

**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)  
AMENDMENT ACT 1987 No. 287**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Amendment of Act No. 40, 1900
3. Abolition of the common law felony of arson

SCHEDULE 1—AMENDMENTS

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RESEARCH AND ANALYSIS DIVISION  
FEDERAL BUREAU OF INVESTIGATION  
U. S. DEPARTMENT OF JUSTICE



**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)  
AMENDMENT ACT 1987 No. 287**

NEW SOUTH WALES



**Act No. 287, 1987**

An Act to amend the Crimes Act 1900 for the purpose of making fresh provision with respect to criminal destruction of and damage to property and offences involving transport, and for related purposes. [Assented to 16 December 1987]

*Crimes (Criminal Destruction and Damage) Amendment 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Criminal Destruction and Damage) Amendment Act 1987.

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

2. The Crimes Act 1900 is amended in the manner set out in Schedule 1.

**Abolition of the common law felony of arson**

3. (1) The common law rule establishing the felony of arson is abolished.

(2) Section 30 of the Interpretation Act 1987 applies to the abolition of the common law rule establishing the felony of arson in the same way as it applies to the repeal of an Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 2)

(1) Section 1 (**Short title and contents of Act**)—

(a) Section 1, matter relating to Chapter II of Part IV—

Omit the matter, insert instead:

**CHAPTER II—Criminal destruction and damage**

(1) *Interpretation*—s. 194

(2) *Crimes against property generally*—ss. 195–200

(3) *Crimes relating to particular kinds of property etc.*—ss. 201–203

(b) Section 1, matter relating to Part IV<sub>AA</sub>—

After the matter relating to Part IV, insert:

**PART IV<sub>AA</sub>—OFFENCES RELATING TO TRANSPORT SERVICES**

(1) *Offences relating to aircraft, vessels etc.*—ss. 204–210

(2) *Offences relating to railways etc.*—ss. 211–214

(c) Section 1, matter relating to Chapter IV of Part XIV—

After item (3), insert:

(4) *Jurisdiction of Magistrates not affected by certain matters*—  
s. 552

(2) Section 4 (**Interpretation**)—

Section 4 (1)—

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SCHEDULE 1—AMENDMENTS—*continued*

Omit the definition of “Railway”, insert instead:

“Railway” includes a tramway, and also includes all stations, buildings, structures and equipment belonging to or associated with a railway or tramway.

(3) Sections 32A–32C—

Omit the sections.

(4) Sections 50–52—

Omit the sections.

(5) Part IV, Chapter II—

Omit the Chapter, insert instead:

**CHAPTER II—Criminal destruction and damage**

**Division 1—Interpretation**

**Interpretation**

194. (1) In this Chapter, a reference to property does not include a reference to property that is not of a tangible nature.

(2) In this Chapter, a reference to property includes a reference to wild creatures that have been tamed or are ordinarily kept in captivity and also includes any other wild creatures or their carcasses but only if they—

(a) have been reduced into possession that has not been lost or abandoned; or

(b) are in the course of being reduced into possession.

(3) For the purposes of this Chapter, an act done by a person under a reasonable belief that the person had a right to do the act shall be taken not to have been done maliciously.

**Division 2—Crimes against property generally**

**Maliciously destroying or damaging property**

195. A person who maliciously destroys or damages property belonging to another or to that person and another is liable—

(a) to penal servitude for 5 years; or

(b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 10 years.

**Maliciously destroying or damaging property with intent to injure a person**

196. A person who maliciously destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is liable—

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) to penal servitude for 7 years; or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

**Dishonestly destroying or damaging property**

197. A person who dishonestly, with a view to making a gain for that person or another, destroys or damages property is liable—

- (a) to penal servitude for 7 years; or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

**Maliciously destroying or damaging property with the intention of endangering life**

198. A person who maliciously destroys or damages property, intending by the destruction or damage to endanger the life of another, is liable to penal servitude for life.

**Threatening to destroy or damage property**

199. A person who, without lawful excuse, makes a threat to another, with the intention of causing that other to fear that the threat would be carried out—

- (a) to destroy or damage property belonging to that other or to a third person; or
- (b) to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person,

is liable to penal servitude for 5 years.

**Possession, custody or control of an article with intent to destroy or damage property**

200. A person who has possession, custody or control of an article with the intention that it should be used maliciously to destroy or damage property belonging to—

- (a) some other person; or
- (b) the first-mentioned person or the user, or both of them, and some other person,

is liable to penal servitude for 3 years.

**Division 3—Crimes relating to particular kinds of property etc.**

**Interfering with a mine**

201. A person who maliciously—

*Crimes (Criminal Destruction and Damage) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) causes water to run into a mine or any subterranean channel connected to it;
  - (b) destroys, damages or obstructs any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine;
  - (c) destroys, damages or renders useless any equipment, building, road or bridge belonging to a mine; or
  - (d) hinders the working of equipment belonging to a mine,
- is liable to penal servitude for 7 years.

**Causing damage etc. to sea, river, canal and other works**

202. A person who—

- (a) maliciously destroys, damages, removes or interferes with piles or other materials that form part of, or have been fixed or placed in position in order to secure—
  - (i) a sea wall or other structure designed to prevent erosion by the sea;
  - (ii) the bank or bed of, or a dam, weir or lock located on, a river or canal;
  - (iii) a drain, aqueduct, marsh or reservoir; or
  - (iv) a dock, quay, wharf, jetty or other harbour installation;
- (b) maliciously opens a floodgate or sluice that is located at or on a dam, weir, reservoir or watercourse; or
- (c) with the intention of obstructing or hindering the navigation of vessels or boats on a navigable river or canal—
  - (i) interferes with or obstructs the flow of the river or canal;
  - (ii) damages or interferes with the bank or bed of the river or canal; or
  - (iii) destroys, damages or interferes with any structure or equipment constructed or installed in connection with the use of the river or canal for the purposes of navigation,

is liable to penal servitude for 7 years.

**False statement that a person or property is in danger**

203. If—

- (a) a person—
  - (i) makes to another person a statement that the first-mentioned person knows to be false or misleading; or

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(ii) sends to another person a document containing such a statement; and

(b) the statement is likely to make that other person fear for the safety of a person (including the maker of the statement or the person to whom it is made) or for the safety of property, or both,

the first-mentioned person is liable to imprisonment for 5 years.

## (6) Part IVAA—

After Part IV, insert:

**PART IVAA—OFFENCES RELATING TO TRANSPORT SERVICES****Division 1—Offences relating to aircraft, vessels etc.****Destruction of, or damage to, an aircraft or vessel with intent or reckless indifference**

204. Any person who—

(a) with intent to cause the death of a person; or

(b) with reckless indifference for the safety of the life of a person,

destroys or damages an aircraft or vessel is liable to penal servitude for life.

**Prejudicing the safe operation of an aircraft or vessel**

205. A person who, whether on board the aircraft or vessel or not, does anything with the intention of prejudicing the safety of an aircraft or vessel is liable to penal servitude for 14 years.

**Assault etc. on member of crew of aircraft or vessel**

206. A person who, while on board an aircraft or vessel, assaults or threatens with violence a member of the crew of the aircraft or vessel—

(a) so as to interfere with the functions or duties performed by the crew member in connection with the safe operation of the aircraft or vessel; or

(b) so as to diminish the ability of the crew member to perform those functions or duties,

is liable to penal servitude for 14 years.

**Placing etc. dangerous articles on board an aircraft or vessel**

207. (1) In this section—

“dangerous article” means—



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- (a) a firearm, ammunition for a firearm, a weapon or an explosive; or
  - (b) a substance or thing that, because of its nature or condition, could endanger the safety of an aircraft or vessel or persons on board an aircraft or vessel.
- (2) A person who—
- (a) places or carries on board an aircraft or vessel an article knowing that it is a dangerous article;
  - (b) knowing that an article is a dangerous article, delivers the article to a person for the purpose of having the article placed or carried on board an aircraft or vessel; or
  - (c) has possession of an article while on board an aircraft or vessel knowing that the article is a dangerous article,
- is liable to penal servitude for 7 years.
- (3) Subsection (2)—
- (a) does not apply to or in relation to anything done with an article in relation to an aircraft or vessel with the consent of the owner or operator of the aircraft or vessel where that consent is given with a knowledge of the nature or condition of the article; and
  - (b) does not apply to or in relation to the carrying or placing of a firearm or ammunition for a firearm on board an aircraft or vessel with permission given in accordance with regulations in force under the Air Navigation Act 1920 of the Commonwealth.

**Threatening to destroy etc. an aircraft, vessel or vehicle**

208. (1) In this section—

“threat” includes—

- (a) an expression of intention; or
- (b) the making of a statement from which an expression of intention could reasonably be inferred;

“transport vehicle” means—

- (a) a mechanically or electrically driven vehicle that is used or designed to be used for the purpose of conveying passengers or goods, or passengers and goods, or for the purpose of drawing a vehicle or vehicles of the kind referred to in paragraph (b); or

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- (b) a vehicle not so driven that is directly or indirectly connected to and drawn by, or designed to be connected to and drawn by, a vehicle of the kind first referred to in paragraph (a),

but does not include an aircraft or vessel.

(2) A person who makes a demand of another person with a threat—

- (a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle; or  
 (b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to penal servitude for 14 years.

(3) A person who makes a demand of another person together with a threat to do any of the things mentioned in subsection (2) (a) or (b) and, while that threat still has effect—

- (a) discharges a firearm;  
 (b) causes an explosion; or  
 (c) inflicts grievous bodily harm on, or wounds, a person,

is liable to penal servitude for life.

(4) A person who makes a threat—

- (a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle; or  
 (b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to imprisonment for 5 years.

**False information as to plan etc. to prejudice the safety of an aircraft or vessel or persons on board an aircraft or vessel**

209. A person who makes a statement or conveys information, knowing it to be false, to the effect, or from which it could reasonably be inferred, that there has been, is or is to be a plan, proposal, attempt, conspiracy or threat to—

- (a) take, or exercise control of, an aircraft or vessel by force;  
 (b) destroy or damage, or endanger the safety of, an aircraft or vessel; or  
 (c) kill, or inflict bodily injury on, persons in or on an aircraft or vessel,

is liable to imprisonment for 2 years.

**SCHEDULE 1—AMENDMENTS—*continued*****Destroying, damaging etc. an aid to navigation**

210. A person who—

- (a) maliciously destroys, damages, removes, conceals or interferes with a mark, device or equipment used or designed to be used to assist the navigation of aircraft or vessels; or
- (b) does any act with the intention of causing any such destruction, damage, concealment or interference,

is liable to penal servitude for 7 years.

**Division 2—Offences relating to railways etc.****Criminal acts relating to railways**

211. (1) A person who—

- (a) maliciously does any act on or in connection with the operation of a railway; or
- (b) maliciously omits to do any act on or in connection with a railway that it is the person's duty to do,

with the intention of causing the death of, inflicting bodily injury on or endangering the safety of any person who is on the railway, or who is in or on any locomotive or other rolling stock on the railway, is liable to penal servitude for life.

(2) A person who—

- (a) maliciously does any act on or in connection with the operation of a railway; or
- (b) maliciously omits to do any act on or in connection with the operation of a railway that it is the person's duty to do,

with the intention of causing any locomotive or other rolling stock on the railway to be derailed, destroyed or damaged, is liable to penal servitude for 14 years.

**Endangering passengers etc. on railway**

212. A person who, by an unlawful act or a negligent omission, endangers the safety of any person who is on, or who is being conveyed on, a railway is liable to imprisonment for 3 years.

**Obstructing a railway**

213. A person who—

- (a) intentionally and without lawful excuse, does an act, or omits to do an act, which causes the passage or operation of a locomotive or other rolling stock on a railway to be obstructed; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) assists a person to do or omit to do such an act, with the knowledge that the person's intention to do or omit to do that act is without lawful excuse,

is liable to imprisonment for 2 years.

**Obstructing a railway—verdict of misdemeanour**

214. (1) If, on the trial of a person for an offence under section 211, the jury is not satisfied that the person is guilty of the offence, but is satisfied that the person is guilty of an offence under section 212 or 213, it may acquit the person of the offence charged and instead find the person guilty of an offence under section 212 or 213.

(2) If, in accordance with subsection (1), a jury finds a person guilty of an offence under section 212 or 213, the person is liable to be punished as provided by that section.

(7) Section 476 (**Indictable offences punishable summarily with consent of accused**)—

(a) Section 476 (6) (a) (iii)—

Omit “, 208, 209, 210, 220, 229, 244, 245, 247, 248”, insert instead “, 195, 196, 197, 201, 202, 210”.

(b) Section 476 (6) (d)—

After “178BB”, insert “, 199, 200, 203, 207, 208 (4), 209, 212, 213”.

(8) Section 501 (**Indictable offences punishable summarily without consent of accused**)—

Section 501 (1) (c)—

Omit “247”, insert instead “195”.

(9) Section 552 and heading—

After section 551, insert:

*Jurisdiction of Magistrates not affected by certain matters*

**Jurisdiction of Magistrates in respect of offences arising under Chapter II of Part IV**

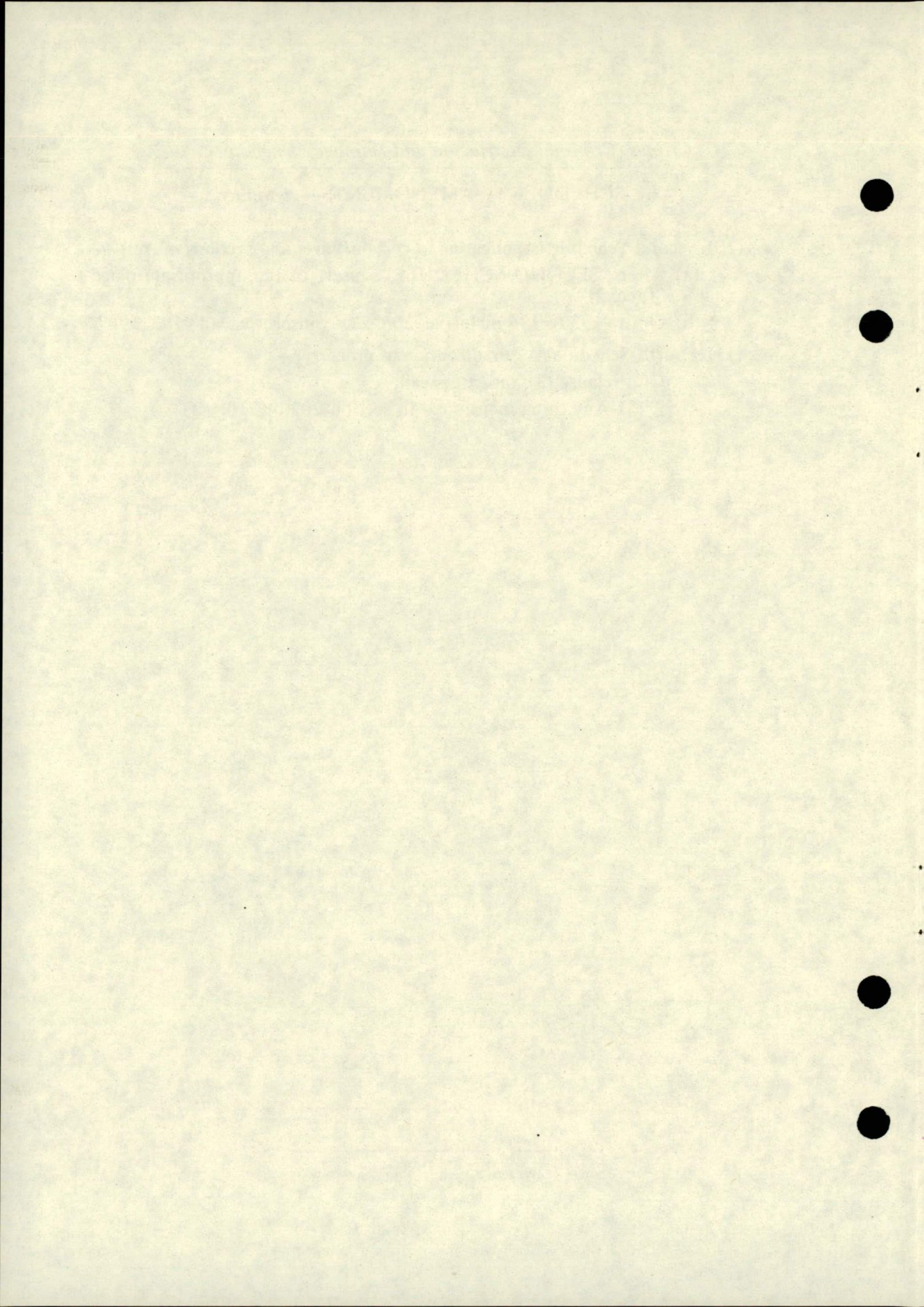
552. In a case where, by virtue of section 476 or 501, a Magistrate has jurisdiction to deal with a charge arising under Chapter II of Part IV (Criminal destruction and damage), the Magistrate may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

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SCHEDULE 1—AMENDMENTS—*continued*

- (10) Second Schedule (**Application of certain Parts and sections of Act**)—
- (a) After “SECOND SCHEDULE”, insert in the appropriate place “(Sec. 3)”.
  - (b) Omit “193 to 195 inclusive, 206, 231”, insert instead “193, 194”.
- (11) Fourth Schedule (**As to allegation of property**)—
- Omit clause (3), insert instead:
- (3) Any thing mentioned in section 202 or 210.









**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)  
AMENDMENT BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Crimes Act 1900 so as to make fresh provision with respect to persons who maliciously or dishonestly destroy or damage property. The provisions relating to destruction of and damage to property are currently contained in Chapter II of Part IV of the Principal Act and are directed at the destruction of and damage to various specified kinds of property. The provisions of proposed Division 2 of the substituted Chapter II adopt a simpler approach by not discriminating between different kinds of property. However, certain provisions relating to mines and sea, harbour, river and canal works are being retained.

Certain provisions currently contained in Part III and Chapter II of Part IV of the Principal Act which specifically deal with transport are to be amalgamated and enacted in a simplified form. These provisions will be contained in proposed Part IV<sup>AA</sup> of the Principal Act.

Consequential amendments are made to sections 476 and 501 of, and the Second and Fourth Schedules to, the Principal Act.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 3 abolishes the common law felony of arson. The elements constituting the felony of arson will in future be adequately covered by various statutory offences.

Schedule 1 (1) consequentially amends section 1 of the Principal Act (short title and contents of Act).

Schedule 1 (2) amends section 4 of the Principal Act (Interpretation) by replacing the definition of "Railway".

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Schedule 1 (3) repeals sections 32A–32C of the Principal Act. Those sections respectively relate to destruction of an aircraft (sec. 32A), assault on an aircraft crew member (sec. 32B) and threats to destroy aircraft and other means of transport (sec. 32C). The contents of these sections will be covered by provisions that are to be included in the proposed Part IV<sub>AA</sub> of the Principal Act. (See Schedule 1 (6).)

Schedule 1 (4) repeals sections 50–52 of the Principal Act. The contents of these sections, which deal with railways, will also be covered by the provisions of the proposed Part IV<sub>AA</sub> of the Principal Act. (See Schedule 1 (6).)

Schedule 1 (5) replaces Chapter II of Part IV of the Principal Act with a new Chapter which contains the following provisions:

Chapter II—Criminal destruction and damage  
Division 1—Interpretation

Proposed section 194 makes it clear that a reference in the new Chapter II to property excludes a reference to property that is not of a tangible nature. The proposed section also makes it clear that property includes certain wild creatures that have been reduced into possession and that an act perpetrated by a person who reasonably believed that he or she had a right to do the act is to be regarded, for the purposes of the substituted Chapter, as not having been done maliciously.

Division 2—Crimes against property generally

Proposed section 195 provides that a person who maliciously destroys or damages property will be guilty of a felony punishable by penal servitude for a term not exceeding 5 years or, if fire or explosives are used, by penal servitude for a term not exceeding 10 years.

Proposed section 196 provides that a person who maliciously destroys or damages property with the intention of causing bodily injury to another person will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years or, if fire or explosives are used, by penal servitude for a term not exceeding 14 years.

Proposed section 197 provides that a person who dishonestly, with a view to gain, destroys or damages property will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years or, if fire or explosives are used, by penal servitude for a term not exceeding 14 years.

Proposed section 198 provides that a person who maliciously destroys or damages property with the intention of endangering the life of another person will be guilty of a felony punishable by penal servitude for life.

Proposed section 199 provides that a person who, without lawful excuse, threatens to destroy or damage property of another, or threatens to destroy or damage one's own property in a way likely to endanger the life of another or to result in injury to another, will be guilty of a felony punishable by penal servitude for a term not exceeding 5 years.

Proposed section 200 provides that a person who has possession, custody or control of an article with the intention that it should be used for the malicious destruction of or damage to property belonging to another person will be guilty of a felony punishable by penal servitude for a term not exceeding 3 years.

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Division 3—Crimes relating to particular kinds of property etc.

Proposed section 201 provides that a person who maliciously—

- (a) causes water to run into a mine or one of its subterranean channels;
- (b) destroys, damages or obstructs mine shafts, passages or the like;
- (c) destroys, damages or renders useless mine equipment, buildings or other things belonging to a mine; or
- (d) hinders the working of mine equipment,

will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. The proposed section replaces section 223 of the Principal Act.

Proposed section 202 of the Principal Act provides that a person who—

- (a) maliciously destroys, damages, removes or interferes with certain coastal protection, harbour, river or canal works;
- (b) maliciously opens a floodgate or sluice; or
- (c) does any other act with the intention of obstructing or hindering the navigation of a navigable river or canal,

will be guilty of a felony punishable by penal servitude not exceeding 7 years. The proposed section replaces section 226 of the Principal Act.

Proposed section 203 provides that, where a person who makes a false or misleading statement to another person, or sends to another person a document containing such a statement, and the statement is likely to have the effect of making that other person fear for the safety of a person or of property, that person will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 5 years. The proposed section replaces section 248A of the Principal Act.

Schedule 1 (6) inserts in the Principal Act a Part IV<sup>AA</sup> which will deal with offences relating to certain transport services. The provisions of the new Part are essentially an amalgam of sections relating to aircraft and vessels which are currently contained in Part III and Chapter II of Part IV of the Principal Act. The new Part contains the following provisions:

Division 1—Offences relating to aircraft, vessels etc.

Proposed section 204 provides that a person who destroys or damages an aircraft or vessel with intent to cause the death of a person or with reckless indifference for the safety of a person will be guilty of a felony punishable by penal servitude for life. The proposed section replaces section 32A of the Principal Act, which deals only with aircraft.

Proposed section 205 provides that a person who does anything with intent to prejudice the safe operation of an aircraft or vessel will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces section 204A of the Principal Act, which relates only to aircraft.

Proposed section 206 provides that a person who assaults or threatens with violence a member of the crew of an aircraft or vessel who is acting in the performance of his or her duties will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces section 32B of the Principal Act, which deals only with crew members of an aircraft.

Proposed section 207 provides that, except in certain specified circumstances, a person who—

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- (a) places or carries an article on board an aircraft or vessel knowing the article to be a dangerous article;
- (b) delivers an article to a person, knowing it to be a dangerous article, for the purpose of having it placed or carried on board an aircraft or vessel; or
- (c) is in possession of an article while on board an aircraft or vessel knowing it to be a dangerous article,

will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. A dangerous article includes a firearm, ammunition and explosives. The proposed section replaces section 204C of the Principal Act, which deals only with dangerous articles on board aircraft.

Proposed section 208 provides that a person who threatens to destroy, damage or endanger the safety of an aircraft, vessel or land transport vehicle or to kill or injure persons who are in or on an aircraft, vessel or land transport vehicle will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section also makes it a felony punishable by penal servitude for life for a person to make a demand of another person, together with a threat of the kind just mentioned, and, at the same time, to discharge a firearm, cause an explosion or wound or grievously harm a person. A person who merely threatens to destroy, damage or endanger the safety of, or to kill or injure persons in or on, an aircraft, vessel or land transport vehicle will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 5 years. The proposed section replaces sections 32C and 204D of the Principal Act. The maximum penalty currently provided for in section 204D (in relation to a threat to destroy an aircraft) is being increased from imprisonment for 2 years to imprisonment for 5 years.

Proposed section 209 provides that a person who makes a statement or conveys information (with the knowledge that it is false) to the effect that, or from which it could be inferred that, there is, has been or is to be a plan, proposal, attempt, conspiracy or threat to take control of an aircraft or vessel by force, to destroy or damage or endanger the safety of an aircraft or vessel or to kill or injure persons on board an aircraft or vessel will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 2 years. The proposed section replaces section 204E of the Principal Act, which applies only to aircraft.

Proposed section 210 provides that a person who maliciously destroys, damages, removes, conceals or interferes with a mark, device or equipment used or designed to be used to assist the navigation of aircraft, vessels or boats will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. The proposed section replaces section 242 of the Principal Act, which currently applies only to navigational aids provided for shipping.

Division 2—Offences relating to railways etc.

Proposed section 211 provides that a person who maliciously does anything, or omits to do something that it is the person's duty to do, with the intention of causing the death of, or bodily injury to, a person on a railway or on any railway rolling stock will be guilty of a felony punishable by penal servitude for life. The proposed section also provides that a person who maliciously does anything, or omits to do something that the person has a duty to do, with the intention of causing railway rolling stock to be derailed, destroyed or damaged will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces sections 50, 51 and 230 of the Principal Act.

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Proposed section 212 provides that a person who, by an unlawful act or negligent omission, endangers the safety of a person on, or who is being conveyed on, a railway will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 3 years. The proposed section replaces section 52 of the Principal Act.

Proposed section 213 makes it a misdemeanour, punishable by imprisonment for a term not exceeding 2 years, for a person, intentionally and without lawful excuse, to obstruct the passage of railway rolling stock. The proposed section replaces section 232 of the Principal Act.

Proposed section 214 will enable a jury to find a person guilty of an offence under proposed section 212 or 213 where the person is charged with an offence under proposed section 211 and the jury is satisfied that the person is guilty of an offence under proposed section 212 or 213 but not guilty of the offence charged. The proposed section 214 replaces section 231 of the Principal Act.

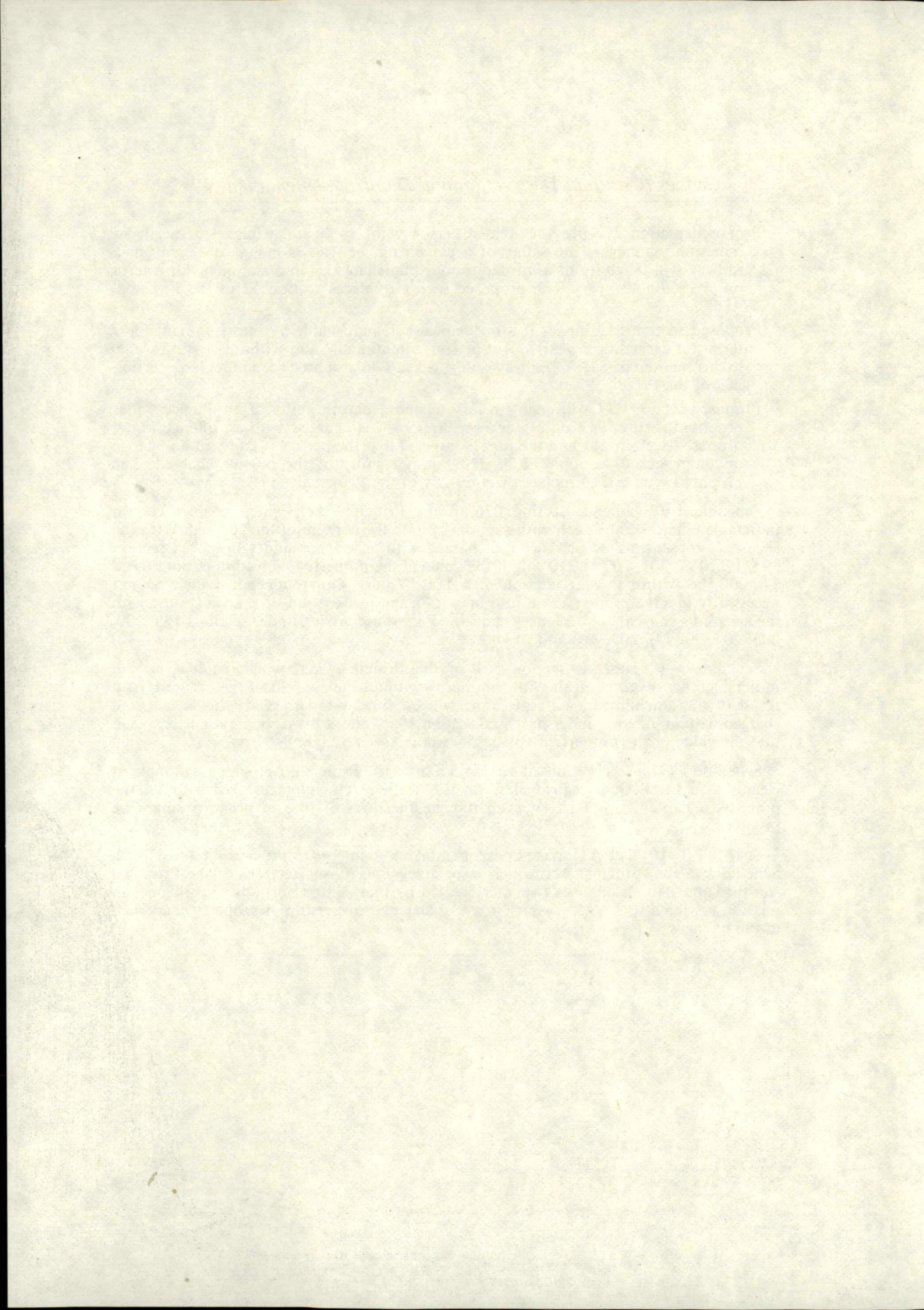
Schedule 1 (7) amends section 476 of the Principal Act, which enables certain indictable offences to be dealt with summarily with the consent of the accused. With the accused's consent, an accused who is charged with an offence under proposed section 195, 196, 197, 201, 202 or 210 will, if the value of the property involved does not exceed \$10,000, be within the jurisdiction of a Local Court. Other offences, which do not necessarily involve property, will also be within the jurisdiction of a Local Court with the accused's consent. The offences concerned are those arising under sections 199, 200, 203, 207, 208 (4), 209, 212 and 213.

Schedule 1 (8) amends section 501 of the Principal Act, which enables certain indictable offences to be dealt with summarily without the consent of the accused. As a result of the amendment, a Local Court will be empowered to deal with an accused charged with an offence under proposed section 195 without his or her consent provided that the value of the property involved does not exceed \$2,000.

Schedule 1 (9) inserts proposed section 552 into the Principal Act which will make it clear that a Local Court can deal summarily with certain offences arising under the proposed Chapter II of Part IV even though questions of title to property might be involved.

Schedule 1 (10) and (11) make consequential amendments to the Second and Fourth Schedules to the Principal Act, which respectively specify the sections of the Principal Act that apply to all offences (whether created by that Act or not) and the offences in relation to which it is not necessary to aver particular ownership of property concerned in the offences.

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**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)  
AMENDMENT BILL 1987**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Amendment of Act No. 40, 1900
3. Abolition of the common law felony of arson

SCHEDULE 1—AMENDMENTS

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CLARK (KINDLY) D. B. (1911-1988)

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**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)  
AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the Crimes Act 1900 for the purpose of making fresh provision with respect to criminal destruction of and damage to property and offences involving transport, and for related purposes.

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*Crimes (Criminal Destruction and Damage) Amendment 1987*

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Criminal Destruction and Damage) Amendment Act 1987.

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

2. The Crimes Act 1900 is amended in the manner set out in Schedule 1.

**Abolition of the common law felony of arson**

3. (1) The common law rule establishing the felony of arson is  
10 abolished.

(2) Section 30 of the Interpretation Act 1987 applies to the abolition of the common law rule establishing the felony of arson in the same way as it applies to the repeal of an Act.

**SCHEDULE 1—AMENDMENTS**

15

(Sec. 2)

(1) Section 1 (**Short title and contents of Act**)—

(a) Section 1, matter relating to Chapter II of Part IV—

Omit the matter, insert instead:

**CHAPTER II—Criminal destruction and damage**

20

(1) *Interpretation*—s. 194

(2) *Crimes against property generally*—ss. 195–200

(3) *Crimes relating to particular kinds of property etc.*—ss.  
201–203

(b) Section 1, matter relating to Part IV<sub>AA</sub>—

25

After the matter relating to Part IV, insert:

**PART IV<sub>AA</sub>—OFFENCES RELATING TO TRANSPORT SERVICES**

(1) *Offences relating to aircraft, vessels etc.*—ss. 204–210

(2) *Offences relating to railways etc.*—ss. 211–214

30

(c) Section 1, matter relating to Chapter IV of Part XIV—

After item (3), insert:

(4) *Jurisdiction of Magistrates not affected by certain matters*—  
s. 552

(2) Section 4 (**Interpretation**)—

35

Section 4 (1)—

*Crimes (Criminal Destruction and Damage) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

Omit the definition of “Railway”, insert instead:

“Railway” includes a tramway, and also includes all stations, buildings, structures and equipment belonging to or associated with a railway or tramway.

5 (3) Sections 32A–32C—  
Omit the sections.

(4) Sections 50–52—  
Omit the sections.

(5) Part IV, Chapter II—  
10 Omit the Chapter, insert instead:

**CHAPTER II—Criminal destruction and damage**  
**Division 1—Interpretation**

**Interpretation**

15 194. (1) In this Chapter, a reference to property does not include a reference to property that is not of a tangible nature.

(2) In this Chapter, a reference to property includes a reference to wild creatures that have been tamed or are ordinarily kept in captivity and also includes any other wild creatures or their carcasses but only if they—

20 (a) have been reduced into possession that has not been lost or abandoned; or

(b) are in the course of being reduced into possession.

25 (3) For the purposes of this Chapter, an act done by a person under a reasonable belief that the person had a right to do the act shall be taken not to have been done maliciously.

**Division 2—Crimes against property generally**

**Maliciously destroying or damaging property**

30 195. A person who maliciously destroys or damages property belonging to another or to that person and another is liable—

(a) to penal servitude for 5 years; or

(b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 10 years.

**Maliciously destroying or damaging property with intent to injure a person**

35 196. A person who maliciously destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is liable—

*Crimes (Criminal Destruction and Damage) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) to penal servitude for 7 years; or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

**Dishonestly destroying or damaging property**

5 197. A person who dishonestly, with a view to making a gain for that person or another, destroys or damages property is liable—

- (a) to penal servitude for 7 years; or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

**Maliciously destroying or damaging property with the intention of endangering life**

15 198. A person who maliciously destroys or damages property, intending by the destruction or damage to endanger the life of another, is liable to penal servitude for life.

**Threatening to destroy or damage property**

20 199. A person who, without lawful excuse, makes a threat to another, with the intention of causing that other to fear that the threat would be carried out—

- (a) to destroy or damage property belonging to that other or to a third person; or
- (b) to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person,

25 is liable to penal servitude for 5 years.

**Possession, custody or control of an article with intent to destroy or damage property**

30 200. A person who has possession, custody or control of an article with the intention that it should be used maliciously to destroy or damage property belonging to—

- (a) some other person; or
- (b) the first-mentioned person or the user, or both of them, and some other person,

35 is liable to penal servitude for 3 years.

**Division 3—Crimes relating to particular kinds of property etc.****Interfering with a mine**

201. A person who maliciously—

*Crimes (Criminal Destruction and Damage) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (a) causes water to run into a mine or any subterranean channel connected to it;
- (b) destroys, damages or obstructs any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine;
- 5 (c) destroys, damages or renders useless any equipment, building, road or bridge belonging to a mine; or
- (d) hinders the working of equipment belonging to a mine,
- is liable to penal servitude for 7 years.

**Causing damage etc. to sea, river, canal and other works**

- 10 202. A person who—
- (a) maliciously destroys, damages, removes or interferes with piles or other materials that form part of, or have been fixed or placed in position in order to secure—
- 15 (i) a sea wall or other structure designed to prevent erosion by the sea;
- (ii) the bank or bed of, or a dam, weir or lock located on, a river or canal;
- (iii) a drain, aqueduct, marsh or reservoir; or
- 20 (iv) a dock, quay, wharf, jetty or other harbour installation;
- (b) maliciously opens a floodgate or sluice that is located at or on a dam, weir, reservoir or watercourse; or
- (c) with the intention of obstructing or hindering the navigation of vessels or boats on a navigable river or canal—
- 25 (i) interferes with or obstructs the flow of the river or canal;
- (ii) damages or interferes with the bank or bed of the river or canal; or
- 30 (iii) destroys, damages or interferes with any structure or equipment constructed or installed in connection with the use of the river or canal for the purposes of navigation,

is liable to penal servitude for 7 years.

**False statement that a person or property is in danger**

203. If—

- (a) a person—
- (i) makes to another person a statement that the first-mentioned person knows to be false or misleading; or

*Crimes (Criminal Destruction and Damage) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(ii) sends to another person a document containing such a statement; and

(b) the statement is likely to make that other person fear for the safety of a person (including the maker of the statement or the person to whom it is made) or for the safety of property, or both,

the first-mentioned person is liable to imprisonment for 5 years.

(6) Part IV<sub>AA</sub>—

After Part IV, insert:

**PART IV<sub>AA</sub>—OFFENCES RELATING TO TRANSPORT SERVICES**

**Division 1—Offences relating to aircraft, vessels etc.**

**Destruction of, or damage to, an aircraft or vessel with intent or reckless indifference**

204. Any person who—

(a) with intent to cause the death of a person; or

(b) with reckless indifference for the safety of the life of a person,

destroys or damages an aircraft or vessel is liable to penal servitude for life.

**Prejudicing the safe operation of an aircraft or vessel**

205. A person who, whether on board the aircraft or vessel or not, does anything with the intention of prejudicing the safety of an aircraft or vessel is liable to penal servitude for 14 years.

**Assault etc. on member of crew of aircraft or vessel**

206. A person who, while on board an aircraft or vessel, assaults or threatens with violence a member of the crew of the aircraft or vessel—

(a) so as to interfere with the functions or duties performed by the crew member in connection with the safe operation of the aircraft or vessel; or

(b) so as to diminish the ability of the crew member to perform those functions or duties,

is liable to penal servitude for 14 years.

**Placing etc. dangerous articles on board an aircraft or vessel**

207. (1) In this section—

“dangerous article” means—

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- (a) a firearm, ammunition for a firearm, a weapon or an explosive; or
- (b) a substance or thing that, because of its nature or condition, could endanger the safety of an aircraft or vessel or persons on board an aircraft or vessel.
- 5
- (2) A person who—
- (a) places or carries on board an aircraft or vessel an article knowing that it is a dangerous article;
- (b) knowing that an article is a dangerous article, delivers the article to a person for the purpose of having the article placed or carried on board an aircraft or vessel; or
- 10
- (c) has possession of an article while on board an aircraft or vessel knowing that the article is a dangerous article,
- is liable to penal servitude for 7 years.
- 15
- (3) Subsection (2)—
- (a) does not apply to or in relation to anything done with an article in relation to an aircraft or vessel with the consent of the owner or operator of the aircraft or vessel where that consent is given with a knowledge of the nature or condition of the article; and
- 20
- (b) does not apply to or in relation to the carrying or placing of a firearm or ammunition for a firearm on board an aircraft or vessel with permission given in accordance with regulations in force under the Air Navigation Act 1920 of the Commonwealth.
- 25

**Threatening to destroy etc. an aircraft, vessel or vehicle**

208. (1) In this section—

“threat” includes—

- (a) an expression of intention; or
- 30
- (b) the making of a statement from which an expression of intention could reasonably be inferred;

“transport vehicle” means—

- (a) a mechanically or electrically driven vehicle that is used or designed to be used for the purpose of conveying passengers or goods, or passengers and goods, or for the purpose of drawing a vehicle or vehicles of the kind referred to in paragraph (b); or
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(b) a vehicle not so driven that is directly or indirectly connected to and drawn by, or designed to be connected to and drawn by, a vehicle of the kind first referred to in paragraph (a),

5 but does not include an aircraft or vessel.

(2) A person who makes a demand of another person with a threat—

(a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle; or

10 (b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to penal servitude for 14 years.

(3) A person who makes a demand of another person together with a threat to do any of the things mentioned in subsection (2) (a) or (b) and, while that threat still has effect—

15 (a) discharges a firearm;

(b) causes an explosion; or

(c) inflicts grievous bodily harm on, or wounds, a person,

is liable to penal servitude for life.

20 (4) A person who makes a threat—

(a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle; or

(b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

25 is liable to imprisonment for 5 years.

**False information as to plan etc. to prejudice the safety of an aircraft or vessel or persons on board an aircraft or vessel**

209. A person who makes a statement or conveys information, knowing it to be false, to the effect, or from which it could reasonably be inferred, that there has been, is or is to be a plan, proposal, attempt, conspiracy or threat to—

30 (a) take, or exercise control of, an aircraft or vessel by force;

(b) destroy or damage, or endanger the safety of, an aircraft or vessel; or

35 (c) kill, or inflict bodily injury on, persons in or on an aircraft or vessel,

is liable to imprisonment for 2 years.



SCHEDULE 1—AMENDMENTS—*continued***Destroying, damaging etc. an aid to navigation**

210. A person who—

- 5 (a) maliciously destroys, damages, removes, conceals or interferes with a mark, device or equipment used or designed to be used to assist the navigation of aircraft or vessels; or
- (b) does any act with the intention of causing any such destruction, damage, concealment or interference,
- is liable to penal servitude for 7 years.

10 **Division 2—Offences relating to railways etc.****Criminal acts relating to railways**

211. (1) A person who—

- 15 (a) maliciously does any act on or in connection with the operation of a railway; or
- (b) maliciously omits to do any act on or in connection with a railway that it is the person's duty to do,
- with the intention of causing the death of, inflicting bodily injury on or endangering the safety of any person who is on the railway, or who is in or on any locomotive or other rolling stock on the railway, is liable to penal servitude for life.

(2) A person who—

- 20 (a) maliciously does any act on or in connection with the operation of a railway; or
- 25 (b) maliciously omits to do any act on or in connection with the operation of a railway that it is the person's duty to do,
- with the intention of causing any locomotive or other rolling stock on the railway to be derailed, destroyed or damaged, is liable to penal servitude for 14 years.

30 **Endangering passengers etc. on railway**

212. A person who, by an unlawful act or a negligent omission, endangers the safety of any person who is on, or who is being conveyed on, a railway is liable to imprisonment for 3 years.

**Obstructing a railway**

35 213. A person who—

- (a) intentionally and without lawful excuse, does an act, or omits to do an act, which causes the passage or operation of a locomotive or other rolling stock on a railway to be obstructed; or

SCHEDULE 1—AMENDMENTS—*continued* .

(b) assists a person to do or omit to do such an act, with the knowledge that the person's intention to do or omit to do that act is without lawful excuse,

is liable to imprisonment for 2 years.

5 **Obstructing a railway—verdict of misdemeanour**

214. (1) If, on the trial of a person for an offence under section 211, the jury is not satisfied that the person is guilty of the offence, but is satisfied that the person is guilty of an offence under section 212 or 213, it may acquit the person of the offence charged and instead find the person guilty of an offence under section 212 or 213.

(2) If, in accordance with subsection (1), a jury finds a person guilty of an offence under section 212 or 213, the person is liable to be punished as provided by that section.

15 (7) **Section 476 (Indictable offences punishable summarily with consent of accused)—**

(a) Section 476 (6) (a) (iii)—

Omit “, 208, 209, 210, 220, 229, 244, 245, 247, 248”, insert instead “, 195, 196, 197, 201, 202, 210”.

20 (b) Section 476 (6) (d)—

After “178BB”, insert “, 199, 200, 203, 207, 208 (4), 209, 212, 213”.

(8) **Section 501 (Indictable offences punishable summarily without consent of accused)—**

25 Section 501 (1) (c)—

Omit “247”, insert instead “195”.

(9) **Section 552 and heading—**

After section 551, insert:

*Jurisdiction of Magistrates not affected by certain matters*

30 **Jurisdiction of Magistrates in respect of offences arising under Chapter II of Part IV**

552. In a case where, by virtue of section 476 or 501, a Magistrate has jurisdiction to deal with a charge arising under Chapter II of Part IV (Criminal destruction and damage), the Magistrate may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

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SCHEDULE 1—AMENDMENTS—*continued*

- (10) Second Schedule (**Application of certain Parts and sections of Act**)—
- (a) After “SECOND SCHEDULE”, insert in the appropriate place “(Sec. 3)”.
  - (b) Omit “193 to 195 inclusive, 206, 231”, insert instead “193, 194”.
- 5 (11) Fourth Schedule (**As to allegation of property**)—
- Omit clause (3), insert instead:
- (3) Any thing mentioned in section 202 or 210.

