(1AA) If—

S. 464ZFB
(1AA)(a)
substituted by
No. 3/2019
s. 63(1).

(a) a DNA profile sample is taken or a forensic procedure is conducted on a person of or above the age of 18 years in accordance with section 464R, 464SA, 464SC, 464SE, 464T(3) or 464V(5); and

(b) a court finds the person guilty, or not guilty because of mental impairment, of—

S. 464ZFB
(1AA)(b)(i)
amended by
No. 3/2019
s. 63(2)(a).

(i) the indictable offence in respect of which the DNA profile sample was taken or the forensic procedure was conducted; or

(ii) any other indictable offence arising out of the same circumstances; or

S. 464ZFB
(1AA)(b)(iii)
amended by
No. 3/2019
s. 63(2)(b).

(iii) any other indictable offence in respect of which evidence obtained as a result of the DNA profile sample or 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—
- (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.
- (1) If at any time on or after the commencement of section 26 of the **Crimes (Amendment) Act 1997**—
- (a) a DNA profile sample is taken from a DNA person who is a child in accordance with section 464SC or 464SE or 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 DNA profile sample was taken or the forensic procedure was conducted; or

S. 464ZFB
(1AB)
inserted by
No. 72/2013
s. 11(1).

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),
amended by
No. 3/2019
s. 63(3)(a).

S. 464ZFB
(1)(b)
amended by
No. 72/2013
s. 11(2)(b).

S. 464ZFB
(1)(b)(i)
amended by
No. 3/2019
s. 63(3)(b).

S. 464ZFB
(1)(b)(iii)
amended by
No. 3/2019
s. 63(3)(c).

- (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 DNA profile sample or 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.

S. 464ZFB(1A)
inserted by
No. 27/2006
s. 11(2),
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(1A) If—

S. 464ZFB
(1A)(a)
substituted by
No. 72/2013
s. 11(3)(a),
amended by
No. 3/2019
s. 63(4)(a).

- (a) a DNA profile sample is taken from a DNA person who is a child in accordance with section 464SC or 464SE or a forensic procedure is conducted on a child in accordance with section 464U(7) or 464V(5); and

S. 464ZFB
(1A)(b)
amended by
No. 72/2013
s. 11(3)(b).

- (b) a court finds the child not guilty because of mental impairment of—

S. 464ZFB
(1A)(b)(i)
amended by
No. 3/2019
s. 63(4)(b).

- (i) the offence in respect of which the DNA profile sample was taken or 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 DNA profile sample or forensic procedure had probative value—

S. 464ZFB
(1A)(b)(iii)
amended by
No. 3/2019
s. 63(4)(c).

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.

(1B) Subsection (1A) does not apply to an offence heard and determined summarily.

S. 464ZFB(1B)
inserted by
No. 27/2006
s. 11(2),
amended by
No. 68/2009
s. 97(Sch.
item 40.38).

(2) A court hearing an application under subsection (1) or (1A)—

S. 464ZFB(2)
amended by
No. 27/2006
s. 11(3)(a).

(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

S. 464ZFB
(2)(a)
amended by
No. 27/2006
s. 11(3)(b).

(b) must be satisfied that, in all the circumstances, the making of the order is justified; and

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

S. 464ZFB
(2)(c)
amended by
No. 6/2018
s. 68(Sch. 2
item 35.11).

(c) may make such inquiries on oath or by affirmation 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)—

(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.

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)).

S. 464ZFB(2B)
inserted by
No. 27/2006
s. 11(4).

(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.

S. 464ZFB(3)
amended by
No. 27/2006
s. 11(5).

(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

- (ab) the finding of guilt of a registrable offender within the meaning of section 3(1) of the **Sex Offenders Registration Act 2004** is quashed or set aside on appeal and, but for that offence, the person would not be a registrable offender; or

- (a) a police officer does not make an application under section 464ZFB(1) or (1A) within the period specified by that subsection; or

- (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.

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)(ab)
inserted by
No. 25/2017
s. 54.

S. 464ZFC
(1)(a)
amended by
Nos 27/2006
s. 12(2),
37/2014
s. 10(Sch.
item 36.37).

S. 464ZFC
(1)(b)
amended by
No. 72/2013
s. 12(b).

- (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).

S. 464ZFD
(Heading)
substituted by
No. 32/2007
s. 5(1).

S. 464ZFD
inserted by
No. 81/1997
s. 26.

S. 464ZFD
(1AA)
inserted by
No. 32/2007
s. 5(2).

464ZFD Victorian DNA database

- (1AA) The Chief Commissioner of Police may keep a DNA database system.

(1) Information (including information which may identify the person from whom a DNA profile sample was taken or 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, 464ZFAAA or 464ZFAB, 464ZFAC, 464ZFAD 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),
25/2017 s. 55,
3/2019
s. 64(1).

(2) Information (other than information which may identify the person from whom a DNA profile sample was taken or 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), 3/2019
s. 64(2).

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
- (b) the date on which every sample listed in the report was taken; and

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

S. 464ZFE(c)
amended by
No. 3/2019
s. 65(a).

(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 the reason for the destruction of the sample; and

S. 464ZFE(d)
amended by
No. 41/2004
s. 18(a),
substituted by
No. 3/2019
s. 65(b).

(d) if a sample has been destroyed, the date that the requirement to destroy it arose, the date of destruction and the name of the person who has destroyed it; and

S. 464ZFE(da)
inserted by
No. 3/2019
s. 65(b).

(da) information on any DNA profile sample that has been retained for 12 months or more including the status of any investigation of the DNA person from whom the sample was taken; and

S. 464ZFE(db)
inserted by
No. 3/2019
s. 65(b).

(db) information on forensic material taken from suspects in accordance with section 464R, 464T or 464U that has been retained for 12 months or more including the status of any investigation of the suspect from whom the forensic material was taken; and

S. 464ZFE(e)
inserted by
No. 41/2004
s. 18(b),
amended by
No. 3/2019
s. 65(c).

(e) the number of authorisations given under sections 464SA and 464SE within the period to which the report relates; and

S. 464ZFE(f)
inserted by
No. 41/2004
s. 18(b),
amended by
No. 3/2019
s. 65(d).

(f) the number of authorisations refused to be given under sections 464SA and 464SE within the period to which the report relates.

464ZG Destruction of identifying information

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

S. 464ZG
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

(a) the indictable offence in respect of which the DNA profile sample was taken or the forensic procedure was conducted; or

S. 464ZG(1)(a)
amended by
Nos 72/2013
s. 13, 3/2019
s. 66(a).

(b) any other indictable offence arising out of the same circumstances; or

S. 464ZG(1)(b)
amended by
No. 72/2013
s. 13.

(c) any other indictable offence in respect of which the evidence obtained as a result of the DNA profile sample or the forensic procedure has probative value.

S. 464ZG(1)(c)
amended by
Nos 72/2013
s. 13, 3/2019
s. 66(b).

* * * * *

S. 464ZG(2)
repealed by
No. 81/1997
s. 27(1).

(3) Subject to section 464ZFD(2), if a DNA profile sample has been taken or a forensic procedure has been conducted on a person and—

S. 464ZG(3)
amended by
Nos 81/1997
s. 27(2)(a)(c),
3/2019
s. 66(c).

(a) the person has not been charged with a relevant offence at the end of the period of 12 months after the taking of the sample or the conduct of the procedure; or

S. 464ZG(3)(a)
amended by
Nos 81/1997
s. 27(2)(b),
3/2019
s. 66(d).

S. 464ZG(3)(b)
amended by
No. 27/2006
s. 14.

(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.

S. 464ZG(4)
amended by
No. 81/1997
s. 27(3)(a).

(4) A sample and any related material and information referred to in subsection (3) must be destroyed—

S. 464ZG(4)(a)
amended by
No. 81/1997
s. 27(3)(b).

(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(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 from whom the DNA profile sample was taken or on whom the forensic procedure was conducted. **S. 464ZG(6) amended by No. 3/2019 s. 66(e).**
- (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(7) substituted by No. 81/1997 s. 27(4).**
- (8) A person who knowingly—
- (a) fails to destroy; or **S. 464ZG(8) amended by Nos 69/1997 s. 22(15), 81/1997 s. 27(5)(a)(c).**
 - (b) uses, or causes or permits to be used— **S. 464ZG(8)(b) amended by No. 81/1997 s. 27(5)(b).**
- 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).
- (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). **S. 464ZG(9) amended by Nos 69/1997 s. 22(15), 81/1997 s. 27(6)(a)–(c).**

S. 464ZGA
inserted by
No. 81/1997
s. 28.

464ZGA Forensic information from juveniles

(1) Subject to section 464ZFD(2), if—

S.
464ZGA(1)(a)
amended by
No. 3/2019
s. 67(1).

- (a) a person has a DNA profile sample taken or 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.

S. 464ZGA(2)
amended by
Nos 77/2005
s. 8(3)(d),
7/2008
s. 7(3)(f),
63/2014
s. 3(5),
substituted by
No. 5/2018
s. 9.

(2) Subsection (1) does not apply if—

- (a) the person from whom the sample was taken is found guilty of—

S. 464ZGA
(2)(a)(i)
amended by
No. 3/2019
s. 67(2)(a).

- (i) the offence in relation to which the DNA profile sample was taken or the forensic procedure was conducted; or

- (ii) an offence arising out of the same circumstances as the offence referred to in subparagraph (i); or
 - (iii) an offence in respect of which evidence obtained as a result of the DNA profile sample or the forensic procedure had probative value; and
- (b) the offence of which the person is found guilty is—
- (i) an offence against this Act; or
 - (ii) an offence at common law the maximum penalty for which is specified by this Act; and
- (c) the offence of which the person is found guilty is punishable by level 4 imprisonment (15 years maximum) or more (however the penalty is described); and
- (d) the sample—
- (i) was taken in accordance with an order under section 464ZF(2); or
 - (ii) is the subject of an order under section 464ZFB(1).

S. 464ZGA
(2)(a)(iii)
amended by
No. 3/2019
s. 67(2)(b).

464ZGB Samples given voluntarily

S. 464ZGB
inserted by
No. 81/1997
s. 28.

- (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(1)
amended by
Nos 72/2004
s. 32, 37/2014
s. 10(Sch.
item 36.37).

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—

(a) that any sample that is given will be analysed;

S. 464ZGB
(3)(b)
substituted by
No. 16/2002
s. 15.

(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 Subdivision or under a corresponding law of a participating jurisdiction;

S. 464ZGB
(3)(ba)
inserted by
No. 16/2002
s. 15.

(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;

S. 464ZGB
(3)(bb)
inserted by
No. 16/2002
s. 15.

(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; **S. 464ZGB (3)(e) amended by No. 72/2013 s. 14.**
- (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)(g) amended by No. 37/2014 s. 10(Sch. item 36.37).**
- (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 (3)(h) amended by No. 13/2010 s. 51(Sch. item 17.10).**
- (4) A police officer who informs a person of the matters in subsection (3) must— **S. 464ZGB(4) amended by No. 37/2014 s. 10(Sch. item 36.37).**
- (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 **S. 464ZGB (4)(b)(i) amended by No. 27/2006 s. 17(30)(b).**

- (ii) a copy of the written record, signed by both the person and the independent person, forthwith.

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.

S. 464ZGC(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

- (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. 464ZGD
inserted by
No. 81/1997
s. 28.

464ZGD Procedure to take sample

- (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

- (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.
- (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

S. 464ZGE
inserted by
No. 81/1997
s. 28.

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
 - (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.
- (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).

**S. 464ZGE(6)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).**

(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).

S. 464ZGE(11)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

(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

(ab) requesting, under section 464SC, the person to give a DNA profile sample; or

S. 464ZGE
(11)(ab)
inserted by
No. 3/2019
s. 68.

(ac) making an authorisation under section 464SE for the taking of a DNA profile sample from the person; or

S. 464ZGE
(11)(ac)
inserted by
No. 3/2019
s. 68.

(b) making an application under section 464T or 464V for a court order directing the person to undergo a compulsory procedure.

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 sample has been taken from that child; and

S. 464ZGF(1)
(a)(ii)
amended by
No. 37/2014
s. 10(Sch.
item 36.37).

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;

S. 464ZGFA
(2)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 36.38(a)).

(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 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

S. 464ZGFA
(5)(b)
amended by
No. 37/2014
s. 10(Sch.
item
36.38(b)(i)).

(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)(c)
amended by
No. 37/2014
s. 10(Sch.
item
36.38(b)(ii)).

- (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.

S. 464ZGFB(4)
amended by
No. 3/2019
s. 69.

- (4) A sample given under section 464ZGFA and a DNA profile derived from the sample must be destroyed if—
 - (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
 - (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

S. 464ZGFB
(4)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(a)).

S. 464ZGFB
(4)(b)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(b)).

- (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.
- (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. 464ZGFB
(4)(e)
amended by
No. 37/2014
s. 10(Sch.
item 36.39(b)).

DNA database systems

Heading
preceding
s. 464ZGG
inserted by
No. 16/2002
s. 16,
amended by
No. 32/2007
s. 6.

464ZGG Supply of forensic material for purposes of DNA database

S. 464ZGG
inserted by
No. 16/2002
s. 16.

(1) In this section—

S. 464ZGG(1)
def. of
*excluded
forensic
material*
amended by
Nos 27/2006
s. 15, 3/2019
s. 70.

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
- (ba) taken from a DNA person in accordance with section 464SC or 464SE; or
- (bb) taken from a person in accordance with section 464ZFAC; or
- (bc) taken from a person in accordance with section 464ZFAC; 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.

S. 464ZGH(1)
amended by
No. 32/2007
s. 7(1).

(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 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—

*	*	*	*	*	S. 464ZGH (2)(g)(i) substituted by No. 60/2014 s. 140(Sch. 3 item 8.1), repealed by No. 20/2017 s. 134(Sch. 1 item 5.1(a)).
					S. 464ZGH (2)(g)(ii) amended by No. 22/2016 s. 167.
					S. 464ZGH(2) (g)(iii) substituted by No. 32/2007 s. 7(3).
					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), 20/2017 s. 134(Sch. 1 item 5.1(b)), substituted by No. 3/2019 s. 71(1).
					S. 464ZGH (2)(ga) inserted by No. 3/2019 s. 71(2).
					S. 464ZGH (2)(h) inserted by No. 20/2017 s. 134(Sch. 1 item 5.1(c)).

(3) This section does not apply to information that cannot be used to discover the identity of any person.

S. 464ZGI inserted by No. 16/2002 s. 16.

464ZGI Permissible matching of DNA profiles

S. 464ZGI(1) substituted by No. 32/2007 s. 8(1).

(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—

- (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.

S. 464ZGI(1) (Table) substituted by No. 32/2007 s. 8(1).

TABLE

<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

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

<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>
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—

(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

S. 464ZGI(2)(a) amended by No. 32/2007 s. 8(2).

(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. 464ZGI(3) amended by No. 32/2007 s. 8(2).

S. 464ZGJ
(Heading)
amended by
No. 32/2007
s. 9(1).
S. 464ZGJ
inserted by
No. 16/2002
s. 16.

464ZGJ Recording, retention and removal of identifying information on DNA database

(1) In this section—

S. 464ZGJ(1)
def. of
identifying information
substituted by
No. 32/2007
s. 9(2).

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 period
amended by
No. 32/2007
s. 9(1)(3)-(5).

identifying period for identifying information means—

- (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 responsible person to retain the information;

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

- | | | | | | |
|-----|---|---|---|---|---|
| * | * | * | * | * | |
| | | | | | S. 464ZGJ(1)
def. of
<i>responsible
person</i>
repealed by
No. 32/2007
s. 9(6). |
| (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(2)
amended by
No. 32/2007
s. 9(1)(7). |
| (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(3)
amended by
No. 32/2007
s. 9(1)(8)-(10). |
| (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). | | | | S. 464ZGJ(4)
amended by
Nos 32/2007
s. 9(1)(9)(11),
68/2009
s. 97(Sch.
item 40.40). |

464ZGK Disclosure of Victorian information

S. 464ZGK
(Heading)
amended by
No. 32/2007
s. 10(1).

(1) A person who—

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).

S. 464ZGK(2)
amended by
No. 32/2007
s. 10(4).

(2) A person may only disclose Victorian information stored on a DNA database for one or more of the following purposes—

S. 464ZGK
(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 36.40).

(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;

(b) making the information available, in accordance with the regulations, to the person to whom the information relates;

S. 464ZGK
(2)(c)
substituted by
No. 32/2007
s. 10(5).

(c) administering the DNA database;

S. 464ZGK
(2)(d)
substituted by
No. 32/2007
s. 10(5).

(d) in accordance with an agreement entered into under section 464ZGN;

(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—

- | | | | | | | |
|---|---|---|---|---|--|--|
| * | * | * | * | * | S. 464ZGK
(2)(g)(i)
substituted by
No. 60/2014
s. 140(Sch. 3
item 8.2),
repealed by
No. 20/2017
s. 134(Sch. 1
item 5.2(a)). | |
| | | | | | | |
| | | | | | (ii) the Health Complaints Commissioner within the meaning of the Health Records Act 2001 for the purposes of that Act; or | S. 464ZGK
(2)(g)(ii)
amended by
No. 22/2016
s. 168. |
| | | | | | (iii) the Ombudsman appointed under the Ombudsman Act 1973 ; or | S. 464ZGK(2)
(g)(iii)
substituted by
No. 32/2007
s. 10(6). |
| | | | | | (iv) the IBAC; or | 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),
substituted by
No. 3/2019
s. 72(1). |
| | | | | | (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; | S. 464ZGK(2)
(g)(v)
inserted by
No. 32/2007
s. 10(6),
amended by
No. 20/2017
s. 134(Sch. 1
item 5.2(b)). |

S. 464ZGK
(2)(ga)
inserted by
No. 3/2019
s. 72(2).

(ga) the IBAC performing its functions under this Act;

S. 464ZGK
(2)(h)
inserted by
No. 20/2017
s. 134(Sch. 1
item 5.2(c)).

(h) an investigation of a complaint by the Information Commissioner under the **Privacy and Data Protection Act 2014**.

S. 464ZGK(3)
amended by
Nos 32/2007
s. 10(7),
3/2019
s. 72(3).

(3) A person may only disclose Victorian information revealed by the taking of a DNA profile sample or the carrying out of a forensic procedure as follows—

S.
464ZGK(3)(a)
amended by
No. 3/2019
s. 72(4)(a).

- (a) if the person is the suspect, DNA person, offender or volunteer to whom the information relates;
- (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, DNA person's, offender's or volunteer's medical treatment; S.
464ZGK(3)(j)
amended by
No. 3/2019
s. 72(4)(b).
- (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).
- (5) In this section—
Victorian information means information referred to in section 464ZFD(1), whether or not kept on the Victorian DNA database. S. 464ZGK(5)
inserted by
No. 32/2007
s. 10(9).

Inter-jurisdictional enforcement

Heading
inserted by
No. 16/2002
s. 16.

464ZGL Registration of orders

S. 464ZGL
inserted by
No. 16/2002
s. 16.

- (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.

S. 464ZGL(2)
amended by
No. 48/2018
s. 19(1).

- (2) An order is registered when a copy of the order (being a copy certified as required under subsection (2A)) is registered in accordance with the law of the participating jurisdiction in which the register is kept.

S. 464ZGL(2A)
inserted by
No. 48/2018
s. 19(2).

- (2A) The copy of the order must be certified by—
- (a) the person who made it; or
 - (b) if that person is not available, a judicial officer of the participating jurisdiction in which the order was made.
- (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.

S. 464ZGM(2)
amended by
No. 37/2014
s. 10(Sch.
item 36.41).

- (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. 464ZGN
inserted by
No. 16/2002
s. 16,
substituted by
No. 32/2007
s. 11.

464ZGN Arrangements for transmission of information on DNA database

- (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 the Australian Crime Commission, under which—
- (a) information from the Victorian DNA database is to be transmitted to the Australian Crime Commission for comparison with information on the NCIDD for the purposes of—
S. 464ZGN(2)
amended by
No. 54/2016
s. 29(1)(a).
 - (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
S. 464ZGN
(2)(a)
amended by
No. 54/2016
s. 29(1)(b).

S. 464ZGN
(2)(b)
amended by
No. 54/2016
s. 29(1)(c).

- (b) information from the Australian Crime Commission obtained as a result of a comparison with the NCIDD 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.

S. 464ZGN(3)
amended by
No. 54/2016
s. 29(2).

- (3) Without limiting subsection (2), an arrangement made under that subsection may provide for the Australian Crime Commission—
- (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 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.

General

Heading
inserted by
No. 16/2002
s. 4(c).

**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 taking a DNA profile sample or 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),
3/2019
s. 73(1).

(a) was requested to be taken from or 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,
amended by
No. 3/2019
s. 73(2).

S. 464ZH(a)(i)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

(i) a request of a police officer given under section 464R; or

(ii) an authorisation given by a senior police officer under section 464SA; or

S.
464ZH(a)(iia)
inserted by
No. 3/2019
s. 73(3).

(iia) a request given by a police officer under section 464SC; or

S.
464ZH(a)(iib)
inserted by
No. 3/2019
s. 73(3).

(iib) an authorisation given by a senior police officer under section 464SE; or

- | | |
|---|---|
| (iic) a direction given by a police officer under section 464ZFAB; or | S.
464ZH(a)(iic)
inserted by
No. 3/2019
s. 73(3). |
| (iid) a senior police officer authorisation; or | S.
464ZH(a)(iid)
inserted by
No. 3/2019
s. 73(3). |
| (iie) an authorisation given by a senior police officer under section 464ZFAB; or | S.
464ZH(a)(iie)
inserted by
No. 3/2019
s. 73(3). |
| (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—

(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. | S. 464ZI
inserted by
No. 129/1993
s. 7,
amended by
No. 41/2004
s. 20 (ILA
s. 39B(1)). |
|--|--|

S. 464Z(2)
inserted by
No. 41/2004
s. 20.

- (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. 464ZJ
inserted by
No. 129/1993
s. 7.

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 taking DNA profile samples or conducting forensic procedures in accordance with this Subdivision and the analysis of any samples taken; and
 - (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(1)(d)
amended by
No. 3/2019
s. 74.

S. 464ZJ(3)(4)
repealed by
No. 10/1999
s. 31(5)(c).

* * * * *

(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—

S. 464ZJ(5)
substituted by
No. 10/1999
s. 31(5)(d).

- (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.
- S. 464ZL(3)
inserted by
No. 41/2004
s. 21.
- (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—
- (a) notice of the application for the order; or
 - (b) an opportunity to be heard on the application.
- S. 464ZL(4)
inserted by
No. 41/2004
s. 21.
- (4) An order purporting to have been made under section 464ZF(3) before the commencement of the **Crimes (Amendment) Act 2004** in respect of 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.

- (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(7)
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.

S. 464ZL(8)
inserted by
No. 72/2013
s. 16.

464ZLA Validation of sample taken in accordance with section 464ZFAB

S. 464ZLA
inserted by
No. 3/2019
s. 75.

- (1) In this section—

commencement day means the day on which section 79 of the **Justice Legislation Amendment (Police and Other Matters) Act 2019** comes into operation.

- (2) A sample taken in a forensic procedure conducted in accordance or purported to be conducted in accordance with section 464ZFAB before the commencement day in a prison was not unlawfully taken only because the person taking the sample had no lawful authority to enter and remain in the prison.

Oversight by IBAC

Heading
preceding
s. 464ZM
inserted by
No. 3/2019
s. 76.

464ZM Functions of IBAC

S. 464ZM
inserted by
No. 3/2019
s. 76.

The IBAC has the following functions under this Subdivision to monitor compliance by police officers and members of Victoria Police personnel or any other person who carried out a function or power in respect of—

- (a) the taking of a DNA profile sample;
- (b) a senior police officer authorisation;
- (c) an authorisation under section 464ZF AE;
- (d) any matter on which the Chief Commissioner is required to report on under section 464ZFE.

464ZN Chief Commissioner of Police to report to IBAC

S. 464ZN
inserted by
No. 3/2019
s. 76.

- (1) As soon as practicable after 1 January but not later than 1 March in each year, the Chief Commissioner of Police must provide a written report to the IBAC for the previous 12 months in relation—
 - (a) to any DNA profile sample taken or senior police officer authorisation or authorisation given and applied for; and
 - (b) to the destruction of any DNA profile sample taken or given in accordance with a senior police officer authorisation or authorisation; and
 - (c) to any matter on which the Chief Commissioner is required to report on under section 464ZFE.

- (2) The report must include—
- (a) a list that identifies by a unique identifying number every DNA profile sample taken or given in accordance with a senior police officer authorisation or authorisation under this Subdivision within the period to which the report relates; and
 - (b) information on whether any of the DNA profile samples listed in the report were taken from a child; and
 - (c) the date on which every DNA profile sample listed in the report was taken; and
 - (d) information on whether any of the DNA profile 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 the reason for the destruction of the sample; and
 - (e) if a DNA profile sample has been destroyed the date that the requirement to destroy it arose under section 464ZFC, the date of destruction and the name of the person who destroyed it; and
 - (f) the number of senior police officer authorisations and authorisations under section 464SE or 464ZF AE given within the period to which the report relates; and
 - (g) the number of DNA profile samples taken by consent in accordance with section 464SC within the period to which the report relates; and
 - (h) the number of authorisations under section 464SE, senior police officer authorisations and authorisations under section 464ZF AE refused within the period to which the report relates; and

- (i) information on any DNA profile sample that has been retained for 12 months or more including the status of any investigation of the DNA person from whom the sample was taken within the period to which the report relates.

S. 464ZO
inserted by
No. 3/2019
s. 76.

464ZO Inspection of records by authorised officers

- (1) In this section—

authorised officer is—

- (a) the IBAC Commissioner; or
- (b) a sworn IBAC Officer who is authorised under subsection (2);

IBAC Commissioner means the Commissioner within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;

police personnel premises has the same meaning as it has in the **Independent Broad-based Anti-corruption Commission Act 2011**;

records include the following—

- (a) forensic material;
- (b) records or recordings, whether in writing or in digital, audio or audiovisual form or otherwise, of—
 - (i) the taking of a DNA profile sample by informed consent in accordance with section 464SC; and
 - (ii) an authorisation under section 464SE or a senior police officer authorisation or an authorisation under section 464ZFAE;
- (c) documents on a database;

sworn IBAC Officer has the same meaning as in the **Independent Broad-based Anti-corruption Commission Act 2011**.

- (2) The IBAC Commissioner may authorise a sworn IBAC Officer to exercise the powers of an authorised officer under this section.
- (3) An authorised officer must, from time to time, inspect any records of Victoria Police or any other person or body that carried out a function or power for the taking of a DNA profile sample that the authorised officer considers necessary to determine the extent of compliance by a member of Victoria Police personnel or the person or body with this Subdivision for the following—
 - (a) the taking of a DNA profile sample by way of informed consent in accordance with section 464SC;
 - (b) an authorisation under section 464SE;
 - (c) a senior police officer authorisation;
 - (d) an authorisation under section 464ZFAE;
 - (e) any matter on which the Chief Commissioner is required to report on under section 464ZFE.
- (4) For the purpose of an inspection under this section, an authorised officer—
 - (a) after notifying the Chief Commissioner of Police, may enter at any reasonable time police personnel premises or any premises occupied by any other person or body that carried out a function or power under this Subdivision; and

- (b) is entitled to have full and free access at all reasonable times to all records of Victoria Police or any other person or body that carried out a function or power under this Subdivision that are relevant to the inspection; and
 - (c) may require a member of Victoria Police personnel or a relevant person or body to give the authorised officer any information that the IBAC considers necessary, being information that is in that person's or body's possession, or to which the person or body has access, and that is relevant to the inspection; and
 - (d) may do anything that is necessary or convenient to be done to enable an inspection to be carried out under this section.
- (5) The Chief Commissioner of Police must ensure that members of Victoria Police personnel give an authorised officer any assistance that the authorised officer reasonably requires to enable the authorised officer to perform functions under this section.

S. 464ZP
inserted by
No. 3/2019
s. 76.

464ZP IBAC to report to the Attorney-General

- (1) The IBAC must give a written report to the Attorney-General at yearly intervals on—
 - (a) the report given by the Chief Commissioner of Police to the IBAC under section 464ZN; and
 - (b) the results of each inspection under section 464ZO; and
 - (c) any recommendations about actions that should be taken in relation to a matter arising out of the report.

- (2) The Attorney-General must cause a report under this section to be laid before each House of Parliament within 15 sitting days after the day on which the Attorney-General receives the report.

464ZQ Recommendations

S. 464ZQ
inserted by
No. 3/2019
s. 76.

- (1) The IBAC may at any time make recommendations to the Chief Commissioner about actions that should be taken in relation to a matter arising out of the functions of IBAC under this Subdivision.
- (2) Within a reasonable time after receiving a recommendation under subsection (1), the Chief Commissioner must—
- (a) take the recommended action; or
 - (b) if the Chief Commissioner has not taken the recommended action or does not intend to take the recommended action—give a report to the IBAC stating the reason for not taking or intending to take the action.

464ZR Attorney-General may make a complaint to the IBAC

S. 464ZR
inserted by
No. 3/2019
s. 76.

The Attorney-General may make a complaint to the IBAC under section 51 of the **Independent Broad-based Anti-corruption Commission Act 2011** about the taking, use, retention or destruction of forensic material under this Subdivision.

464ZS Immunity of the IBAC and sworn IBAC Officers

S. 464ZS
inserted by
No. 3/2019
s. 76.

- (1) The IBAC or a sworn IBAC Officer is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
- (a) in the performance of a duty or a function or the exercise of a power under this Subdivision; or

(b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to the IBAC or a sworn IBAC Officer attaches instead to the State.

(31) Search warrants for and seizure of things

465 Issue of search warrant by magistrate

No. 6103
s. 465.

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),
6/2018
s. 68(Sch. 2
item 35.10).

(1) Any magistrate who is satisfied by the evidence on oath or by affirmation or 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)(a)
amended by
No. 22/1996
s. 6(1)(b).

- (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—

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.

* * * * *

S. 465(1A)
inserted by
No. 22/1996
s. 6(2),
repealed by
No. 42/2015
s. 8.

(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(1B)
inserted by
No. 63/2003
s. 43.

(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.

S. 465(2)
amended by
Nos 9427
s. 6(1)(Sch. 5
item 40),
57/1989
s. 3(Sch. item
42.57(a)(b)).

(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.

S. 465AAA
inserted by
No. 42/2015
s. 9.

465AAA

Warrant may authorise the giving of a direction requiring assistance from person with knowledge of a computer or computer network

- (1) Subject to subsection (3), a warrant issued under section 465 in relation to a building, receptacle, place or vehicle (*warrant premises*) may authorise a police officer executing the warrant to give a direction under subsection (2) to a specified person.
- (2) A police officer may direct a specified person to provide any information or assistance that is reasonable and necessary to allow the police officer to do one or more of the following things—
- (a) access data held in, or accessible from, a computer or data storage device that—
 - (i) is on warrant premises; or
 - (ii) has been seized under the warrant and is at a place other than warrant premises;

- (b) copy to another data storage device data held in, or accessible from, a computer, or data storage device, described in paragraph (a);
 - (c) convert into documentary form or another form intelligible to a police officer—
 - (i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or
 - (ii) data held in a data storage device to which the data was copied as described in paragraph (b).
- (3) A warrant may authorise the giving of a direction under subsection (2) if the magistrate issuing the warrant is satisfied that—
- (a) there are reasonable grounds for suspecting that data held in, or accessible from, a computer, or data storage device, described in subsection (2)(a) will afford evidence as to the commission of an indictable offence; and
 - (b) the specified person is—
 - (i) reasonably suspected of having committed an indictable offence in relation to which the warrant was issued; or
 - (ii) the owner or lessee of the computer or device; or
 - (iii) an employee of the owner or lessee of the computer or device; or
 - (iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or
 - (v) a person who uses or has used the computer or device; or

- (vi) a person who is or was a system administrator for the computer network of which the computer or device forms or formed a part; and
- (c) the specified person has relevant knowledge of—
 - (i) the computer or device or a computer network of which the computer or device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or device.
- (4) A person commits an offence if—
 - (a) the person has relevant knowledge of—
 - (i) the computer or data storage device or a computer network of which the computer or data storage device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or data storage device; and
 - (b) the person is informed by a police officer—
 - (i) of the authorisation to give the direction under subsection (2) and of its terms; and
 - (ii) that it is an offence to fail to comply with the direction; and
 - (c) the person fails to comply with the direction without reasonable excuse.
- (5) A person who commits an offence against subsection (4) is liable to level 7 imprisonment (2 years maximum).

- (6) An offence against subsection (4) is a summary offence.
- (7) A person is not excused from complying with a direction under subsection (2) on the ground that complying with it may result in information being provided that might incriminate the person.
- (8) In this section *access*, *data*, *data held in a computer* and *data storage device* have the meanings given by section 247A(1).

465AA Power to require assistance from person with knowledge of a computer or computer network

S. 465AA
inserted by
No. 79/2014
s. 69.

- (1) This section applies if a magistrate has issued a warrant under section 465 in relation to a building, receptacle, place or vehicle (*warrant premises*).
- (2) The Magistrates' Court may, on the application of a police officer of or above the rank of senior sergeant, make an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow a police officer to do one or more of the things specified in subsection (3).
- (3) The things are—
 - (a) access data held in, or accessible from, a computer or data storage device that—
 - (i) is on warrant premises; or
 - (ii) has been seized under the warrant and is at a place other than warrant premises;
 - (b) copy to another data storage device data held in, or accessible from, a computer, or data storage device, described in paragraph (a);

- (c) convert into documentary form or another form intelligible to a police officer—
 - (i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or
 - (ii) data held in a data storage device to which the data was copied as described in paragraph (b).
- (4) An application may be made under subsection (2) at the same time as an application is made for the warrant under section 465 or at any time after the issue of the warrant.
- (5) The Magistrates' Court may make the order if satisfied that—
 - (a) there are reasonable grounds for suspecting that data held in, or accessible from, a computer, or data storage device, described in subsection (3)(a) will afford evidence as to the commission of an indictable offence; and
 - (b) the specified person is—
 - (i) reasonably suspected of having committed an indictable offence in relation to which the warrant was issued; or
 - (ii) the owner or lessee of the computer or device; or
 - (iii) an employee of the owner or lessee of the computer or device; or
 - (iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or
 - (v) a person who uses or has used the computer or device; or

- (vi) a person who is or was a system administrator for the computer network of which the computer or device forms or formed a part; and
- (c) the specified person has relevant knowledge of—
 - (i) the computer or device or a computer network of which the computer or device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or device.
- (6) A person is not excused from complying with an order on the ground that complying with it may result in information being provided that might incriminate the person.
- (7) If—
 - (a) the computer or data storage device that is the subject of the order is seized under the warrant; and
 - (b) the order was granted on the basis of an application made before the seizure—the order does not have effect on or after the completion of the execution of the warrant.
- Note**

An application for another order under this section relating to the computer or data storage device may be made after the completion of the execution of the warrant.
- (8) If the computer or data storage device is not on warrant premises, the order must—
 - (a) specify the period within which the person must provide the information or assistance; and

- (b) specify the place at which the person must provide the information or assistance; and
- (c) specify the conditions (if any) to which the requirement to provide the information or assistance is subject.

(9) A person commits an offence if—

- (a) the person has relevant knowledge of—
 - (i) the computer or data storage device or a computer network of which the computer or data storage device forms or formed a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer or data storage device; and
- (b) the person is informed by a police officer—
 - (i) of the order made under this section and of its terms; and
 - (ii) that it is an indictable offence punishable by imprisonment to fail to comply with the order; and
- (c) the person fails to comply with the order without reasonable excuse.

(10) A person who commits an offence against subsection (9) is liable to level 6 imprisonment (5 years maximum).

(10A) This section applies in addition to section 465AAA, whether or not in relation to the same specified person. However, a person may be charged with an offence against either section 465AAA(4) or subsection (9) but not both.

(11) In this section *access*, *data*, *data held in a computer* and *data storage device* have the meanings given by section 247A(1).

S. 465AA(10A)
inserted by
No. 42/2015
s. 10.

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
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 gunpowder³⁹

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)),
6/2018
s. 68(Sch. 2
item 35.11).

Where any credible person on oath or by affirmation 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.

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).

S. 469A
inserted by
No. 7088
s. 2(f),
amended by
No. 57/1989
s. 3(Sch.
item 42.62).

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

(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 affirmation or 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
Nos 57/1989
s. 3(Sch. item
42.63(a)-(d)),
6/2018
s. 68(Sch. 2
item 35.12).

(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—

- (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).

* * * * *

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.⁴⁰

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.⁴¹

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),
repealed by
No. 63/2014
s. 7(7).

* * * * *

- (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

S. 479C
inserted by
No. 117/1986
s. 6(Sch. 1
item 1(8)(d)).

- (1) A person who, whether by force or not, escapes or attempts to escape—

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).

- (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

S. 479C(1)
(b)(ii)
amended by
No. 37/2014
s. 10(Sch.
item 36.42).

- (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(2)
amended by
Nos 129/1993
s. 9(2),
48/1997
s. 60(1)(Sch. 1
item 101).

- (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
 - (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(1)(i).
---	---	---	---	---	---

*	*	*	*	*	Ss 480–484 repealed. ⁴²
---	---	---	---	---	---------------------------------------

(3) Execution of sentences

Pt 3 Div. 2
Subdiv. (3)
(Heading)
amended by
No. 8679
s. 3(1)(c).

*	*	*	*	*	Ss 485–492 repealed ⁴³ .
---	---	---	---	---	--

493 Sentences of imprisonment etc. to be carried out according to law relating to prisons

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.

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).

Crimes Act 1958
No. 6231 of 1958
Part III—Procedure and punishment

S. 494 repealed by No. 9554 s. 2(1)(Sch. 1 item 7).	*	*	*	*	*
Pt 3 Div. 2 Subdiv. (4) (Heading) repealed by No. 65/1997 s. 82(2)(c).	*	*	*	*	*
Ss 495–497 repealed. ⁴⁴	*	*	*	*	*
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). ⁴⁵	*	*	*	*	*
Ss 499–502 repealed. ⁴⁶	*	*	*	*	*
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.

Part IV—Probation and parole provisions

506 Definitions

No. 6103
s. 506.

S. 506
amended by
Nos 6651
s. 57(b),
46/1998
s. 7(Sch. 1)
(ILA s. 39B(1)).

- (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
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).

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(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).

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

(4A) All stipendiary and honorary probation officers appointed under this section shall be under the control of the Secretary to the Department of Justice.	S. 507(4A) inserted by No. 9966 s. 21(2)(c), amended by No. 45/1996 s. 18(Sch. 2 item 6.5).
* * * * *	S. 507(5) amended by No. 9966 s. 21(2)(d), repealed by No. 10260 s. 114(Sch. 4 item 5).
(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.	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).
* * * * *	S. 507(7) amended by No. 9966 s. 21(2)(f), repealed by No. 10260 s. 114(Sch. 4 item 5).
* * * * *	Pt 4 Div. 1 Subdiv. (2) (Heading) repealed by No. 25/1989 s. 20(m)(i).
* * * * *	Ss 508, 509 repealed. ⁴⁷
* * * * *	Pt 4 Div. 1 Subdiv. (3) (Heading) repealed by No. 25/1989 s. 20(m)(ii).

Crimes Act 1958
No. 6231 of 1958
Part IV—Probation and parole provisions

Ss 510–515A repealed. ⁴⁸	*	*	*	*	*
Pt 4 Div. 1 Subdiv. (4) (Heading) repealed by No. 25/1989 s. 20(m)(iii).	*	*	*	*	*
Ss 516–519A repealed. ⁴⁹	*	*	*	*	*
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

- (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.

* * * * *

**No. 6103
s. 538.**

**S. 542(2)
repealed by
No. 6888 s. 3.**

Pt 5 (Heading)
amended by
No. 9576
s. 11(1).

Part V—Property of persons convicted of treason or an indictable offence. Orders as to costs

Ss 543–544
repealed.⁵⁰

* * * * *

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).

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*⁵¹ 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).

* * * * *

Ss 549–561
repealed by
No. 8410
s. 5(1).

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).

* * * * *

Pt 6
(Headings
and
ss 566–584)
repealed.⁵²

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**.
- (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(1)
amended by
No. 81/1997
s. 29(2) (ILA
s. 39B(1)).

S. 585(2)
inserted by
No. 81/1997
s. 29(2).

585AAA Regulations

S. 585AAA
inserted by
No. 28/2016
s. 13.

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances.

585AA Transitional provisions—(Crimes (Theft) Act 1973)

S. 585AA
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

- (1) Section 3(1) of the **Crimes (Theft) Act 1973** continues in effect despite its repeal.

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—
- (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.

S. 585AB
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

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 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.

585AC Transitional provisions—(Crimes (Classification of Offences) Act 1981)

S. 585AC
inserted by
No. 70/2013
s. 5(Sch. 3
item 1).

- (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
 - (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)

- (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**.

S. 585C
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (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**.

S. 585D
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

585D Transitional provisions—(Sentencing and Other Acts (Amendment) Act 1997)

- (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**.

586 Transitional provisions (Sentencing (Amendment) Act 1997)

S. 586
inserted by
No. 69/1997
s. 25.

- (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.
- (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.

589 Transitional provisions (Crimes (Amendment) Act 1997—Part 4)

S. 589
inserted by
No. 81/1997
s. 30.

- (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.

591 Transitional provision—Crimes (Amendment) Act 1998

S. 590
inserted by
No. 65/1998
s. 4,
re-numbered
as s. 591 by
No. 10/1999
s. 31(5)(e).

- (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.

592 Transitional provisions—Magistrates' Court (Amendment) Act 1999

S. 592
inserted by
No. 10/1999
s. 20.

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**.

S. 596
inserted by
No. 16/2002
s. 19.

596 Transitional provisions—Crimes (DNA Database) Act 2002

- (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.

597 Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003

S. 597
inserted by
No. 10/2003
s. 9.

- (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.

S. 599
inserted by
No. 104/2003
s. 4.

599 Transitional provision—Crimes (Money Laundering) Act 2003

- (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.

S. 600
inserted by
No. 59/2004
s. 8.

600 Transitional provisions—Crimes (Dangerous Driving) Act 2004

- (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.
- (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.

601 Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004

S. 601
inserted by
No. 72/2004
s. 33.

- (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.

S. 602
inserted by
No. 66/2005
s. 7.

602 Transitional provision—Crimes (Contamination of Goods) Act 2005

- (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.

S. 603
inserted by
No. 77/2005
s. 7.

603 Transitional provision—Crimes (Homicide) Act 2005

- (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.
- (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.

605 Transitional provision—Justice Legislation (Further Miscellaneous Amendments) Act 2006

S. 605
inserted by
No. 27/2006
s. 18.

- (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.

606 Transitional provision—Courts Legislation (Jurisdiction) Act 2006

S. 606
inserted by
No. 50/2006
s. 11.

- (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.

S. 606A
inserted by
No. 2/2006
s. 19A (as
amended by
No. 76/2006
s. 10).

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 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.

607 Transitional provision—Crimes (Sexual Offences) (Further Amendment) Act 2006

S. 607
inserted by
No. 76/2006
s. 4.

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.

608 Transitional provisions—Crimes Amendment (DNA Database) Act 2007

S. 608
inserted by
No. 32/2007
s. 12.

- (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.
- (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.

(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.

**610 Transitional provision—Crimes Amendment
(Child Homicide) Act 2008**

S. 610
inserted by
No. 7/2008
s. 6.

- (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.

**612 Transitional provision—Justice Legislation
Amendment (Sex Offences Procedure) Act 2008**

S. 612
inserted by
No. 18/2008
s. 4.

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.

S. 613
inserted by
No. 69/2009
s. 51.

**613 Transitional provision—Statute Law Amendment
(Evidence Consequential Provisions) Act 2009**

- (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
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.

615 Transitional provision—Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009

S. 615
inserted by
No. 93/2009
s. 46.

- (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.

616 Transitional provision—Justice Legislation Further Amendment Act 2010

S. 616
inserted by
No. 64/2010
s. 6.

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.

617 Transitional provision—Crimes Amendment (Bullying) Act 2011

S. 617
inserted by
No. 20/2011
s. 4.

- (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.

S. 618
inserted by
No. 6/2013
s. 6.

618 Transitional provision—Crimes Amendment (Gross Violence Offences) Act 2013

- (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.

S. 619
inserted by
No. 20/2013
s. 4.

619 Transitional provision—Crimes Amendment (Integrity in Sports) Act 2013

- (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.

**620 Transitional provision—Crimes Amendment
(Investigation Powers) Act 2013**

S. 620
inserted by
No. 72/2013
s. 17.

- (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.

**621 Transitional provision—Crimes Amendment
(Grooming) Act 2014**

S. 621
inserted by
No. 7/2014
s. 4.

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.

**621A Transitional provision—Justice Legislation
Amendment (Confiscation and Other Matters)
Act 2014**

S. 621A
(Heading)
amended by
No. 38/2017
s. 81(2).

Section 465AA applies with respect to a warrant issued under section 465 irrespective of whether the warrant was issued before, on or after the commencement of section 69 of the **Justice Legislation Amendment (Confiscation and Other Matters) Act 2014**.

S. 621A
inserted by
No. 79/2014
s. 70.

S. 622
inserted by
No. 36/2014
s. 5.

**622 Transitional provision—Crimes Amendment
(Protection of Children) Act 2014**

- (1) Section 49C as inserted by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** applies to an offence alleged to have been committed on or after the commencement of section 3 of that Act, irrespective of when the risk was created.
- (2) Section 327 as inserted by section 4 of the **Crimes Amendment (Protection of Children) Act 2014** applies to a person if the victim of the alleged sexual offence is still a child under the age of 16 years on the commencement of section 4 of that Act (irrespective of whether information is received or a reasonable belief is formed before or after the commencement of section 4 of that Act) unless the person has already disclosed the information referred to in section 327(2) to a police officer before the commencement of section 4 of that Act.

S. 622(2)
amended by
No. 36/2014
s. 7(3).

S. 623
inserted by
No. 63/2014
s. 8.

**623 Transitional provision—Crimes Amendment
(Abolition of Defensive Homicide) Act 2014**

- (1) This Act as amended by sections 3 and 4 of the **Crimes Amendment (Abolition of Defensive Homicide) Act 2014** applies to offences alleged to have been committed on or after the commencement of sections 3 and 4 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 sections 3 and 4 of the **Crimes Amendment (Abolition of Defensive Homicide) Act 2014**, the offence is alleged to have been committed before that commencement.

- (3) This Act as amended by section 6 of the **Crimes Amendment (Abolition of Defensive Homicide) Act 2014** applies to offences alleged to have been committed on or after the commencement of section 6 of that Act.
- (4) For the purposes of subsection (3), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 6 of the **Crimes Amendment (Abolition of Defensive Homicide) Act 2014**, the offence is alleged to have been committed before that commencement.

624 Transitional provisions—Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014

S. 624
inserted by
No. 72/2014
s. 5.

- (1) Section 4A only applies to an offence alleged to have been committed on or after the commencement of section 3 of the **Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014**.
- (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 section 3 of the **Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014**, it is alleged to have been committed before that commencement.

625 Transitional provision—Sentencing Amendment (Emergency Workers) Act 2014

S. 625
inserted by
No. 69/2014
s. 12 (as
amended by
No. 72/2014
s. 13(3)(4)).

- (1) The amendments made to this Act by section 11 of the **Sentencing Amendment (Emergency Workers) Act 2014** only apply to the sentencing of an offender on or after the commencement of that section for an offence alleged to have been committed on or after that commencement.

- (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 section 11 of the **Sentencing Amendment (Emergency Workers) Act 2014**, the offence is alleged to have been committed before that commencement.

S. 626
inserted by
No. 74/2014
s. 9.

626 Transitional provision—Crimes Amendment (Sexual Offences and Other Matters) Act 2014

- (1) The amendments made to this Act by sections 3 and 7(2) and (3) of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply only to offences alleged to have been committed on or after the commencement of those sections.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of sections 3 and 7(2) and (3) of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, the offence is alleged to have been committed before that commencement.
- (3) The amendments made to this Act by section 6 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply only to an offence alleged to have been committed on or after the commencement of that section.
- (4) For the purposes of subsection (3), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 6 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**, the offence is alleged to have been committed before that commencement.

- (5) The amendments made to this Act by section 8 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** apply to a proceeding that commences before, on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (6) Despite subsection (5), the amendments made to this Act by section 8 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014** do not apply to a proceeding in which the hearing or trial (as the case requires) has commenced before the commencement of that section.

Note

See section 210 of the **Criminal Procedure Act 2009** regarding when a trial commences.

627 Transitional provision—Justice Legislation Amendment Act 2015

S. 627
inserted by
No. 20/2015
s. 24.

- (1) The amendments made to this Act by section 22 of the **Justice Legislation Amendment Act 2015** apply only to offences alleged to have been committed on or after the commencement of that section.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of section 22 of the **Justice Legislation Amendment Act 2015**, the offence is alleged to have been committed before that commencement.

628 Transitional provision—Crimes Amendment (Child Pornography and Other Matters) Act 2015

S. 628
inserted by
No. 42/2015
s. 11.

- (1) Section 70AAAE applies to the following proceedings or part proceedings, irrespective of when the offence to which the proceeding relates is alleged to have been committed—

- (a) a trial that commences on or after the day on which section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** comes into operation (*the commencement day*);

Note

See section 210 of the **Criminal Procedure Act 2009** for when a trial commences.

- (b) a summary proceeding that commences on or after the commencement day;
- (c) for a summary proceeding that commenced before the commencement day, that part of the proceeding that takes place on or after that day, other than any hearing in the proceeding that commenced before that day and continued on or after that day or was adjourned until that day or a day after that day.
- (2) Section 465AAA applies with respect to a warrant issued under section 465 irrespective of when the offence to which the warrant relates is suspected to have been committed.

S. 629
inserted by
No. 43/2017
s. 64(5),
re-numbered
as s. 628A by
No. 5/2018
s. 42.

628A Transitional provision—Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

- (1) The amendments made to this Act by Division 1 of Part 8 of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** apply to the sentencing of an offender for an offence alleged to have been committed on or after the commencement of that Part.
- (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 Division 1 of Part 8 of the **Children and Justice Legislation Amendment (Youth Justice**

Reform) Act 2017, the offence is alleged to have been committed before that commencement.

629 Transitional provision—Crimes Amendment (Sexual Offences) Act 2016

S. 629
inserted by
No. 47/2016
s. 22.

The amendments made to this Act by section 21 of the **Crimes Amendment (Sexual Offences) Act 2016** apply only to a trial that commences (within the meaning of section 210 of the **Criminal Procedure Act 2009**) on or after the day on which that section comes into operation.

630 Transitional provision—Police and Justice Legislation Amendment (Miscellaneous) Act 2016

S. 630
inserted by
No. 54/2016
s. 30.

- (1) An arrangement entered into by the Minister under section 464ZGN(2) with CrimTrac before 1 July 2016 that is in effect immediately before 1 July 2016 is taken, on and from 1 July 2016, to be an arrangement entered into by the Minister under that section with the Australian Crime Commission.
- (2) On and from 1 July 2016, information transmitted from the Victorian DNA database to the Australian Crime Commission is taken to have been lawfully transmitted in accordance with an arrangement entered into under section 464ZGN(2).
- (3) On and from 1 July 2016, information transmitted from the Australian Crime Commission to the Chief Commissioner of Police is taken to have been lawfully transmitted in accordance with an arrangement entered into under section 464ZGN(2).

(4) In this section—

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. 631
inserted by
No. 6/2017
s. 14.

631 Transitional provision—Crimes Legislation Further Amendment Act 2017

- (1) The amendments made to this Act by Part 4 of the **Crimes Legislation Further Amendment Act 2017** apply only to offences alleged to have been committed on or after the commencement of that Part.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of Part 4 of the **Crimes Legislation Further Amendment Act 2017**, the offence is alleged to have been committed before that commencement.

S. 632
inserted by
No. 19/2017
s. 55.

632 Transitional provision—Family Violence Protection Amendment Act 2017

Section 327 as amended by section 54 of the **Family Violence Protection Amendment Act 2017** applies to a prosecution for an offence under section 327(2) that is commenced on or after the day on which section 54 of that Act comes into operation irrespective of when that offence is alleged to have been committed.

S. 633
inserted by
No. 5/2018
s. 10.

633 Transitional provision—Justice Legislation Amendment (Victims) Act 2018

- (1) Despite the amendment made to section 464ZGA by section 9 of the **Justice Legislation Amendment (Victims) Act 2018**, section 464ZGA as in force immediately before the commencement day continues to apply to—

- (a) a sample that was taken in accordance with an order under section 464ZF(2) that was made before the commencement day; or
 - (b) a sample in respect of which an order under section 464ZFB(1) was made before the commencement day.
- (2) Section 464ZGA, as amended by section 9 of the **Justice Legislation Amendment (Victims) Act 2018**, applies in relation to a sample—
- (a) taken in accordance with an order under section 464ZF(2) that was made on or after the commencement day; or
 - (b) that is the subject of an order under section 464ZFB(1) that was made on or after the commencement day.
- (3) In this section—

commencement day means the day on which section 9 of the **Justice Legislation Amendment (Victims) Act 2018** comes into operation.

634 Transitional provision—Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017

S. 634
inserted by
No. 65/2017
s. 24(1).

- (1) For the purposes of sections 317AD and 317AF as inserted by Division 1 of Part 2 of the **Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017**, a reference to an indictable offence committed in connection with an offence alleged to have been committed under section 317AC or 317AE, as the case requires, is a reference to an offence committed on or after the commencement of that Division.

- (2) For the purposes of subsection (1), if an indictable offence is committed between 2 dates, one before and one after the commencement of Division 1 of Part 2 of the **Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017**, the offence is taken to have been committed before that commencement.

S. 635
inserted by
No. 3/2019
s. 77.

635 Transitional provision—Justice Legislation Amendment (Police and Other Matters) Act 2019

- (1) The amendments made to this Act by sections 52, 53 and 55 of the **Justice Legislation Amendment (Police and Other Matters) Act 2019** apply—
- (a) to an offence alleged to have been committed before the day on which those sections come into operation if a criminal proceeding in respect of the alleged offence has not been commenced before that day; and
 - (b) to an offence alleged to have been committed on or after the day on which those sections come into operation.
- (2) The amendments made to this Act by section 62 of the **Justice Legislation Amendment (Police and Other Matters) Act 2019** apply to a person found guilty or found not guilty because of mental impairment on or after the day on which that section comes into operation.

S. 636
inserted by
No. 30/2019
s. 17.

636 Transitional provision—Children Legislation Amendment Act 2019

- (1) The amendment to section 327 of this Act made by section 16 of the **Children Legislation Amendment Act 2019** applies to an offence alleged to have been committed on or after the commencement of that section of that Act.

- (2) For the purposes of subsection (1), if any of the conduct constituting the offence set out in section 327(2) of this Act is alleged to have occurred between 2 dates, one before and one on or after the commencement of section 16 of the **Children Legislation Amendment Act 2019**, all of the conduct constituting the offence is taken to have occurred before that commencement.

637 Transitional provision—Crimes Amendment (Manslaughter and Related Offences) Act 2020

S. 637
inserted by
No. 16/2020
s. 9.

- (1) In this section—
amending Act means the **Crimes Amendment (Manslaughter and Related Offences) Act 2020**.
- (2) Section 5 as amended by section 3 of the amending Act applies to offences alleged to have been committed on or after the commencement of section 3 of that Act.
- (3) For the purposes of subsection (2), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of section 3 of the amending Act, the offence is alleged to have been committed before that commencement.
- (4) Section 5A as amended by section 4(2) of the amending Act applies to offences alleged to have been committed on or after the commencement of section 4(2) of that Act.
- (5) For the purposes of subsection (4), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of section 4(2) of the amending Act, the offence is alleged to have been committed before that commencement.

- (6) Section 5B as inserted by section 5 of the amending Act applies to an offence alleged to have been committed on or after the commencement of that section.
- (7) For the purposes of subsection (6), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of section 5 of the amending Act, the offence is alleged to have been committed before that commencement.

Crimes Act 1958
No. 6231 of 1958
Schedules

Schedules

First Schedule

<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				
	*	*	*	*	*	Sch. 2 repealed by No. 6958 s. 8(4)(d).
	*	*	*	*	*	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
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)).

* * * * *

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).

* * * * *

Sch. 6
repealed.⁵³

* * * * *

Schedule 7—Summary offences for which a person may be fingerprinted

Sections 464K, 464L, 464M

- 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**.

* * * * *

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
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,
74/2014
s. 7(9),
47/2016 s. 23.

Schedule 8—Forensic sample offences

Sections 464ZF, 464ZF AAA

A forensic sample offence is:

Offences against the person—non-sexual offences

* * * * *

- 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**.

* * * * *

- 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).

* * * * *

Offences against the person—sexual offences

* * * * *

- 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);

Crimes Act 1958
No. 6231 of 1958
Schedule 8—Forensic sample offences

- (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.);

- (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;

- (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**.
- 11A An offence against section 38 or 39 of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.

- 11B An offence against section 40 of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 15 August 1993 by section 20 of the **Sentencing (Amendment) Act 1993** and repealed by section 4 of the **Crimes Amendment (Sexual Offences and Other Matters) Act 2014**.
- 11C An offence against section 34B(1) of the **Crimes Act 1958** (offence to interfere with corpse of a human being) inserted in the **Crimes Act 1958** on 1 July 2005 by section 185 of the **Cemeteries and Crematoria Act 2003** and repealed by section 3 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11D An offence against any of the following provisions 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 16 of the **Crimes Amendment (Sexual Offences) Act 2016**:
- (a) section 44(1), (2), (3) or (4) (incest);
 - (b) section 47(1) (indecent act with child under the age of 16);
 - (c) section 47A(1) (persistent sexual abuse of child under the age of 16);
 - (d) section 48(1) (sexual penetration of 16 or 17 year old child);
 - (e) section 53(1) (administration of drugs etc.);
 - (f) section 54 (occupier etc. permitting unlawful sexual penetration);
 - (g) section 55 (abduction or detention);
 - (h) section 56(1) or (2) (abduction of child under the age of 16);
 - (i) section 57(1) or (2) (procuring sexual penetration by threats or fraud);
 - (j) section 59(1) (bestiality).

- 11E An offence against section 45(1) of the **Crimes Act 1958** (sexual penetration of child under the age of 16) inserted in the **Crimes Act 1958** on 22 November 2000 by section 5 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11F An offence against section 49(1) of the **Crimes Act 1958** (indecent act with 16 or 17 year old child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 13 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11G An offence against section 49A(1) of the **Crimes Act 1958** (facilitating sexual offences against children) inserted in the **Crimes Act 1958** on 13 June 1995 by section 93 of the **Sex Work Act 1994** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11H An offence against section 49B(2) of the **Crimes Act 1958** (grooming for sexual conduct with child under the age of 16 years) inserted in the **Crimes Act 1958** on 9 April 2014 by section 3 of the **Crimes Amendment (Grooming) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11I An offence against section 49C(2) of the **Crimes Act 1958** (failure by person in authority to protect child from sexual offence) inserted in the **Crimes Act 1958** on 1 July 2015 by section 3 of the **Crimes Amendment (Protection of Children) Act 2014** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11J An offence against section 51(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services) inserted in the **Crimes Act 1958** on 1 December 2006 by section 16 of the **Crimes (Sexual**

- Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11K An offence against section 52(1) or (2) of the **Crimes Act 1958** (sexual offences against persons with a cognitive impairment by workers) inserted in the **Crimes Act 1958** on 1 December 2006 by section 17 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11L An offence against section 53(2) of the **Crimes Act 1958** (administration of drugs etc.) inserted in the **Crimes Act 1958** on 11 February 2009 by section 3 of the **Crimes Legislation Amendment (Food and Drink Spiking) Act 2009** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11M An offence against section 58(1), (2) or (3) of the **Crimes Act 1958** (procuring sexual penetration of a child) inserted in the **Crimes Act 1958** on 1 December 2006 by section 18 of the **Crimes (Sexual Offences) Act 2006** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11N An offence against section 60AB(2), (3) or (4) (sexual servitude), 60AC(1) (aggravated sexual servitude), 60AD(1) (deceptive recruiting for commercial sexual services) or 60AE(1) (aggravated deceptive recruiting for commercial sexual services) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 19 May 2004 by section 3 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11O An offence against section 68(1) (production of child pornography) or 69(1) (procurement etc. of minor for child pornography) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 January 1996 by section 88 of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** and repealed by

section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.

- 11P An offence against section 70(1) of the **Crimes Act 1958** (possession of child pornography) inserted in the **Crimes Act 1958** on 22 November 2000 by section 6 of the **Crimes (Amendment) Act 2000** and repealed by section 16 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11Q An offence against section 70AAAB(1) (administering a child pornography website), 70AAAC(1) (encouraging use of a website to deal with child pornography) or 70AAAD(1) (assisting a person to avoid apprehension) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 1 December 2015 by section 6 of the **Crimes Amendment (Child Pornography and Other Matters) Act 2015** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**.
- 11R An offence against section 70AC of the **Crimes Act 1958** (sexual performance involving a minor) inserted in the **Crimes Act 1958** on 19 May 2004 by section 7 of the **Justice Legislation (Sexual Offences and Bail) Act 2004** and repealed by section 18 of the **Crimes Amendment (Sexual Offences) Act 2016**.

* * * * *

- 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**:

Crimes Act 1958
No. 6231 of 1958
Schedule 8—Forensic sample offences

- (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**.
- * * * * *
- 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**.

* * * * *

Explosive substances

* * * * *

Parties to offence

* * * * *

Drug offences

* * * * *

- 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).

New Sch. 9
inserted by
No. 3/2019
s. 78,
amended by
Nos 50/2019
s. 9, 16/2020
s. 8.

Schedule 9—DNA sample offences

Section 464(2)

- 1 Child homicide.
- 1A Homicide by firearm.
 - 2 Murder.
 - 3 Manslaughter.
 - 4 Treason.
 - 5 An offence against section 15A(1) of the **Crimes Act 1958** (causing serious injury intentionally in circumstances of gross violence).
 - 6 An offence against section 15B(1) of the **Crimes Act 1958** (causing serious injury recklessly in circumstances of gross violence).
 - 7 An offence against section 16 of the **Crimes Act 1958** (causing serious injury intentionally).
 - 8 An offence against section 21A(1) of the **Crimes Act 1958** (stalking) and the accused has within the preceding 10 years been convicted or found guilty of an offence against that section in relation to any person or an offence in the course of committing which the accused used or threatened to use violence against any person.
 - 9 An offence against section 38(1) of the **Crimes Act 1958** (rape).
 - 10 An offence against section 39(1) of the **Crimes Act 1958** (rape by compelling sexual penetration).
 - 11 An offence against section 42(1) of the **Crimes Act 1958** (assault with intent to commit a sexual offence).
 - 12 An offence against section 47(1) of the **Crimes Act 1958** (abduction or detention for a sexual purpose).

- 13 An offence against section 49A(1) of the **Crimes Act 1958** (sexual penetration of a child under the age of 12).
- 14 An offence against section 49B(1) of the **Crimes Act 1958** (sexual penetration of a child under the age of 16) in circumstances other than where at the time of the alleged offence the child was 12 years of age or more and the accused was not more than 2 years older than the child.
- 15 An offence against section 49J(1) of the **Crimes Act 1958** (persistent sexual abuse of a child under the age of 16).
- 16 An offence against section 49P(1) of the **Crimes Act 1958** (abduction or detention of a child under the age of 16 for a sexual purpose).
- 17 An offence against any of the following provisions of Subdivision (8C) of Division 1 of Part I of the **Crimes Act 1958** (incest) in circumstances other than where both people are aged 18 or older—
 - (a) section 50C(1) (sexual penetration of a child or lineal descendant);
 - (b) section 50D(1) (sexual penetration of a step-child);
 - (c) section 50E(1) (sexual penetration of a parent, lineal ancestor or step-parent);
 - (d) section 50F(1) (sexual penetration of a sibling or half-sibling).
- 18 An offence against section 63A of the **Crimes Act 1958** (kidnapping).
- 19 An offence against section 75A(1) of the **Crimes Act 1958** (armed robbery).
- 20 An offence against section 77 of the **Crimes Act 1958** (aggravated burglary).

- 21 Any indictable offence in the course of committing which the accused, or any person involved in the commission of the offence, is alleged to have used or threatened to use a firearm, offensive weapon, or explosive as defined by section 77(1A) of the **Crimes Act 1958**.
- 22 An offence against section 77A of the **Crimes Act 1958** (home invasion).
- 23 An offence against section 77B of the **Crimes Act 1958** (aggravated home invasion).
- 24 An offence against section 79 of the **Crimes Act 1958** (carjacking).
- 25 An offence against section 79A of the **Crimes Act 1958** (aggravated carjacking).
- 26 An offence against section 197A of the **Crimes Act 1958** (arson causing death).
- 27 An offence against section 318(1) of the **Crimes Act 1958** (culpable driving causing death).
- 28 An offence against section 319(1) or (1A) of the **Crimes Act 1958** (dangerous driving causing death or serious injury).
- 29 An offence against section 319AA(1) of the **Crimes Act 1958** (dangerous or negligent driving while pursued by police).
- 30 An offence against any of the following provisions 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**)—
 - (a) section 71(1) (trafficking in a drug of dependence) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;

- (b) section 72(1) (cultivation of narcotic plants) 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;
 - (c) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a) or (b).
- 31 An offence against any of the following provisions 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**)—
- (a) section 71(1) (trafficking in a drug of dependence);
 - (b) section 72(1) (cultivation of narcotic plants);
 - (c) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a) or (b).
- 32 An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**—
- (a) section 71 (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs);
 - (b) section 71AA (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs);
 - (c) section 72 (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant);

- (d) section 72A (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant);
 - (e) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (b), (c) or (d).
- 33 An offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981**—
- (a) section 71AB (trafficking in a drug of dependence to a child);
 - (b) section 71AC (trafficking in a drug of dependence);
 - (c) section 72B (cultivation of narcotic plants);
 - (d) section 79(1) (conspiracy) in circumstances where the conspiracy is to commit an offence referred to in paragraph (a), (b) or (c).
- 34 An offence against section 37A or 123A of the **Family Violence Protection Act 2008** of contravening a family violence intervention order or family violence safety notice (as the case requires) in the course of committing which the accused is alleged to have used or threatened to use violence and the accused has within the preceding 10 years been convicted or found guilty of an offence in the course of committing which the accused used or threatened to use violence against any person.
- 35 An offence against section 125A(1) of the **Family Violence Protection Act 2008** (persistent contravention of family violence safety notices and family violence intervention orders).
- 35A An offence against section 39G(1) or (2) of the **Occupational Health and Safety Act 2004** (workplace manslaughter).

Crimes Act 1958
No. 6231 of 1958
Schedule 9—DNA sample offences

- 35B An offence against section 144(1) of the **Occupational Health and Safety Act 2004** arising in respect of a contravention of section 39G(1) of that Act (workplace manslaughter—liability of officers of bodies corporate).
- 36 An offence against section 4B(1) or 21W of the **Terrorism (Community Protection) Act 2003**.
- 37 An offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in any other item of this Schedule.

* * * * *

Schs 8A–11
repealed.⁵⁴

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication 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

Crimes Act 1958
No. 6231 of 1958
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 Act 1958
No. 6231 of 1958
Endnotes

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

Crimes Act 1958
No. 6231 of 1958
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 Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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 Act 1958
No. 6231 of 1958
Endnotes

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

Crimes Act 1958
No. 6231 of 1958
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 Act 1958
No. 6231 of 1958
Endnotes

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

Crimes Act 1958
No. 6231 of 1958
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**

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 1958
Endnotes

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

Crimes Act 1958
No. 6231 of 1958
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 Act 1958
No. 6231 of 1958
Endnotes

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

Crimes Act 1958
No. 6231 of 1958
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**

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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**

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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 Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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 Act 1958
No. 6231 of 1958
Endnotes

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**

Crimes Act 1958
No. 6231 of 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

Succession to the Crown (Request) Act 2013, No. 60/2013

Assent Date: 22.10.13
Commencement Date: S. 6(Sch. 2 item 1) on 26.3.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

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**

Crimes Act 1958
No. 6231 of 1958
Endnotes

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**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 28) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
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**

Crimes Amendment (Protection of Children) Act 2014, No. 36/2014

Assent Date: 3.6.14
Commencement Date: Ss 4, 5 on 27.10.14: Special Gazette (No. 350) 7.10.14 p. 1; s. 7(1)(2)(3) on 27.10.14: s. 2(2); s. 8 on 27.10.14: s. 2(3); s. 3 on 1.7.15: s. 2(5)
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**

Sentencing Amendment (Baseline Sentences) Act 2014, No. 52/2014

Assent Date: 12.8.14
Commencement Date: Ss 11–16 on 2.11.14: Special Gazette (No. 350) 7.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Powers of Attorney Act 2014, No. 57/2014

Assent Date: 26.8.14
Commencement Date: S. 149 on 1.9.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 8) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Abolition of Defensive Homicide) Act 2014, No. 63/2014

Assent Date: 9.9.14
Commencement Date: Ss 3, 4, 6, 7(3)–(7), 8 on 1.11.14: Special Gazette (No. 350) 7.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing Amendment (Emergency Workers) Act 2014, No. 69/2014 (as amended by No. 72/2014)

Assent Date: 23.9.14
Commencement Date: Ss 8, 11–13 on 2.11.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014, No. 72/2014

Assent Date: 30.9.14
Commencement Date: Ss 3–5 on 1.11.14: s. 2(4)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Sexual Offences and Other Matters) Act 2014, No. 74/2014 (as amended by No. 14/2015 s. 69(2))

Assent Date: 21.10.14
Commencement Date: Ss 5, 6 on 22.10.14: s. 2(1); ss 8, 9 on 3.11.14: Special Gazette (No. 400) 29.10.14 p. 1; ss 3, 4, 7 on 1.7.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Confiscation and Other Matters) Act 2014, No. 79/2014

Assent Date: 21.10.14
Commencement Date: Ss 69, 70 on 22.10.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Jury Directions Act 2015, No. 14/2015

Assent Date: 12.5.15
Commencement Date: Ss 69(7)(8), 79 on 29.6.15: s. 2(4)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Crimes Amendment (Repeal of Section 19A) Act 2015, No. 17/2015

Assent Date: 2.6.15
Commencement Date: S. 3 on 3.6.15: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment Act 2015, No. 20/2015

Assent Date: 16.6.15
Commencement Date: Ss 21–24, 49 on 17.6.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Child Pornography and Other Matters) Act 2015, No. 42/2015

Assent Date: 22.9.15
Commencement Date: Ss 3–11 on 1.12.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Firearms Amendment (Trafficking and Other Measures) Act 2015, No. 44/2015

Assent Date: 22.9.15
Commencement Date: S. 9 on 1.12.15: Special Gazette (No. 349) 18.11.15 p. 1.
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Police Custody Officers) Act 2015, No. 59/2015

Assent Date: 18.11.15
Commencement Date: Ss 25–27 on 19.11.15: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Bail Amendment Act 2016, No. 1/2016

Assent Date: 16.2.16
Commencement Date: S. 22(1) on 2.5.16: Special Gazette (No. 103) 19.4.16 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Access to Medicinal Cannabis Act 2016, No. 20/2016

Assent Date: 26.4.16
Commencement Date: Ss 143–145 on 14.9.16: Special Gazette (No. 284) 13.9.16 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: Ss 167, 168 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Crimes Legislation Amendment Act 2016, No. 28/2016

Assent Date: 31.5.16
Commencement Date: S. 13 on 1.6.16: s. 2(1); ss 6, 7 on 3.10.16: Special Gazette (No. 296) 27.9.16 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Witness Protection Amendment Act 2016, No. 34/2016

Assent Date: 15.6.16
Commencement Date: S. 40 on 5.10.16: Special Gazette (No. 289) 20.9.16 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Sexual Offences) Act 2016, No. 47/2016

Assent Date: 6.9.16
Commencement Date: Ss 3–23 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Carjacking and Home Invasion) Act 2016, No. 50/2016

Assent Date: 18.10.16
Commencement Date: Ss 3, 4 on 7.12.16: Special Gazette (No. 375) 6.12.16 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Police and Justice Legislation Amendment (Miscellaneous) Act 2016, No. 54/2016

Assent Date: 18.10.16
Commencement Date: Ss 27–30 on 19.10.16: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing (Community Correction Order) and Other Acts Amendment Act 2016, No. 65/2016

Assent Date: 15.11.16
Commencement Date: Ss 20, 25 on 20.3.17: Special Gazette (No. 17) 31.1.17 p. 1; s. 24 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation Further Amendment Act 2017, No. 6/2017

Assent Date: 15.3.17
Commencement Date: Ss 13, 14 on 1.4.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Family Violence Protection Amendment Act 2017, No. 19/2017

Assent Date: 16.5.17
Commencement Date: Ss 54, 55 on 16.11.17: Special Gazette (No. 388) 15.11.17 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: S. 134(Sch. 1 item 5) on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sex Offenders Registration Amendment (Miscellaneous) Act 2017, No. 25/2017
(as amended by No. 3/2019)

Assent Date: 20.6.17
Commencement Date: Ss 50–52, 54, 55 on 1.3.18: s. 2(4); s. 53 on 1.3.21: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Bail Amendment (Stage One) Act 2017, No. 26/2017

Assent Date: 27.6.17
Commencement Date: S. 21 on 21.5.18: Special Gazette (No. 218) 15.5.18 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation Amendment (Public Order) Act 2017, No. 32/2017

Assent Date: 15.8.17
Commencement Date: Ss 8, 10 on 13.9.17: Special Gazette (No. 303) 12.9.17 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing Amendment (Sentencing Standards) Act 2017, No. 34/2017

Assent Date: 15.8.17
Commencement Date: Ss 12–14 on 29.11.17: Special Gazette (No. 406) 28.11.17 p. 1; ss 24–35 on 1.2.18: Special Gazette (No. 28) 30.1.18 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date: 29.8.17
Commencement Date: S. 81 on 30.8.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017, No. 43/2017

Assent Date: 26.9.17
Commencement Date: S. 64(5) on 30.11.17: Special Gazette (No. 406) 28.11.17 p. 1; s. 4 on 26.2.18: Special Gazette (No. 406) 28.11.17 p. 1; s. 48 on 5.4.18: Special Gazette (No. 136) 27.3.18 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017, No. 45/2017

Assent Date: 26.9.17
Commencement Date: Ss 15, 52 on 1.4.18: Special Gazette (No. 136) 27.3.18 p. 3
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017, No. 65/2017

Assent Date: 19.12.17
Commencement Date: Ss 3–14, 24(1) on 5.4.18: Special Gazette (No. 136) 27.3.18 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Victims) Act 2018, No. 5/2018

Assent Date: 27.2.18
Commencement Date: Ss 3–10, 42 on 28.2.18: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: Ss 63, 68(Sch. 2 item 35) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Road Safety Amendment (Automated Vehicles) Act 2018, No. 8/2018

Assent Date: 27.2.18
Commencement Date: S. 14 on 28.2.18: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Terrorism) Act 2018, No. 32/2018

Assent Date: 7.8.18
Commencement Date: S. 131 on 8.8.18: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, No. 33/2018

Assent Date: 14.8.18
Commencement Date: Ss 86, 87 on 31.7.19: Special Gazette (No. 306) 30.7.19 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Justice Legislation Miscellaneous Amendment Act 2018, No. 48/2018

Assent Date: 25.9.18
Commencement Date: Ss 19, 19A, 85–96 on 28.10.18: Special Gazette (No. 480) 16.10.18 p. 1; ss 16–18 on 1.10.19: s. 2(5)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation Amendment (Police and Other Matters) Act 2019, No. 3/2019

Assent Date: 13.3.19
Commencement Date: Ss 3–5 on 5.6.19: Special Gazette (No. 215) 4.6.19 p. 1; ss 52–78 on 1.7.19: Special Gazette (No. 215) 4.6.19 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date: 4.6.19
Commencement Date: S. 221(Sch. 1 item 11) on 1.3.20: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date: 25.6.19
Commencement Date: S. 257 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children Legislation Amendment Act 2019, No. 30/2019

Assent Date: 17.9.19
Commencement Date: Ss 16, 17 on 17.2.20: Special Gazette (No. 49) 4.2.20 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Health Legislation Amendment and Repeal Act 2019, No. 34/2019

Assent Date: 22.10.19
Commencement Date: Ss 45–47 on 23.10.19: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019, No. 50/2019

Assent Date: 3.12.19
Commencement Date: S. 9 on 1.7.20: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Amendment (Manslaughter and Related Offences) Act 2020, No. 16/2020

Assent Date: 10.6.20
Commencement Date: Ss 3–9 on 1.7.20: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
No. 6231 of 1958
Endnotes

Sentencing Amendment (Emergency Worker Harm) Act 2020, No. 23/2020

Assent Date: 30.6.20
Commencement Date: Ss 9–18 on 1.7.20: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Police and Emergency Legislation Amendment Act 2020, No. 29/2020

Assent Date: 27.10.20
Commencement Date: S. 9 on 2.12.20: Special Gazette (No. 624) 1.12.20 p. 1
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 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 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 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, amended by Nos 49/1991 s. 119(3)(Sch. 3 items 4A, 5–8), 102/1994 s. 93, 48/1997 s. 60(1)(Sch. 1 items 22–27), 81/1997 s. 5, 67/2000 s. 5, 2/2006 ss 9–13, 8/2008 s. 22(1), 68/2009 s. 97(Sch. items 40.3, 40.4), 7/2010 s. 3, 7/2014 s. 3, 36/2014 s. 3, 37/2014 s. 10(Sch. item 36.4), 52/2014 ss 14, 15, 74/2014 ss 5, 6, 65/2016 s. 20(16)(17), substituted as Pt 1 Div. 1 Subdiv. (8C) (Heading and ss 50A–50K) by No. 47/2016 s. 16.

³ Pt 1 Div. 1 Subdiv. (12): See section 6 as to the offence of infanticide.

⁴ 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.

⁵ 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 Chapter 7 of the Criminal Code contained in the Schedule to the Criminal Code Act 1995 of the Commonwealth.

⁶ S. 176: See note 5.

⁷ S. 177: See note 5.

⁸ S. 178: See note 5.

⁹ S. 179: See note 5.

¹⁰ S. 180: See note 5.

¹¹ S. 181: See note 5.

¹² S. 182: See note 5.

¹³ S. 184: See note 5.

¹⁴ S. 185: See note 5.

¹⁵ S. 186: See note 5.

¹⁶ S. 206: See section 435.

¹⁷ S. 232: Compare sections 25–28.

¹⁸ S. 233: See note 17.

¹⁹ Pt 1 Div. 8: See also sections 15–31, Pt 1 Div. 3, section 466 of this Act and the **Dangerous Goods Act 1985**, No. 10189/1985.

²⁰ S. 317(9)(d): See section 466 of this Act and the **Dangerous Goods Act 1985**, No. 10189/1985.

²¹ S. 317AC(3): The amendment proposed by section 7(2) of the **Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017**, No. 65/2017 is not included in this publication because the words "or a custodial officer" do not appear in section 317AC(3) (excluding the Notes).

Section 7(2) reads as follows:

7 Intentionally exposing an emergency worker or a custodial officer to risk by driving

(2) In section 317AC(1)(b), (2) and (3) (excluding the Notes) of the **Crimes Act 1958**, for "or a custodial officer" (wherever occurring) **substitute** ", a custodial officer or a youth justice custodial worker."

²² 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).

²³ 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)).

²⁴ 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)).

²⁵ 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)).

²⁶ 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)).

²⁷ 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)).

²⁸ 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

Section 89

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.

Sch. 3 cl. 15 inserted by No. 55/2014 s. 131.

15 Transitional provision—Criminal Organisations Control and Other Acts Amendment Act 2014

This Act as amended by Division 1 of Part 5 of the **Criminal Organisations Control and Other Acts Amendment Act 2014** applies to—

- (a) a proceeding for an offence that is commenced on or after the commencement of Division 1 of Part 5 of that Act; and
- (b) a proceeding for an offence that, on the commencement of Division 1 of Part 5 of that Act, is before the Children's Court, irrespective of when the proceeding was commenced.

Sch. 3 cl. 16 inserted by No. 6/2017 s. 12.

16 Transitional provision—Crimes Legislation Further Amendment Act 2017

This Act as amended by Part 3 of the **Crimes Legislation Further Amendment Act 2017** applies to an investigation into the fitness of an accused to stand trial that commences on or after the day on which that Part comes into operation.

²⁹ 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)).

³⁰ 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.

³¹ S. 420 (*repealed*): See note 28.

³² 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)).

³³ 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 (*repealed*) are not included in this publication because section 464S had been substituted before the proposed amendments came into operation.

³⁴ S. 464T(1)(c): See note 33.

³⁵ S. 464U(5): See note 33.

³⁶ S. 464V(6)(d): See note 33.

³⁷ S. 464X(1): See note 33.

Crimes Act 1958
No. 6231 of 1958
Endnotes

³⁸ S. 464ZE: See note 33.

³⁹ S. 466: See **Dangerous Goods Act 1985**, No. 10189/1985.

⁴⁰ 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).

⁴¹ 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).

⁴² 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).

⁴³ Ss 485–492:

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).

Crimes Act 1958
No. 6231 of 1958
Endnotes

S. 492 amended by No. 8338 s. 7(a), repealed by No. 8679 s. 3(1)(b).

⁴⁴ 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).

⁴⁵ S. 498 (*repealed*): See note 28.

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ 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).

Crimes Act 1958
No. 6231 of 1958
Endnotes

⁴⁹ 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).

⁵⁰ 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).

⁵¹ 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.

⁵² 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)).

⁵³ 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

Crimes Act 1958
No. 6231 of 1958
Endnotes

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)).

⁵⁴ 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).