

## CRIMES (AMENDMENT) BILL, 1983

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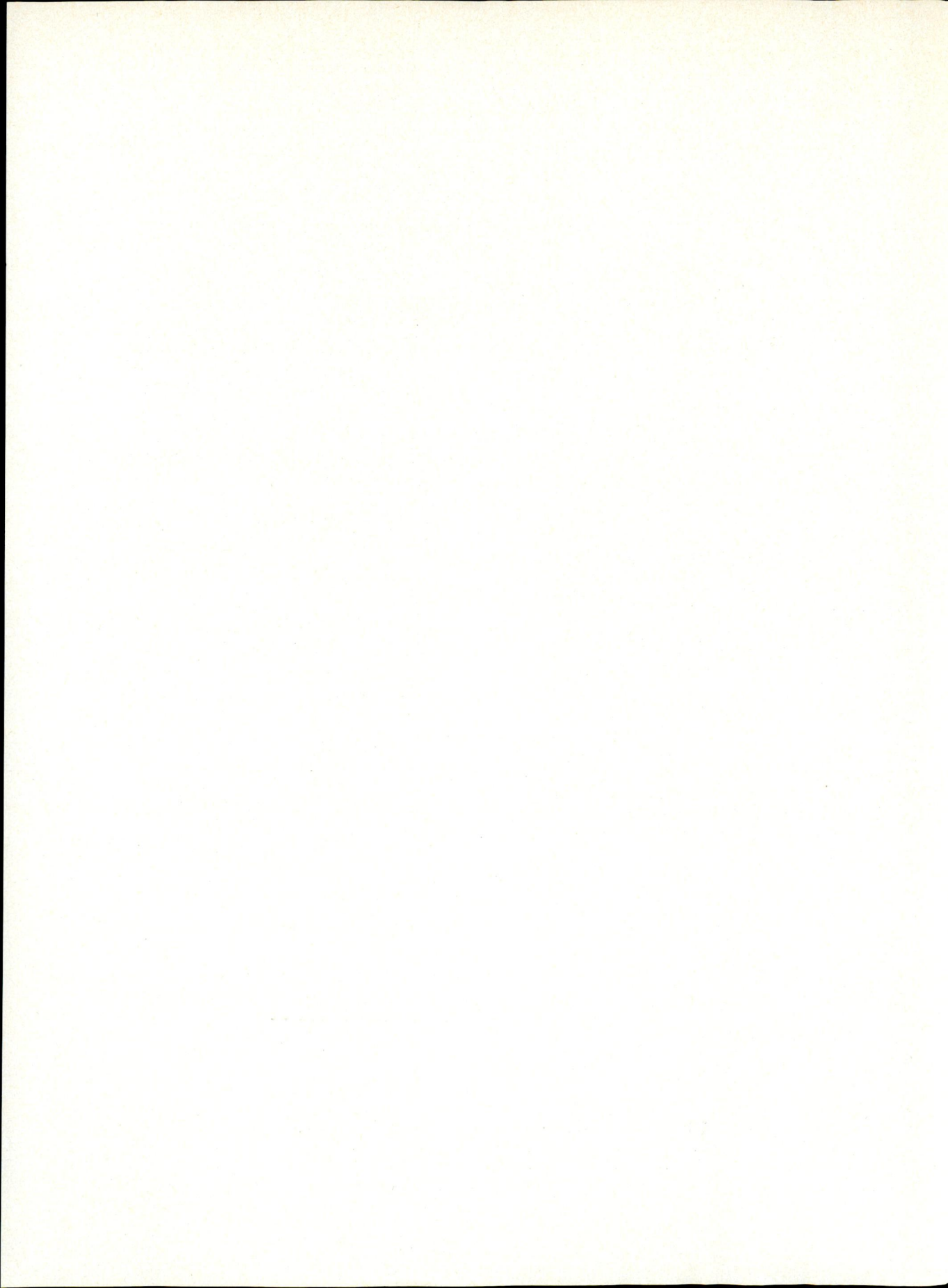
### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Justices (Procedure) Amendment Bill, 1983, is cognate with this Bill.

The objects of this Bill are—

- (a) to extend the range of offences that, by consent, may be dealt with summarily instead of upon indictment (Schedule 1);
- (b) to provide for the arrest, pending the execution of the appropriate warrant, of a person reasonably suspected of having committed a serious offence in Australia, but outside New South Wales (Schedule 2);
- (c) to provide for the searching of a female person in custody where a female constable is not available (Schedule 3);
- (d) to limit the circumstances in which the prosecutor may address the jury after the closing address for the accused (Schedule 4);
- (e) to bring within the offence of culpable driving an act causing death or grievous bodily harm to a person—
  - (i) where the person is being conveyed on (as distinct from “in”) the motor vehicle;
  - (ii) by reason of impact with something on, but not part of, the motor vehicle; or
  - (iii) by reason of impact with anything that falls from a motor vehicle, (Schedule 5 (1));
- (f) to create, on the like basis to the offence of culpable driving in relation to a motor vehicle, the offence of culpable navigation of a vessel on water (Schedule 5 (2)); and
- (g) to make provisions consequential upon or ancillary to the foregoing.



**CRIMES (AMENDMENT) BILL, 1983**

No.           , 1983.

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**A BILL FOR**

An Act to amend the Crimes Act, 1900, to extend the range of indictable offences that may be dealt with summarily, to change the order in which addresses may be made, to extend the offence of culpable driving and to create the offence of culpable navigation; and for other purposes.

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See also Justices (Procedure) Amendment Bill, 1983.



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*Crimes (Amendment).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **Short title.**

1. This Act may be cited as the "Crimes (Amendment) Act, 1983".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

10 (2) Section 5 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 **Principal Act.**

3. The Crimes Act, 1900, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

20 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMARY PROCEEDINGS FOR INDICTABLE OFFENCES.

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*Crimes (Amendment).*

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SCHEDULE 2.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO  
ARREST OF INTERSTATE OFFENDERS.

SCHEDULE 3.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO  
THE SEARCHING OF FEMALES.

5 SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CLOSING ADDRESSES.

SCHEDULE 5.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CULPABLE DRIVING AND NAVIGATION.

**Amendment of Act No. 40, 1900.**

10 **5.** The Principal Act is amended in the manner set forth in Schedules  
1–5.

**Application of Act.**

15 **6. (1)** The amendments made by section 5, in its application to Schedule  
1, and Schedule 1 do not have effect in relation to a person charged before a  
stipendiary magistrate before the commencement of Schedule 1.

**(2)** The amendments made by section 5, in its application to  
Schedule 4, do not have effect in relation to the trial of a person arraigned  
before the commencement of Schedule 4.

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*Crimes (Amendment).*

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMARY  
PROCEEDINGS FOR INDICTABLE OFFENCES.

5 (1) Section 35—

Omit the section, insert instead:—

**Malicious wounding or infliction of grievous bodily harm.**

35. Whosoever maliciously by any means—

(a) wounds any person; or

10 (b) inflicts grievous bodily harm upon any person,  
shall be liable to penal servitude for 7 years.

(2) (a) Section 476 (6) (a)—

After “where”, insert “(except in the case of a conveyance as defined for the purposes of section 154A)”.

15 (b) Section 476 (6) (a)—

Omit “\$1,000”, insert instead “\$10,000”.

(c) Section 476 (6) (aa)—

After section 476 (6) (a), insert:—

20 (aa) any offence mentioned in section 52A or 52B except  
an offence whereby death was occasioned;

(d) Section 476 (6) (d)—

After “section”, insert “35 (a), 53, 54,”.

(e) Section 476 (6) (d)—

25 After “158”, insert “ , 172, 173, 174, 175, 176, 176A, 176BA,  
176BB”.



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*Crimes (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMARY  
PROCEEDINGS FOR INDICTABLE OFFENCES—*continued.*

- 5 (f) Section 476 (6) (f) (ii)—  
Omit "\$1,000", insert instead "\$10,000".
- (g) Section 476 (6) (i)—  
After "(a),", insert "(aa),".
- (h) Section 476 (7)—  
After "contrary", insert ", subsection (7A) excepted".
- 10 (i) Section 476 (7A)—  
After section 476 (7), insert:—  
(7A) Notwithstanding anything in this Act to the contrary—
- 15 (a) the maximum term of imprisonment to which a person may  
be sentenced by a magistrate for any one offence mentioned  
in section 52A or 52B is 18 months;
- (b) a magistrate may, instead of imposing a term of imprison-  
ment for an offence disposed of under this section, impose  
a penalty not exceeding \$2,000; and
- 20 (c) the maximum term of imprisonment to which a person may  
be sentenced by a magistrate for any one offence mentioned  
in section 53 or 54 is 12 months.
- (3) Section 501 (1)—  
Omit "\$500", insert instead "\$2,000".
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*Crimes (Amendment).*

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## SCHEDULE 2.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO ARREST OF  
INTERSTATE OFFENDERS.

## 5 Section 352A—

After section 352, insert:—

**Power of arrest in cases of certain offences committed outside the State.**

352A. (1) This section applies to an offence—

- 10 (a) that is an offence against the law of a State (other than New South Wales) or a Territory of the Commonwealth; and
- (b) that consists of an act or omission which, if it occurred in New South Wales, would constitute—
- (i) an indictable offence; or
  - (ii) an offence punishable by imprisonment for 2 years or more.

15 (2) A member of the police force may, at any hour of the day or night and without any warrant other than this Act, apprehend any person whom he has reasonable cause to suspect of having committed an offence to which this section applies.

20 (3) A person apprehended under this section shall be brought as soon as practicable before a court and the court—

- (a) may discharge the person; or
- (b) may—
  - (i) commit him to custody; or
  - (ii) admit him to bail,

25 pending the execution under a law of the Commonwealth of a warrant or provisional warrant for his apprehension or his earlier release from bail, or discharge from custody, under subsection (7).



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*Crimes (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENT TO THE PRINCIPAL ACT RELATING  
TO ARREST OF INTERSTATE OFFENDERS—*continued.*

5 (4) Subject to this section, a person apprehended under this section for an offence to which this section applies shall generally have the same rights, and be liable to be dealt with in the same way, as a person charged with the commission of the like offence in New South Wales, and in particular—

10 (a) a member of the police force may exercise, in respect of a person so apprehended, the powers conferred on him by section 353A, as if the person were in lawful custody upon a charge or for any crime referred to in that section; and

(b) the provisions of—

15 (i) the Bail Act, 1978; and

(ii) the Justices Act, 1902,

shall, with such modifications as may be necessary, apply in relation to the admission of any such person to bail and in relation to proceedings before a court under this section.

20 (5) Where a person has been committed to custody under subsection (3) (b) (i) and a warrant for his apprehension is subsequently presented for execution, he shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.

25 (6) Where a person has been admitted to bail under subsection (3) (b) (ii) or under Part III of the Bail Act, 1978, and subsequently, but before he has complied with his bail undertaking, a warrant for his apprehension is executed under a law of the Commonwealth, he shall be deemed, at the time the warrant is executed or he is discharged or admitted to bail as referred to in paragraph (b), to be released from the bail to which he was admitted under subsection (3) (b) (ii) and to have complied with any condition or undertaking in relation to that bail at that time  
30 outstanding, not being a condition or undertaking with which he has by that time failed, without lawful excuse, to comply.

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*Crimes (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING  
TO ARREST OF INTERSTATE OFFENDERS—*continued.*

(7) Where—

- 5 (a) a person has been admitted to bail or, under subsection (3) (b),  
committed to custody; and
- (b) a warrant or provisional warrant for his apprehension is not execu-  
ted within a reasonable time (not exceeding 7 days) thereafter,
- 10 the person may be released from bail or shall be discharged from custody,  
as the case may require, by order of a court.

(8) In this section “court” has the same meaning as it has in  
the Bail Act, 1978.

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SCHEDULE 3.

(Sec. 5.)

15 AMENDMENT TO THE PRINCIPAL ACT RELATING  
TO THE SEARCHING OF FEMALES.

Section 353A (1)—

Omit “offence, any constable may search his person and take from him  
anything found upon his person.”, insert instead:—

20 offence—

- (a) any constable; or
- (b) where the person in custody is female and no female constable is  
available to conduct the search—any female acting under and in  
accordance with the request of a constable,
- 25 may search the person and take from the person anything found upon that  
search.

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*Crimes (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE SEARCHING  
OF FEMALES—*continued.*

5 (1A) A search conducted by a person under and in accordance with a  
request made by a constable under subsection (1) (b) does not, if the  
search would be lawful if conducted by a constable, subject the person  
making the search personally to any action, liability, claim or demand  
whatever.

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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CLOSING ADDRESSES.

- 10 (1) (a) Section 402—  
After “Crown”, insert “and any address by the prosecutor”.
- 15 (b) Section 402—  
After “such address”, insert “for the defence”.
- (2) (a) Section 405 (1)—  
Omit “Crown, or by the Court, and may thereafter”, insert  
instead “Crown or by the Court and, after the prosecutor has  
20 addressed the jury or has declined to address the jury, may”.
- (b) Section 405 (3)—  
After section 405 (2), insert:—  
(3) Where, in the closing address by or on behalf of the  
accused, relevant facts are asserted which are not supported by  
25 any evidence or unsworn statement that is before the jury,  
the Court may grant leave to counsel for the Crown to make a  
supplementary address to the jury replying to any such  
assertion.
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*Crimes (Amendment).*

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SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CULPABLE DRIVING  
AND NAVIGATION.

5 (1) (a) Section 52A (1) (a), (b)—

Omit “in which that person was a passenger” wherever occurring, insert instead “in or on which that person was being conveyed (whether as a passenger or otherwise)”.

(b) Section 52A (1) (c)—

10 Omit “or”.

(c) Section 52A (1) (d)—

Omit “impact,”, insert instead “impact;”.

(d) Section 52A (1) (da), (db)—

After section 52A (1) (d), insert:—

15 (da) impact with anything on, or attached to, a motor vehicle; or

(db) impact with anything that is in motion through falling from a motor vehicle,

(e) Section 52A (1)—

20 Omit “being driven”, insert instead “or at the time the thing fell from it, being driven”.

(2) Section 52B—

After section 52A, insert:—

**Culpable navigation.**

25 52B. (1) In this section—

“drug” has the same meaning as it has in section 5 (2) of the Motor Traffic Act, 1909;

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*Crimes (Amendment).*

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SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CULPABLE DRIVING  
AND NAVIGATION—*continued.*

5 “object” includes pier, wharf, jetty, pontoon, breakwater,  
bridge, bridge support, mooring post or platform, naviga-  
tion aid, retaining wall, marina, boatshed, slipway and  
swimming enclosure;

10 “vessel” means a vessel within the meaning of the Maritime  
Services Act, 1935, propelled or towed upon water other-  
wise than by human or animal power.

(2) Where the death of, or grievous bodily harm to, any  
person is occasioned through—

15 (a) the impact with any object of a vessel in or on which that  
person was being conveyed (whether as a passenger or  
otherwise);

(b) a vessel in or on which that person was being conveyed  
(whether as a passenger or otherwise) overturning or  
running aground;

(c) impact with a vessel;

20 (d) the impact of a vessel with any vessel or other object in,  
on or near which that person was at the time of the impact;

(e) impact with anything on, or attached to, a vessel; or

(f) impact with anything that is in motion through falling from  
a vessel,

25 and the vessel was at the time of the impact, or at the time of over-  
turning or running aground, or at the time the thing fell from it, being  
navigated by another person—

(g) under the influence of intoxicating liquor or of a drug; or

(h) at a speed or in a manner dangerous to the public,

30 the person who was so navigating the vessel shall be guilty of the  
misdemeanour of culpable navigation.



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*Crimes (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CULPABLE DRIVING  
AND NAVIGATION—*continued.*

5 (3) A person convicted of the misdemeanour of culpable navigation is—

(a) if the death of any person was occasioned, liable to imprisonment for 5 years; or

(b) if grievous bodily harm to any person was occasioned, liable to imprisonment for 3 years.

10 (4) It shall be a defence to any charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug or, as the case may be, to the speed at which or the manner in which the vessel  
15 was navigated.

(5) This section does not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence or affect the punishment which may be imposed therefor, but—

20 (a) a person who has been convicted or acquitted of an offence under this section shall not afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts; and

25 (b) a person who has been convicted or acquitted of murder or manslaughter or of any other offence shall not afterwards be prosecuted for an offence under this section on the same, or substantially the same, facts.



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*Crimes (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CULPABLE DRIVING  
AND NAVIGATION—*continued.*

- 5 (6) Upon the trial of a person for murder or manslaughter or for an offence under section 54 in connection with the navigation of a vessel by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

