

First print



New South Wales

Criminal Legislation Further Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts relating to criminal law and procedure:

Children (Criminal Proceedings) Act 1987

Crimes Act 1900

Criminal Appeal Act 1912

Criminal Procedure Act 1986

Justices Act 1902

Listening Devices Act 1984

Summary Offences Act 1988

Supreme Court Act 1970.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to Schedule 1 which contains amendments to the Acts listed above.

Schedule 1 Amendment of Acts

Children (Criminal Proceedings) Act 1987 (Schedule 1.1 [1]–[4])

Section 10 of the *Children (Criminal Proceedings) Act 1987* provides for the exclusion of persons from a court while the court is hearing criminal proceedings to which a child is a party. Section 11 prohibits the publication or broadcasting of the name, or any other matter that may lead to the identification, of a child in any way mentioned or involved in any criminal proceedings.

Schedule 1.1 [1] increases the fine for an offence under section 11 from 10 penalty units (currently \$1,000) to 500 penalty units, in the case of a corporation, or 50 penalty units in any other case (currently \$50,000 and \$5,000 respectively). Schedule 1.1 [3] and [4] contain consequential amendments relating to the jurisdiction of courts.

Schedule 1.1 [2] extends the protection for a child involved in criminal proceedings under section 10 or 11 to a child involved in an application for bail.

Crimes Act 1900 (Schedule 1.2 [1]–[14])

Misuse of public property by public officials outside New South Wales (Schedule 1.2 [1], [5] and [14])

Proposed section 3B (Schedule 1.2 [5]) enables the prosecution in New South Wales of certain offences under section 178BA (Obtaining money etc by deception) or 178BB (Obtaining money etc by false or misleading statements) of the *Crimes Act 1900* that are committed by public officials outside New South Wales and that involve the misuse of public money of the State, or other property held by or on behalf of the State.

Proposed section 3B (6) makes it clear that the proposed section applies only to offences committed after the commencement of the proposed section.

Schedule 1.2 [1] is consequential on the insertion of proposed section 3B.

Schedule 1.2 [14] is a consequential amendment that excludes proposed section 3B from the Second Schedule to the *Crimes Act 1900* (which contains a list of provisions of the *Crimes Act 1900* that extend to all offences and courts).

Dangerous navigation (Schedule 1.2 [6])

Proposed sections 52B and 52BA:

- (a) replace the offence of culpable navigation with the following four offences:
 - dangerous navigation occasioning death,
 - aggravated dangerous navigation occasioning death,
 - dangerous navigation occasioning grievous bodily harm,
 - aggravated dangerous navigation occasioning grievous bodily harm, and
- (b) increase the penalties in relation to dangerous navigation offences and provide for higher maximum sentences of imprisonment if aggravating circumstances (such as having the prescribed concentration of alcohol or navigating at an excessive speed) are involved, and
- (c) provide that, for the purposes of the offences, there is a conclusive presumption that a person is under the influence of intoxicating liquor if the person has a blood alcohol concentration of 0.15 grams or more per 100 millilitres of blood.

The proposed sections also provide that any of the offences may be established if the prosecution proves that the person navigating a vessel caused a collision between other vessels or between another vessel and an object or person. Apart from this, the other circumstances that may presently give rise to an offence are retained, though section 52B is in a recast form. The recast form of the section will not affect the elements that the prosecution is required to prove to establish an offence.

The amendment will bring the offences into line with sections 52A and 52AA (dangerous driving) of the *Crimes Act 1900*.

Orders for cohabitation and custody and maintenance of children (Schedule 1.2 [2], [7] and [13])

Section 60 of the *Crimes Act 1900* enables a judge, following conviction of a husband for an assault against his wife, to make a declaration that the wife is no longer bound to cohabit with her husband. Such a declaration is stated in the section to have the effect of a decree of judicial separation on the ground of cruelty. Section 573 provides that where a declaration is made under section 60, a judge may also make orders as to the custody and maintenance of children.

Schedule 1.2 [7] and [13] repeal sections 60 and 573, respectively. The sections are superfluous. Decrees of judicial separation are no longer available in Australia (see section 8 (2) of the *Family Law Act 1975* of the Commonwealth) and Part 15A of the *Crimes Act 1900* enables courts to make orders in domestic violence matters. A consequential amendment is made by Schedule 1.2 [2].

Possession of implements for making false instruments (Schedule 1.2 [8])

Proposed section 302A creates an offence of making, or having possession of, a device or other material for the purpose of making a false instrument. Under the proposed section it will, for example, be an offence to possess a machine designed to encode cardholder details in the magnetic stripe of credit cards on blank cards for a fraudulent purpose.

Harbouring escaped interstate prisoners (Schedule 1.2 [3] and [9])

Proposed section 358C (Schedule 1.2 [9]) will make it an offence to harbour, maintain or employ in New South Wales a prisoner who has escaped from custody in another State or a Territory.

At present, section 36 of the *Prisons Act 1952* provides for a similar offence. However, that offence is in general terms and does not expressly cover harbouring of such prisoners. Section 36 will continue to apply to the harbouring of prisoners who have escaped from custody within the State.

Schedule 1.2 [3] makes a consequential amendment.

Intoxication (Schedule 1.2 [10])

Proposed Part 11A (Schedule 1.2 [10]) will reform the law concerning the effect of intoxication on criminal liability. The proposed Part does not affect the operation of any defence to criminal liability.

Presently, the common law in Australia enables an accused to adduce evidence of intoxication to cast doubt on whether the accused acted voluntarily or with the requisite mental state for the offence. (See *R v O'Connor* (1979–1980) 146 CLR 64.) In England, the common law draws a distinction between offences of specific intent (where evidence of intoxication is relevant) and offences of basic intent (where evidence of intoxication is irrelevant). (See *Reg v Majewski* [1977] AC 443.) An offence of specific intent is essentially an offence requiring a person to intend a result. An offence of basic intent, on the other hand, requires a person simply to intend the prohibited conduct.

The amendments will reform the law to bring it closer to the English common law. Part 11A contains the following provisions:

Proposed section 428A includes definitions of *offence*, *intoxication* and *self-induced intoxication*.

Proposed section 428B defines *offence of specific intent* and lists examples of such offences. The definition is based on that suggested by Gibbs J in *Viro v The Queen* (1978) 141 CLR 88 at 111 and *O'Connor* at 91.

Proposed section 428C provides that evidence of intoxication (both self-induced and otherwise) can be taken into account in determining whether a person has formed the requisite intent for an offence of specific intent. However, such evidence cannot be considered if the person became intoxicated to strengthen his or her resolve.

Proposed section 428D provides that evidence of self-intoxication cannot be considered in determining whether a person had the requisite mens rea in relation to offences that are not offences of specific intent. However, evidence of intoxication that was not self-induced may be taken into account in relation to such offences.

Proposed section 428E prevents evidence of self-induced intoxication from being taken into account in determining the mens rea for manslaughter in cases where that evidence has resulted in a person being acquitted of murder. However, evidence of intoxication that was not self-induced can be taken into account.

Proposed section 428F provides that, in applying the reasonable person test in relation to an offence, the test is to be applied by having regard to a reasonable person who is not intoxicated.

Proposed section 428G provides that evidence of self-induced intoxication cannot be considered in determining whether a person voluntarily committed the actus reus of any offence. However, the proposed section also provides that a person is not criminally responsible for conduct constituting an offence if it results from intoxication that was not self-induced.

Proposed section 428H abolishes the common law relating to the effect of intoxication on criminal responsibility.

Proposed section 428I provides that the proposed Part applies to offences (whether under the Act or otherwise) committed after the commencement of the proposed Part.

Offence of watching or besetting (Schedule 1.2 [11] and [12])

Section 545B of the *Crimes Act 1900* provides (among other things) that a person who "watches or besets" another person with a view to compelling the person to do or to abstain from doing any lawful thing is guilty of an offence.

Persons watch or beset another person by attending at or near any place in such numbers or in such a manner as to intimidate any person, or obstruct entry or exit or lead to a breach of the peace. The offence covers picketing and other behaviour that is associated with peaceful industrial disputes. The proposed amendment will repeal those provisions of section 545B relating to watching or besetting while retaining other elements of the section relating to violence or intimidation, following a person from place to place or hiding, or hindering use of, a person's tools.

Criminal Appeal Act 1912 (Schedule 1.3)

Proposed section 14A specifies the circumstances in which the Court of Appeal may sentence (or resentence) a respondent to a Crown appeal in his or her absence. The Court may do so if notice of the date of appeal has been given to the respondent (or notice of appeal has been given but not the date because the respondent's whereabouts are unknown) and it would not be unjust to pass sentence in the absence of the respondent.

Criminal Procedure Act 1986 (Schedule 1.4 [1]–[9])

Under Part 9A of the *Criminal Procedure Act 1986* indictable offences are required to be dealt with summarily:

- (a) if the offence is listed in Table 1 to Part 9A—unless the prosecuting authority or other person charged with the offence elects to have the offence dealt with on indictment, or
- (b) if the offence is listed in Table 2 to Part 9A—unless the prosecuting authority elects to have the offence dealt with on indictment.

Schedule 1.4 [4] and [9] removes the offence contained in section 114 (1) (b) of the *Crimes Act 1900* (possession of implement of housebreaking or any implement capable of being used to enter or drive a conveyance) from Table 1 and inserts it in Table 2.

The offence under section 562AB (Stalking) of the *Crimes Act 1900* is included in Table 2. The proposed amendment to section 33K of the *Criminal Procedure Act 1986* (Schedule 1.4 [1]) provides a maximum penalty (imprisonment for 2 years, or a fine of 50 penalty units (currently \$5,000), or both) that may be imposed if the stalking offence is dealt with summarily.

Schedule 1.4 [3], [5] and [6] amend Table 1 to list offences to be created by proposed section 3B (Misuse of public property by public officials outside the State) (Schedule 1.2 [6]), 302A (Making or possession of implements for making false instruments) (Schedule 1.2 [9]) and 358C (Harbouring escapee from another State or Territory) (Schedule 1.2 [10]), respectively, in the Table.

Schedule 1.4 [8] amends Table 2 to list the offence created by proposed section 3B (Schedule 1.2 [6]) in the Table.

Schedule 1.4 [7] contains an amendment by way of statute law revision to more accurately describe the offences of larceny and other property offences listed in clause 3 of Part 2 of Table 2.

The proposed amendment to section 33L (Schedule 1.4 [2]) extends the jurisdiction of a Local Court under section 33F (Time for making election) and 33H (Information to be given to person charged (Table 1 offences)) of the *Criminal Procedure Act 1986* to the Clerks of the Court or Justices of the Peace employed in the Local Court Administration of the Attorney General's Department. This will enable such persons to attend to purely procedural matters.

Justices Act 1902 (Schedule 1.5 [1]–[3])

Under section 442B of the *Crimes Act 1900*, a Magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence) may reduce the sentence the Magistrate would otherwise impose on a person convicted of the offence by having regard to the degree to which the person has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of, or in proceedings relating to, the offence or other offences.

Proposed section 131ACA (Schedule 1.5 [3]) enables the Director of Public Prosecutions to appeal against a sentence that was reduced because an offender undertook to assist law enforcement authorities if the person fails wholly or partly to fulfil the undertaking. Such an appeal will be able to be lodged outside the normal 28 day period for appeals against sentence.

Schedule 1.5 [1] and [2] make consequential amendments.

Listening Devices Act 1984 (Schedule 1.6 [1]–[13])

The proposed definition of *prescribed offence* (Schedule 1.6 [2]) makes it clear that a listening device warrant can authorise the use of a listening device for the investigation of offences under the laws of the Commonwealth and of other States and Territories (and not just under the laws of New South Wales).

Proposed section 17 (3) (Schedule 1.6 [5]) allows the notice of particulars of warrants sought under section 16 that is required to be served on the Attorney General or a prescribed officer to be served by facsimile. Schedule 1.6 [4] makes a consequential amendment.

Proposed section 20A (Schedule 1.6 [11]) allows the use of assumed names or code-names in a listening device warrant and associated documents if it is necessary to do so to protect the safety of the persons who are participants in conversations at which the warrant is directed.

Proposed amendments to sections 16 and 18 (Schedule 1.6 [3] and [6]) change the nomenclature for referring to the process for seeking warrants authorising the use of listening devices from “complaint” to “application”. Schedule 1.6 [1], [7]–[10] and [12] make consequential amendments to references to complaints in other provisions.

Schedule 1.6 [13] contains a savings provision consequential on the change of nomenclature.

Summary Offences Act 1988 (Schedule 1.7 [1] and [2])

Unauthorised entry of vehicle or boat (Schedule 1.7 [1])

Proposed section 6A creates an offence of entering a vehicle or boat in a public place (without reasonable excuse) without the consent of the owner or lawful occupier of the vehicle or vessel. The penalty for the offence is to be 4 penalty units (currently \$400).

Penalty for custody of offensive implement (Schedule 1.7 [2])

The proposed amendment to section 10 (Schedule 1.7 [2]) increases the maximum penalty for having an offensive implement in custody (without reasonable excuse) in a public place from 10 penalty units (currently \$1,000) or imprisonment for 6 months to 20 penalty units (\$2,000) or imprisonment for 12 months.

Supreme Court Act 1970 (Schedule 1.8)

Sentences of convicted persons seeking judicial review

Proposed section 69A enables the Supreme Court, in proceedings for judicial review of a conviction or sentence for an offence, to commence or recommence an original sentence from a fresh date. This addresses concerns expressed by the Court of Appeal in cases such as *Parker v Director of Public Prosecutions* (1992) 28 NSWLR 282 at 298–299 and *Blazevski v Judges of the District Court of New South Wales* (1992–93) 29 ALD 197 at 202–203.

The proposed section also includes provisions similar to section 18 of the *Criminal Appeal Act 1912* (as to be amended by the *Courts Legislation Further Amendment Bill 1995*) to enable the time a person has spent on bail or in special custody awaiting a determination in such proceedings to be reflected in the sentence to be served.

Deferential upholding on judicial review of decisions in relation to conviction or sentence

Proposed section 69B seeks to overcome procedural difficulties encountered by the Court of Appeal in granting relief when reviewing orders of the District Court in appeals under section 125 of the *Justices Act 1902* from

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convictions and sentences determined by Magistrates. See *Anderson v Judges of the District Court of New South Wales* (1992) 27 NSWLR 701 and *Parker v Director of Public Prosecutions* (1992) 28 NSWLR 282. At present, the Court must either uphold or quash both the conviction and sentence ordered by the District Court in order to grant relief in respect of an erroneous decision of the District Court concerning sentence alone. The proposed section will enable the Court to grant differential relief in such cases.

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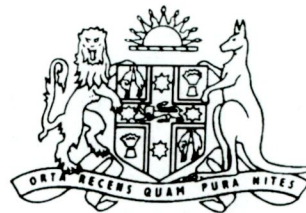


New South Wales

Criminal Legislation Further Amendment Bill 1995

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New South Wales

Criminal Legislation Further Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments relating to criminal law and procedure, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Legislation Further Amendment Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

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Schedule 1 Amendment of Acts

(Section 3)

1.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 11 Publication and broadcasting of names

Omit section 11 (3). Insert instead:

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- (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

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[2] Section 12A

Insert after section 12:

12A Bail applications

Sections 10 and 11 apply to a child who appears or is brought before a court in relation to a bail application in the same way as the sections apply to a child appearing or brought before a court in any criminal proceeding.

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[3] Section 49 Proceedings for offences

Insert "and subsection (2)" after "Part 3".

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Schedule 1 Amendment of Acts

[4] Section 49 (2) and (3)

Insert at the end of section 49:

- (2) Proceedings for an offence against section 11 may be dealt with by the Supreme Court in its summary jurisdiction. 5
- (3) If proceedings for an offence against section 11 are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

1.2 Crimes Act 1900 No 40 10

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 1 (3A):

- (3B) *Misuse of public property by public officials outside the State—s 3B*

[2] Section 1 15

Omit “56–60” from the matter relating to item 7 of Part 3.
Insert instead “56–59”.

[3] Section 1

Insert at the end of the matter relating to Part 10:

- (5) *Offence relating to escaped prisoners—s 358C* 20

[4] Section 1

Insert “**Part 11A Intoxication—ss 428A–428I**” after the matter relating to Part 11.

[5] Section 3B

Insert after section 3A:

Misuse of public property by public officials outside the State

3B Misuse of public property by public officials outside the State

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(1) A public official commits an offence under section 178BA or 178BB if:

(a) the public official does, or omits to do, outside the State any act or thing that constitutes the offence, and

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(b) (apart from this section) the act or omission would have constituted the offence had it been done, or omitted to be done, within the State, and

(c) the offence involves public money of the State or other property held by any person for or on behalf of the State.

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(2) A public official who commits an offence by the operation of this section may be dealt with, and is liable to the same punishment, as if the public official had committed the offence within the State.

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(3) A sufficient nexus exists between the State and an element of an offence to which this section applies if the offence is committed by a public official and involves the misuse of public money of the State or other property held by any person for or on behalf of the State.

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(4) The other provisions of this Act, the provisions of other Acts and the common law, in so far as these are applicable, apply to an offence to which this section applies as if it had been committed within the State (for example, section 344A and the rules of law relating to attempts to commit offences apply to such an offence).

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- (5) Nothing in this section prevents or affects any other punishment, or any forfeiture, provided under any Act. In particular, nothing in this section prevents or affects any other punishment for a breach of discipline by a public official. 5
- (6) This section applies only to acts or omissions occurring after the commencement of this section.
- (7) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction. 10
- (8) In this section:
public official has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.
the State includes:
(a) the territorial sea adjacent to the State, and 15
(b) the sea on the landward side of the territorial sea that is not within the limits of the State.

[6] Sections 52B and 52BA

Omit section 52B. Insert instead:

52B Dangerous navigation: substantive matters 20

(1) **Dangerous navigation occasioning death**

A person is guilty of the offence of dangerous navigation occasioning death if the vessel navigated by the person is involved in an impact occasioning the death of another person and the person navigating the vessel was, at the time of the impact, navigating the vessel: 25

- (a) under the influence of intoxicating liquor or of a drug, or
(b) at a speed dangerous to the public, or
(c) in a manner dangerous to the public. 30

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) **Aggravated dangerous navigation occasioning death**

A person is guilty of the offence of aggravated dangerous navigation occasioning death if the person commits the offence of dangerous navigation occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

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(3) **Dangerous navigation causing grievous bodily harm**

A person is guilty of the offence of dangerous navigation causing grievous bodily harm if the vessel navigated by the person is involved in an impact occasioning grievous bodily harm to another person and the person navigating the vessel was, at the time of the impact, navigating the vessel:

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- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to the public, or
- (c) in a manner dangerous to the public.

A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

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(4) **Aggravated dangerous navigation occasioning grievous bodily harm**

A person is guilty of the offence of aggravated dangerous navigation occasioning grievous bodily harm if the person commits the offence of dangerous navigation occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years.

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(5) **When vessel is involved in impact—generally**

For the purposes of this section, the circumstances in which a vessel is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following: 5

- (a) the vessel overturning or running aground while the person is being conveyed in or on the vessel (whether as a passenger or otherwise),
- (b) an impact between any object and the vessel while the person is being conveyed in or on that vessel (whether as a passenger or otherwise), 10
- (c) an impact between the person and the vessel,
- (d) the impact of the vessel with another vessel or an object in, on or near which the person is at the time of the impact, 15
- (e) an impact with anything on, or attached to, the vessel,
- (f) an impact with anything that was in motion through falling from the vessel. 20

(6) **When vessel is involved in causing other impacts**

For the purposes of this section, a vessel is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if the death or harm is occasioned through the vessel causing an impact between other vessels or between another vessel and any object or person or causing another vessel to overturn or run aground. 25

(7) **Circumstances of aggravation**

In this section, *circumstances of aggravation* means any circumstances at the time of the impact occasioning death or grievous bodily harm in which: 30

- (a) the prescribed concentration of alcohol was present in the accused's blood, or

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- (b) the accused was navigating the vessel at a speed that exceeds the speed limit (if any) applicable to the person navigating the vessel, or to the navigable waters, on which the vessel was navigated at the time of the impact, or 5
- (c) the accused was navigating the vessel in an attempt to escape pursuit by a police officer.

(8) **Defences**

It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant): 10

- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or
- (b) to the speed at which the vessel was navigated, or
- (c) to the manner in which the vessel was navigated. 15

(9) **Definitions**

In this section:

drug has the meaning it has in section 2 (1) of the *Traffic Act 1909*.

object includes a pier, wharf, jetty, pontoon, buoy, breakwater, bridge, support, mooring post or platform, navigation aid, retaining wall, marina, boatshed, slipway or swimming enclosure. 20

prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood. 25

vessel means a vessel within the meaning of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.

52BA Dangerous navigation: procedural matters

(1) **Presumption as to intoxication**

For the purposes of section 52B, the accused is conclusively presumed to be under the influence of liquor if the prosecution proves that the prescribed concentration of alcohol was present in the accused's blood at the time of the impact occasioning death or grievous bodily harm. 5

(2) **Evidence of intoxication**

For the purposes of section 52B, evidence may be given of the concentration of alcohol present in the accused's blood at the time of the impact occasioning death or grievous bodily harm as determined by a blood analysis carried out in accordance with Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*. 10 15

(3) **Time of intoxication**

A concentration of alcohol determined by the means referred to in subsection (2) is taken to be the concentration of alcohol in the accused's blood at the time of the impact occasioning death or grievous bodily harm: 20

- (a) if the blood sample that was analysed was taken within 2 hours after the impact, and
- (b) unless the accused proves that the concentration of alcohol in the accused's blood at that time was less than the prescribed concentration of alcohol. 25

(4) **Alternative verdicts**

If on the trial of a person who is indicted for murder or manslaughter or for an offence under section 54 the jury is satisfied that the person is guilty of an offence under section 52B, it may find the accused guilty of the offence under section 52B, and the accused is liable to punishment accordingly. 30

(5) **Question of aggravation**

If on the trial of a person for an offence under section 52B (2) or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 52B (1) or (3), it may find that the accused is guilty of the offence under section 52B (1) or (3), and the accused is liable to punishment accordingly.

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(6) **Double jeopardy**

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 that may be imposed for any such offence. However, a person who:

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(a) has been convicted or acquitted of an offence under section 52B cannot be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, or

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(b) has been convicted or acquitted of murder or manslaughter or of any other offence under this Act cannot be prosecuted for an offence under section 52B on the same, or substantially the same, facts.

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(7) **Definition**

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In this section:

prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood.

[7] **Section 60 Assault by husband on wife**

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Omit the section.

[8] Section 302A

Insert after section 302:

302A Making or possession of implements for making false instruments

A person who makes, or who has in his or her custody or under his or her control, a machine or implement, or paper or other material, that is, and that the person knows to be, specially designed or adapted for the making of a false instrument, with the intention that he or she or another person will use it to induce another person: 5
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- (a) to accept the instrument as genuine, and
- (b) because of that acceptance, to do or not do some act to that other person's or to another person's prejudice, 15

is liable to penal servitude for 10 years.

[9] Section 358C

Insert after section 358B:

Offence relating to escaped prisoners

358C Harboursing escapee from another State or Territory 20

Any person who, in this State, knowingly harbours, maintains or employs a prisoner who has escaped from lawful custody in another State or a Territory is liable to penal servitude for 3 years.

[10] Part 11A

Insert after Part 11:

Part 11A Intoxication

428A Definitions

In this Part:

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drug includes a drug within the meaning of the *Drug Misuse and Trafficking Act 1985* and a poison, restricted substance or drug of addiction within the meaning of the *Poisons Act 1966*.

intoxication means intoxication because of the influence of alcohol, a drug or any other substance. 10

offence includes an attempt to commit the offence.

offence of specific intent is defined in section 428B.

relevant conduct means an act or omission necessary to constitute the actus reus of an offence. 15

self-induced intoxication means any intoxication except intoxication that:

- (a) is involuntary, or
- (b) results from fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force, or 20

- (c) results from the administration of a drug for which a prescription is required in accordance with the prescription of a medical practitioner or dentist, or of a drug for which no prescription is required administered for the purpose, and in accordance with the dosage level recommended, in the manufacturer's instructions. 25

428B Offences of specific intent to which Part applies

- (1) An *offence of specific intent* is an offence of which an intention to cause a specific result is an element.
- (2) Without limiting the generality of subsection (1), the offences referred to in the Table to this section are examples of offences of specific intent. 5

Table

(a)	an offence under the following provisions of this Act:	
19A	Murder	
27	Acts done to the person with intent to murder	10
28	Acts done to property with intent to murder	
29	Certain other attempts to murder	
30	Attempts to murder by other means	
33	Wounding etc, with intent to do bodily harm or resist arrest	15
33A	Discharging loaded arms with intent	
33B	Use of weapon to resist arrest etc	
36	Causing a grievous bodily disease	
37	Attempts to choke etc (garrotting)	20
38	Using chloroform etc to commit an offence	
41	Administering poison etc with intent to injure or annoy	
41A	Poisoning etc of water supply	
47	Using etc explosive substance or corrosive fluid etc	25
48	Placing gunpowder near a building etc	
49	Setting trap etc	
55	Possessing etc gunpowder etc with intent to injure the person	30
61K	Assault with intent to have sexual intercourse	

Table—continued

82	Administering drugs etc to herself by woman with child	
83	Administering drugs etc to woman with intent	
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Criminal Legislation Further Amendment Bill 1995

Schedule 1 Amendment of Acts

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211	Criminal acts relating to railways	
249C	Misleading documents or statements used or made by agents	
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318	Making or using false official instrument to pervert the course of justice	
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321 (1)	Corruption of witnesses and jurors	
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57	(assault on persons preserving wreck)	
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78L	(assault with intent to have homosexual intercourse with male between 10 and 18)	25
78O	(assault with intent to have homosexual intercourse with pupil etc)	
91	(taking child with intent to steal)	
94	(assault with intent to rob person)	30
95	(assault with intent to rob in circumstances of aggravation)	
96	(assault with intent to rob with wounding)	
97	(assault with intent to rob with arms)	
98	(assault with intent to rob)	35
109	(entering with intent, or stealing etc in dwelling-house and breaking out)	

Table—continued

126	(killing with intent to steal)	
139	(destroys, damages, breaks with intent to steal)	
140	(destroys, damages, breaks with intent to steal)	5
144	(severs with intent to steal)	
146	(concealing royalty with intent to defraud)	
197	(dishonestly destroying or damaging property with a view to gain)	10
204	(destruction of, or damage to, an aircraft or vessel with intent)	
(c)	any other offence by or under any law (including the common law) prescribed by the regulations.	
428C	Intoxication in relation to offences of specific intent	15
(1)	Evidence that a person was intoxicated (whether by reason of self-induced intoxication or otherwise) at the time of the relevant conduct may be taken into account in determining whether the person had the intention to cause the specific result necessary for an offence of specific intent.	20
(2)	However, such evidence cannot be taken into account if the person:	
(a)	had resolved before becoming intoxicated to do the relevant conduct, or	25
(b)	became intoxicated in order to strengthen his or her resolve to do the relevant conduct.	
428D	Intoxication in relation to other offences	
	In determining whether a person had the mens rea for an offence other than an offence of specific intent, evidence that a person was intoxicated at the time of the relevant conduct:	30
(a)	if the intoxication was self-induced—cannot be taken into account, or	
(b)	if the intoxication was not self-induced—may be taken into account.	35

428E Intoxication in relation to murder and manslaughter

If evidence of intoxication at the time of the relevant conduct results in a person being acquitted of murder:

- (a) in the case of intoxication that was self-induced—evidence of that intoxication cannot be taken into account in determining whether the person had the requisite mens rea for manslaughter, or 5
- (b) in the case of intoxication that was not self-induced—evidence of that intoxication may be taken into account in determining whether the person had the requisite mens rea for manslaughter. 10

428F Intoxication in relation to the reasonable person test

If, for the purposes of determining whether a person is guilty of an offence, it is necessary to compare the state of mind of the person with that of a reasonable person, the comparison is to be made between the conduct or state of mind of the person and that of a reasonable person who is not intoxicated. 15

428G Intoxication and the actus reus of an offence 20

- (1) In determining whether a person has committed an offence, evidence that the intoxication was self-induced cannot be taken into account in determining whether the relevant conduct was voluntary.
- (2) However, a person is not criminally responsible for an offence if the relevant conduct resulted from intoxication that was not self-induced. 25

428H Abolition of common law relating to self-induced intoxication

The common law relating to the effect of intoxication on criminal liability is abolished.

428I Application of Part

5

This Part applies to any offence (whether under this Act or otherwise) committed after the commencement of this Part.

[11] Section 545B Intimidation or annoyance by violence or otherwise

10

Omit section 545B (1) (iv).

[12] Section 545B (2)

Omit the definition of *Watches or besets*.

[13] Section 573 Provision for wife where husband convicted of aggravated assault

15

Omit the section.

[14] Second Schedule Application of certain Parts and sections of Act

Omit "Section 3A to 10".

Insert instead "Section 3A, 4 to 10".

20

1.3 Criminal Appeal Act 1912 No 16

Section 14A

Omit the section. Insert instead:

14A Crown appeals—absence of respondent

An appeal under section 5C, 5D or 5DA may be dealt with, and the court may pass any sentence under this Act, in the absence of the respondent if the court is satisfied: 5

(a) that:

(i) the respondent has been given notice of the date on which the appeal is to be heard, or 10

(ii) although the notice of appeal was served on the respondent, the respondent has not been given notice of the date on which the appeal is to be heard because the respondent's whereabouts are unknown, and 15

(b) that it would not be unjust to deal with the appeal, and pass sentence, in the absence of the respondent.

1.4 Criminal Procedure Act 1986 No 209 20

[1] Section 33K Maximum penalties for Table 2 offences

Insert at the end of section 33K (2):

(f) for an offence under section 562AB of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both. 25

[2] Section 33L Jurisdiction of Local Court

Insert at the end of section 33L:

(2) Despite subsection (1), the jurisdiction of a Local Court under section 33F or 33H may also be exercised by an authorised justice. 5

(3) In this section:

authorised justice means:

(a) a justice of the peace who is a Clerk of a Local Court, or

(b) a justice of the peace who is employed in the Local Courts Administration of the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Attorney General by instrument in writing or by order published in the Gazette to be an authorised justice for the purposes of this section. 10
15

[3] Part 9A, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise 20

Omit "section 125" from clause 3 (c) of Part 2.
Insert instead "section 3B, 125".

[4] Part 9A, Table 1, Part 2

Omit "114" from clause 9. Insert instead "114 (1) (a), (c) and (d)".

[5] Part 9A, Table 1, Part 3 25

Omit "or 302" from clause 13. Insert instead " , 302 or 302A".

[6] Part 9A, Table 1, Part 3

Insert at the end of clause 16:

- (2) An offence under section 358C of the *Crimes Act 1900*.

[7] Part 9A, Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise 5

Insert "or the damage," after "property" in clause 3 of Part 2.

[8] Part 9A, Table 2, Part 2

Omit "section 125" from clause 3 (c).
Insert instead "section 3B, 125".

[9] Part 9A, Table 2, Part 2 10

Insert after clause 3:

3A Possession of implement of housebreaking

An offence under section 114 (1) (b) of the *Crimes Act 1900*.

1.5 Justices Act 1902 No 27 15

[1] Section 131AB Appeal by Crown to District Court against sentence

Insert after section 131AB (5):

- (6) This section does not apply to an appeal referred to in section 131ACA.

20

[2] Section 131AC Procedure

Insert "except as provided by section 131ACA" after "must" in section 131AC.

[3] Section 131ACA

Insert after section 131AC:

5

131ACA Appeal by Crown against reduced sentence for assistance to authorities

- (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed on a person that was reduced because the person undertook to assist law enforcement authorities if the person fails wholly or partly to fulfil the undertaking. 10
- (2) On such an appeal the District Court may, if satisfied that the person has failed wholly or partly to fulfil the undertaking, vary the sentence and impose such sentence as it thinks fit. 15
- (3) An appeal under this section may be lodged within such period after the date the Justice or Justices imposed the sentence as the District Court may allow.

1.6 Listening Devices Act 1984 No 69

20

[1] Section 14 Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant

Omit "complaint" from section 14 (2) (b).
Insert instead "application".

[2] Section 15 Definitions

Omit the definition of *prescribed offence*. Insert instead:

prescribed offence means an offence (including an offence under a law of the Commonwealth or of another State or Territory) that:

5

- (a) is punishable on indictment, or
- (b) is of a class or description prescribed for the purposes of this Part (whether or not it is punishable on indictment).

[3] Section 16 Warrants authorising use of listening devices

10

Omit "complaint" from section 16 (1).
Insert instead "application".

[4] Section 17 Particulars of warrant sought under section 16 to be notified to Attorney General

Omit "subsection (1)" from section 17 (2) (a).
Insert instead "this section".

15

[5] Section 17 (3)

Insert after section 17 (2):

- (3) A notice required by this section to be served on a person may be served:
 - (a) by delivering it personally to the person, or
 - (b) by sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent.

20

25

- [6] Section 18 Radio/telephone warrants**
Omit "complaint" from section 18 (2). Insert instead "application".
- [7] Section 18 (4)**
Omit "A complaint". Insert instead "The application".
- [8] Section 18** 5
Omit "the complaint" wherever occurring.
Insert instead "the application".
- [9] Section 18 (5)**
Omit "a complaint". Insert instead "an application".
- [10] Section 18 (7)** 10
Omit "the complainant" wherever occurring.
Insert instead "the applicant".
- [11] Section 20A**
Insert after section 20:
- 20A Use of assumed names or code-names in warrants** 15
- (1) The Court may grant a warrant under this Part that refers to a person by an assumed name or code-name if the Court is satisfied that it is necessary to do so to protect the safety of the person.
- (2) A person may be referred to by an assumed name or code-name in a notice under section 17 or report under section 5 (4) or 19 if the person who furnishes the notice or report believes on reasonable grounds that use of the assumed name is necessary to protect the safety of the person referred to. 20
- 25

- (3) The only persons who may be referred to by assumed names or code-names are persons who are referred to as participants or potential participants in a conversation to which the warrant, notice or report relates.

[12] Section 21 Proceedings under this Part 5

Omit "complaints" from section 21 (2) (a).
Insert instead "applications".

[13] Schedule 1 Savings and transitional provisions

Insert after clause 4:

5 Change in nomenclature 10

A warrant issued under section 16 or 18 before the commencement of Schedule 1.6 [3] or [6] to the *Criminal Legislation Further Amendment Act 1995* is taken to be a warrant issued under those sections as amended by that Act.

15

1.7 Summary Offences Act 1988 No 25

[1] Section 6A

Insert after section 6:

6A Unauthorised entry of vehicle or boat

A person must not, without reasonable excuse (proof of which lies on the person), enter any vehicle or boat in a public place without the consent of the owner or lawful occupier of the vehicle or boat.

20

Maximum penalty: 4 penalty units.

[2] Section 10 Custody of offensive implement

Omit "10 penalty units or imprisonment for 6 months" from section 10 (1).

Insert instead "20 penalty units or imprisonment for 12 months".

1.8 Supreme Court Act 1970 No 52

5

Section 69A and 69B

Insert after section 69:

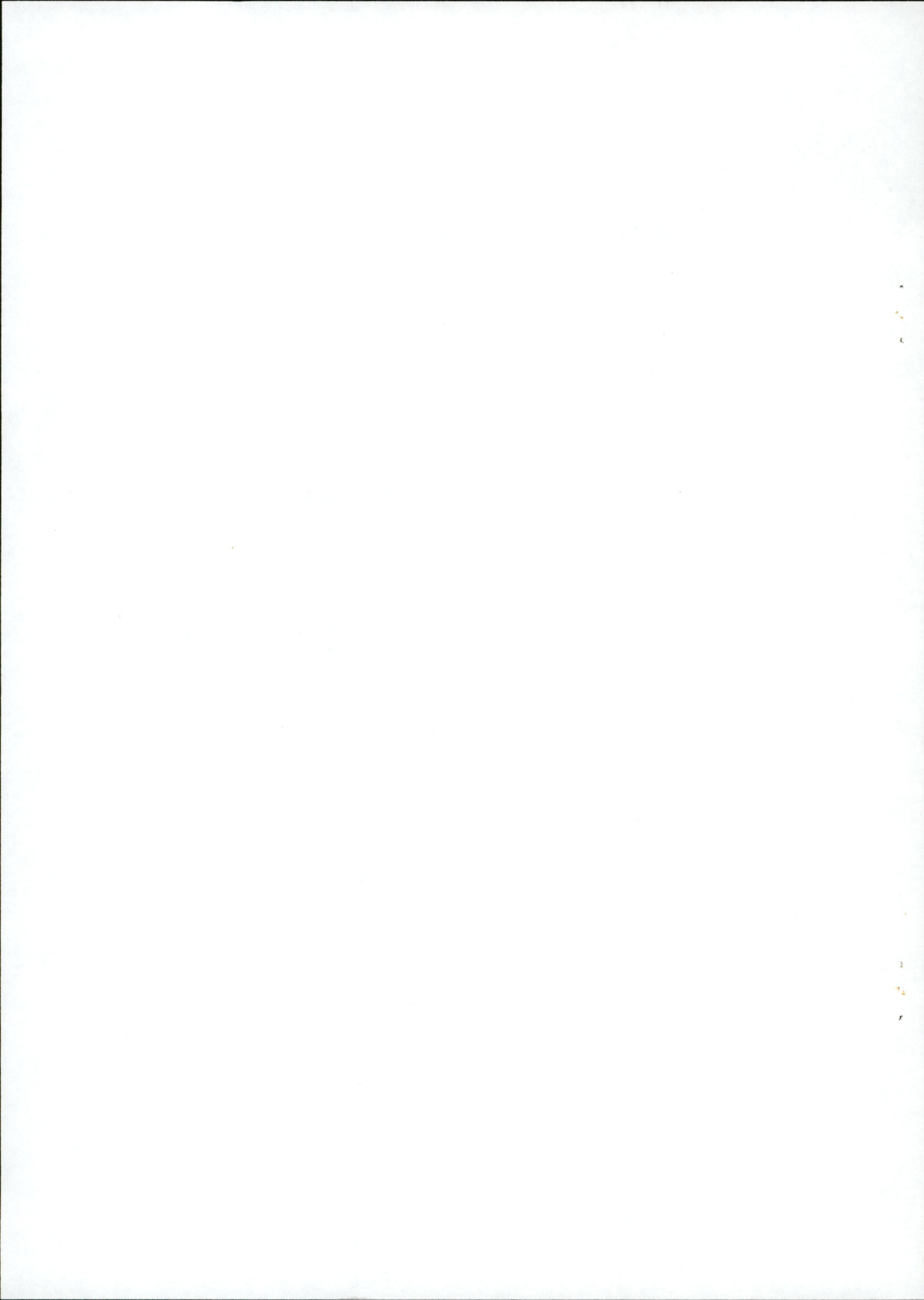
69A Release on bail and custody of claimants seeking judicial review of conviction or sentence

- (1) This section and section 69B apply to proceedings in the Court by a convicted person (*the claimant*) seeking judicial review in relation to a conviction or sentence for an offence. 10
- (2) A claimant who is not released on bail must, pending the determination of the proceedings, be treated in such manner as may be directed by regulations made under the *Prisons Act 1952* (which is referred to in this section as *special treatment*). 15
- (3) The time during which a claimant is at liberty on bail (pending the determination of the proceedings for review) does not count as part of any term of imprisonment or penal servitude under the claimant's sentence. 20
- (4) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the claimant's sentence. However, if the Court is satisfied that the claim was unarguable or frivolous, the Court may order that the time in custody with special treatment does not count. 25

-
- (5) In determining proceedings for judicial review, the Court may order that the imprisonment under the original sentence of imprisonment or penal servitude is to commence or recommence on a day specified by the Court. 5
- (6) Provision is to be made in regulations made under the *Prisons Act 1952* for:
- (a) the manner in which a claimant, when in custody, is to be brought to any place where the claimant is entitled to be present, or ordered to be taken, for the purposes of this Act, and 10
- (b) the manner in which the appellant is to be kept in custody whilst absent from prison for the purpose.
- (7) A claimant while in custody in accordance with those regulations is taken to be in legal custody. 15

69B Other powers in relations to claimants for judicial review of convictions and sentences

- (1) In determining proceedings for judicial review in relation to a conviction or sentence for an offence, the Court may make an order quashing either the conviction of, or the sentence imposed on, the claimant, or quash both the conviction and the sentence. 20
- (2) This section applies to judicial review of orders made by the District Court despite anything contained in section 125 of the *Justices Act 1902*. 25



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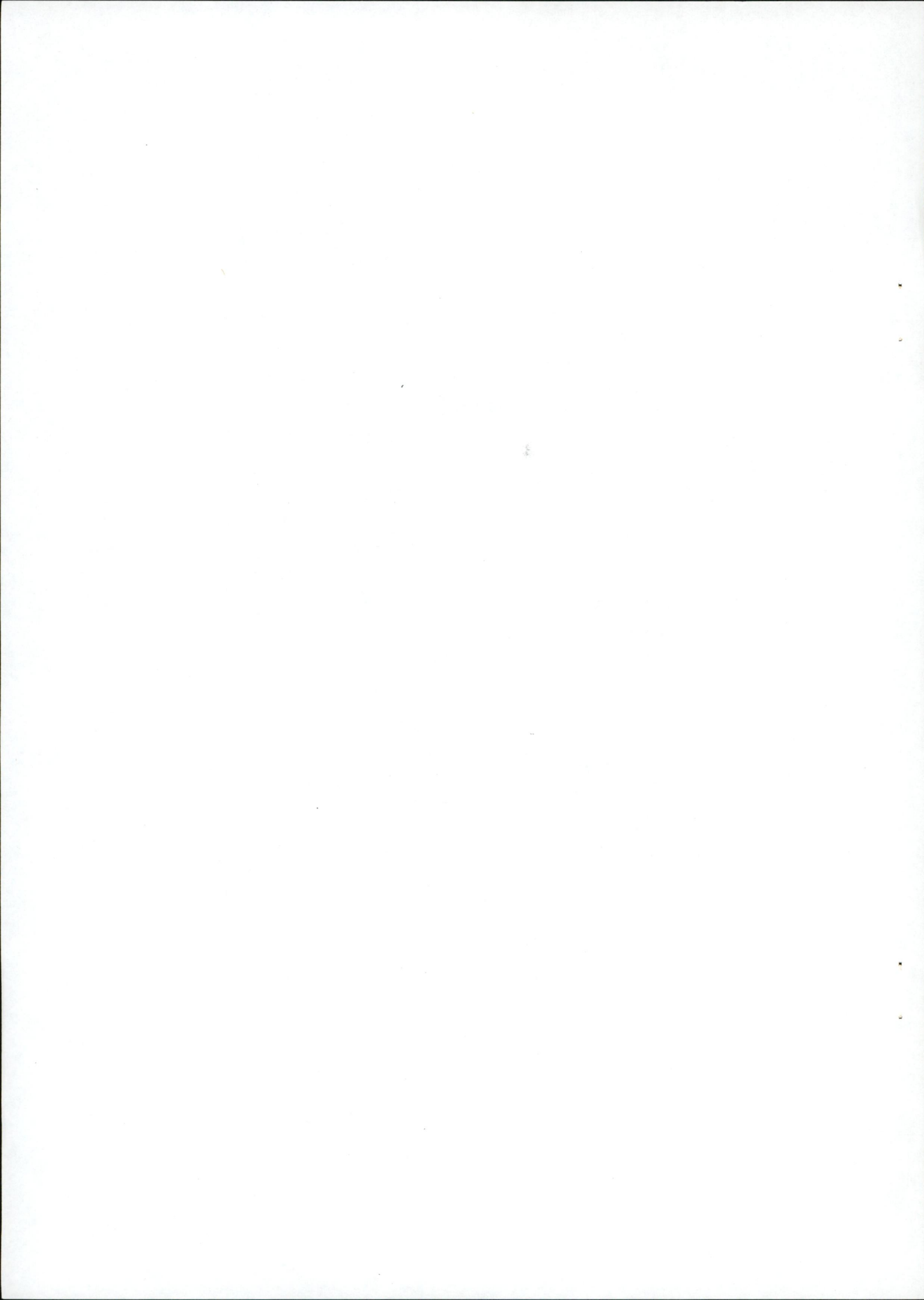


New South Wales

Criminal Legislation Further Amendment Bill 1995

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Criminal Legislation Further Amendment Bill 1995

Act No , 1995

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments relating to criminal law and procedure, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Legislation Further Amendment Act 1995*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

10

Schedule 1 Amendment of Acts

(Section 3)

1.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 11 Publication and broadcasting of names

Omit section 11 (3). Insert instead:

5

- (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

10

[2] Section 12A

Insert after section 12:

12A Bail applications

Sections 10 and 11 apply to a child who appears or is brought before a court in relation to a bail application in the same way as the sections apply to a child appearing or brought before a court in any criminal proceeding.

15

[3] Section 49 Proceedings for offences

Insert "and subsection (2)" after "Part 3".

20

Criminal Legislation Further Amendment Bill 1995

Schedule 1 Amendment of Acts

[4] Section 49 (2) and (3)

Insert at the end of section 49:

- (2) Proceedings for an offence against section 11 may be dealt with by the Supreme Court in its summary jurisdiction. 5
- (3) If proceedings for an offence against section 11 are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

1.2 Crimes Act 1900 No 40 10

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 1 (3A):

- (3B) *Misuse of public property by public officials outside the State—s 3B*

[2] Section 1 15

Omit “56–60” from the matter relating to item 7 of Part 3.
Insert instead “56–59”.

[3] Section 1

Insert at the end of the matter relating to Part 10:

- (5) *Offence relating to escaped prisoners—s 358C* 20

[4] Section 1

Insert “**Part 11A Intoxication—ss 428A–428I**” after the matter relating to Part 11.

[5] Section 3B

Insert after section 3A:

Misuse of public property by public officials outside the State

3B Misuse of public property by public officials outside the State

5

(1) A public official commits an offence under section 178BA or 178BB if:

(a) the public official does, or omits to do, outside the State any act or thing that constitutes the offence, and

10

(b) (apart from this section) the act or omission would have constituted the offence had it been done, or omitted to be done, within the State, and

(c) the offence involves public money of the State or other property held by any person for or on behalf of the State.

15

(2) A public official who commits an offence by the operation of this section may be dealt with, and is liable to the same punishment, as if the public official had committed the offence within the State.

20

(3) A sufficient nexus exists between the State and an element of an offence to which this section applies if the offence is committed by a public official and involves the misuse of public money of the State or other property held by any person for or on behalf of the State.

25

(4) The other provisions of this Act, the provisions of other Acts and the common law, in so far as these are applicable, apply to an offence to which this section applies as if it had been committed within the State (for example, section 344A and the rules of law relating to attempts to commit offences apply to such an offence).

30

- (5) Nothing in this section prevents or affects any other punishment, or any forfeiture, provided under any Act. In particular, nothing in this section prevents or affects any other punishment for a breach of discipline by a public official. 5
- (6) This section applies only to acts or omissions occurring after the commencement of this section.
- (7) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction. 10
- (8) In this section:
public official has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.
the State includes:
(a) the territorial sea adjacent to the State, and 15
(b) the sea on the landward side of the territorial sea that is not within the limits of the State.

[6] Sections 52B and 52BA

Omit section 52B. Insert instead:

52B Dangerous navigation: substantive matters 20

(1) Dangerous navigation occasioning death

A person is guilty of the offence of dangerous navigation occasioning death if the vessel navigated by the person is involved in an impact occasioning the death of another person and the person navigating the vessel was, at the time of the impact, navigating the vessel: 25

- (a) under the influence of intoxicating liquor or of a drug, or
(b) at a speed dangerous to the public, or
(c) in a manner dangerous to the public. 30

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) **Aggravated dangerous navigation occasioning death**

A person is guilty of the offence of aggravated dangerous navigation occasioning death if the person commits the offence of dangerous navigation occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years. 5

(3) **Dangerous navigation causing grievous bodily harm**

A person is guilty of the offence of dangerous navigation causing grievous bodily harm if the vessel navigated by the person is involved in an impact occasioning grievous bodily harm to another person and the person navigating the vessel was, at the time of the impact, navigating the vessel: 10
15

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to the public, or
- (c) in a manner dangerous to the public.

A person convicted of an offence under this subsection is liable to imprisonment for 7 years. 20

(4) **Aggravated dangerous navigation occasioning grievous bodily harm**

A person is guilty of the offence of aggravated dangerous navigation occasioning grievous bodily harm if the person commits the offence of dangerous navigation occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years. 25
30

(5) **When vessel is involved in impact—generally**

For the purposes of this section, the circumstances in which a vessel is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following: 5

- (a) the vessel overturning or running aground while the person is being conveyed in or on the vessel (whether as a passenger or otherwise),
- (b) an impact between any object and the vessel while the person is being conveyed in or on that vessel (whether as a passenger or otherwise), 10
- (c) an impact between the person and the vessel,
- (d) the impact of the vessel with another vessel or an object in, on or near which the person is at the time of the impact, 15
- (e) an impact with anything on, or attached to, the vessel,
- (f) an impact with anything that was in motion through falling from the vessel. 20

(6) **When vessel is involved in causing other impacts**

For the purposes of this section, a vessel is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if the death or harm is occasioned through the vessel causing an impact between other vessels or between another vessel and any object or person or causing another vessel to overturn or run aground. 25

(7) **Circumstances of aggravation**

In this section, *circumstances of aggravation* means any circumstances at the time of the impact occasioning death or grievous bodily harm in which: 30

- (a) the prescribed concentration of alcohol was present in the accused's blood, or

-
- (b) the accused was navigating the vessel at a speed that exceeds the speed limit (if any) applicable to the person navigating the vessel, or to the navigable waters, on which the vessel was navigated at the time of the impact, or 5
- (c) the accused was navigating the vessel in an attempt to escape pursuit by a police officer.

(8) **Defences**

It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant): 10

- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or
- (b) to the speed at which the vessel was navigated, or
- (c) to the manner in which the vessel was navigated. 15

(9) **Definitions**

In this section:

drug has the meaning it has in section 2 (1) of the *Traffic Act 1909*.

object includes a pier, wharf, jetty, pontoon, buoy, breakwater, bridge, support, mooring post or platform, navigation aid, retaining wall, marina, boatshed, slipway or swimming enclosure. 20

prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood. 25

vessel means a vessel within the meaning of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.

52BA Dangerous navigation: procedural matters

(1) **Presumption as to intoxication**

For the purposes of section 52B, the accused is conclusively presumed to be under the influence of liquor if the prosecution proves that the prescribed concentration of alcohol was present in the accused's blood at the time of the impact occasioning death or grievous bodily harm. 5

(2) **Evidence of intoxication**

For the purposes of section 52B, evidence may be given of the concentration of alcohol present in the accused's blood at the time of the impact occasioning death or grievous bodily harm as determined by a blood analysis carried out in accordance with Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*. 10
15

(3) **Time of intoxication**

A concentration of alcohol determined by the means referred to in subsection (2) is taken to be the concentration of alcohol in the accused's blood at the time of the impact occasioning death or grievous bodily harm: 20

- (a) if the blood sample that was analysed was taken within 2 hours after the impact, and
- (b) unless the accused proves that the concentration of alcohol in the accused's blood at that time was less than the prescribed concentration of alcohol. 25

(4) **Alternative verdicts**

If on the trial of a person who is indicted for murder or manslaughter or for an offence under section 54 the jury is satisfied that the person is guilty of an offence under section 52B, it may find the accused guilty of the offence under section 52B, and the accused is liable to punishment accordingly. 30

(5)	Question of aggravation	
	If on the trial of a person for an offence under section 52B (2) or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 52B (1) or (3), it may find that the accused is guilty of the offence under section 52B (1) or (3), and the accused is liable to punishment accordingly.	5
(6)	Double jeopardy	
	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 that may be imposed for any such offence. However, a person who:	10
	(a) has been convicted or acquitted of an offence under section 52B cannot be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, or	15
	(b) has been convicted or acquitted of murder or manslaughter or of any other offence under this Act cannot be prosecuted for an offence under section 52B on the same, or substantially the same, facts.	20
(7)	Definition	25
	In this section:	
	<i>prescribed concentration of alcohol</i> means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood.	
[7]	Section 60 Assault by husband on wife	30
	Omit the section.	

[8] Section 302A

Insert after section 302:

302A Making or possession of implements for making false instruments

A person who makes, or who has in his or her custody or under his or her control, a machine or implement, or paper or other material, that is, and that the person knows to be, specially designed or adapted for the making of a false instrument, with the intention that he or she or another person will use it to induce another person: 5
10

- (a) to accept the instrument as genuine, and
- (b) because of that acceptance, to do or not do some act to that other person's or to another person's prejudice, 15

is liable to penal servitude for 10 years.

[9] Section 358C

Insert after section 358B:

Offence relating to escaped prisoners

358C Harboursing escapee from another State or Territory 20

Any person who, in this State, knowingly harbours, maintains or employs a prisoner who has escaped from lawful custody in another State or a Territory is liable to penal servitude for 3 years.

[10] Part 11A

Insert after Part 11:

Part 11A Intoxication

428A Definitions

In this Part:

5

drug includes a drug within the meaning of the *Drug Misuse and Trafficking Act 1985* and a poison, restricted substance or drug of addiction within the meaning of the *Poisons Act 1966*.

intoxication means intoxication because of the influence of alcohol, a drug or any other substance. 10

offence includes an attempt to commit the offence.

offence of specific intent is defined in section 428B.

relevant conduct means an act or omission necessary to constitute the actus reus of an offence. 15

self-induced intoxication means any intoxication except intoxication that:

- (a) is involuntary, or
- (b) results from fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force, or 20
- (c) results from the administration of a drug for which a prescription is required in accordance with the prescription of a medical practitioner or dentist, or of a drug for which no prescription is required administered for the purpose, and in accordance with the dosage level recommended, in the manufacturer's instructions. 25

428B Offences of specific intent to which Part applies

- (1) An *offence of specific intent* is an offence of which an intention to cause a specific result is an element.
- (2) Without limiting the generality of subsection (1), the offences referred to in the Table to this section are examples of offences of specific intent. 5

Table

(a)	an offence under the following provisions of this Act:	
19A	Murder	
27	Acts done to the person with intent to murder	10
28	Acts done to property with intent to murder	
29	Certain other attempts to murder	
30	Attempts to murder by other means	
33	Wounding etc, with intent to do bodily harm or resist arrest	15
33A	Discharging loaded arms with intent	
33B	Use of weapon to resist arrest etc	
36	Causing a grievous bodily disease	
37	Attempts to choke etc (garrotting)	20
38	Using chloroform etc to commit an offence	
41	Administering poison etc with intent to injure or annoy	
41A	Poisoning etc of water supply	
47	Using etc explosive substance or corrosive fluid etc	25
48	Placing gunpowder near a building etc	
49	Setting trap etc	
55	Possessing etc gunpowder etc with intent to injure the person	30
61K	Assault with intent to have sexual intercourse	

Table—continued

82	Administering drugs etc to herself by woman with child	
83	Administering drugs etc to woman with intent	
86	Abduction of woman against her will	5
87	The like against the will of parent etc	
89	Forcible abduction of a woman	
90A	Kidnapping	
99	Demanding money with intent to steal	
100A	Blackmail by threat to publish etc	10
101	Threatening letters	
102	Accusing or threatening to accuse of crime to extort money etc	
103	Causing a person by violence or threats to execute deeds etc	15
110	Breaking, entering and assaulting with intent to murder etc	
111	Entering dwelling-house	
113	Breaking etc into any house etc with intent to commit felony	20
114 (a) (c) (d)	Being armed etc with intent to commit offence	
145	Miners removing ore with intent to defraud	
147	Fraud on partners in mines etc	
158	Destruction, falsification of accounts etc by clerk or servant	25
172	Trustees fraudulently disposing of property	
174	Directors etc omitting certain entries	
175	Director etc wilfully destroying etc books of company etc	30
176	Director or officer publishing fraudulent statements	
178BB	Obtaining money etc by false or misleading statements	
179	False pretences etc	35

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Table—continued

180	Causing payment etc by false pretences etc	
181	False pretence of title	
184	Fraudulent personation	
185	Inducing persons by fraud to execute instruments	5
190	Receiving etc cattle feloniously killed, or carcass etc	
196	Maliciously destroying or damaging property with intent to injure a person	10
198	Maliciously destroying or damaging property with the intention of endangering life	
199	Threatening to destroy or damage property	
200	Possession, custody or control of an article with intent to destroy or damage property	15
202 (c)	Interfering or damaging etc bed or bank of river with intent of obstructing etc navigation	
205	Prejudicing the safe operation of an aircraft or vessel	
210 (b)	Acting with intention of destroying etc aids to navigation	20
211	Criminal acts relating to railways	
249C	Misleading documents or statements used or made by agents	
249D	Corrupt inducements for advice	25
298	Demanding property on forged instruments	
300	Making or using false instruments	
301	Making or using copies of false instruments	
302	Custody of false instruments etc	
302A	Making or possession of implements for making false instruments	30
309 (2)	Unlawful access to data in computer	
314	False accusations etc	
315	Hindering investigation etc	
317	Tampering etc with evidence	35

Table—continued

318	Making or using false official instrument to pervert the course of justice	
319	General offence of perverting the course of justice	5
321 (1)	Corruption of witnesses and jurors	
322	Threatening or intimidating judges, witnesses, jurors etc	
323	Influencing witnesses and jurors	
328	Perjury with intent to procure conviction or acquittal	10
333 (2)	Subornation of perjury	
(b)	an offence under the following provisions of this Act to the extent that an element of the offence requires a person to intend to cause the specific result necessary for the offence:	15
57	(assault on persons preserving wreck)	
58	(assault with intent to commit felony on certain officers)	
66B	(assaulting with intent to have sexual intercourse with child under 10)	20
66D	(assaulting with intent to have sexual intercourse with child between 10 and 16)	
78I	(assault with intent to have homosexual intercourse with male under 10)	
78L	(assault with intent to have homosexual intercourse with male between 10 and 18)	25
78O	(assault with intent to have homosexual intercourse with pupil etc)	
91	(taking child with intent to steal)	
94	(assault with intent to rob person)	30
95	(assault with intent to rob in circumstances of aggravation)	
96	(assault with intent to rob with wounding)	
97	(assault with intent to rob with arms)	
98	(assault with intent to rob)	35
109	(entering with intent, or stealing etc in dwelling-house and breaking out)	

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Table—continued

126	(killing with intent to steal)	
139	(destroys, damages, breaks with intent to steal)	
140	(destroys, damages, breaks with intent to steal)	5
144	(severs with intent to steal)	
146	(concealing royalty with intent to defraud)	
197	(dishonestly destroying or damaging property with a view to gain)	10
204	(destruction of, or damage to, an aircraft or vessel with intent)	
(c)	any other offence by or under any law (including the common law) prescribed by the regulations.	
428C	Intoxication in relation to offences of specific intent	15
(1)	Evidence that a person was intoxicated (whether by reason of self-induced intoxication or otherwise) at the time of the relevant conduct may be taken into account in determining whether the person had the intention to cause the specific result necessary for an offence of specific intent.	20
(2)	However, such evidence cannot be taken into account if the person:	
(a)	had resolved before becoming intoxicated to do the relevant conduct, or	25
(b)	became intoxicated in order to strengthen his or her resolve to do the relevant conduct.	
428D	Intoxication in relation to other offences	
	In determining whether a person had the mens rea for an offence other than an offence of specific intent, evidence that a person was intoxicated at the time of the relevant conduct:	30
(a)	if the intoxication was self-induced—cannot be taken into account, or	
(b)	if the intoxication was not self-induced—may be taken into account.	35

428E Intoxication in relation to murder and manslaughter

If evidence of intoxication at the time of the relevant conduct results in a person being acquitted of murder:

- (a) in the case of intoxication that was self-induced—evidence of that intoxication cannot be taken into account in determining whether the person had the requisite mens rea for manslaughter, or 5
- (b) in the case of intoxication that was not self-induced—evidence of that intoxication may be taken into account in determining whether the person had the requisite mens rea for manslaughter. 10

428F Intoxication in relation to the reasonable person test

If, for the purposes of determining whether a person is guilty of an offence, it is necessary to compare the state of mind of the person with that of a reasonable person, the comparison is to be made between the conduct or state of mind of the person and that of a reasonable person who is not intoxicated. 15

428G Intoxication and the actus reus of an offence 20

- (1) In determining whether a person has committed an offence, evidence that the intoxication was self-induced cannot be taken into account in determining whether the relevant conduct was voluntary.
- (2) However, a person is not criminally responsible for an offence if the relevant conduct resulted from intoxication that was not self-induced. 25

428H Abolition of common law relating to self-induced intoxication

The common law relating to the effect of intoxication on criminal liability is abolished.

428I Application of Part

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This Part applies to any offence (whether under this Act or otherwise) committed after the commencement of this Part.

[11] Section 545B Intimidation or annoyance by violence or otherwise

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Omit section 545B (1) (iv).

[12] Section 545B (2)

Omit the definition of *Watches or besets*.

[13] Section 573 Provision for wife where husband convicted of aggravated assault

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Omit the section.

[14] Second Schedule Application of certain Parts and sections of Act

Omit "Section 3A to 10".
Insert instead "Section 3A, 4 to 10".

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1.3 Criminal Appeal Act 1912 No 16

Section 14A

Omit the section. Insert instead:

14A Crown appeals—absence of respondent

An appeal under section 5C, 5D or 5DA may be dealt with, and the court may pass any sentence under this Act, in the absence of the respondent if the court is satisfied: 5

(a) that:

(i) the respondent has been given notice of the date on which the appeal is to be heard, or 10

(ii) although the notice of appeal was served on the respondent, the respondent has not been given notice of the date on which the appeal is to be heard because the respondent's whereabouts are unknown, and 15

(b) that it would not be unjust to deal with the appeal, and pass sentence, in the absence of the respondent.

1.4 Criminal Procedure Act 1986 No 209 20

[1] Section 33K Maximum penalties for Table 2 offences

Insert at the end of section 33K (2):

(f) for an offence under section 562AB of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both. 25

[2] Section 33L Jurisdiction of Local Court

Insert at the end of section 33L:

- (2) Despite subsection (1), the jurisdiction of a Local Court under section 33F or 33H may also be exercised by an authorised justice. 5
- (3) In this section:
- authorised justice* means:
- (a) a justice of the peace who is a Clerk of a Local Court, or
- (b) a justice of the peace who is employed in the Local Courts Administration of the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Attorney General by instrument in writing or by order published in the Gazette to be an authorised justice for the purposes of this section. 10
15

[3] Part 9A, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise 20

Omit "section 125" from clause 3 (c) of Part 2.
Insert instead "section 3B, 125".

[4] Part 9A, Table 1, Part 2

Omit "114" from clause 9. Insert instead "114 (1) (a), (c) and (d)".

[5] Part 9A, Table 1, Part 3 25

Omit "or 302" from clause 13. Insert instead ", 302 or 302A".

-
- [6] **Part 9A, Table 1, Part 3**
- Insert at the end of clause 16:
- (2) An offence under section 358C of the *Crimes Act 1900*.
- [7] **Part 9A, Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise** 5
- Insert "or the damage," after "property" in clause 3 of Part 2.
- [8] **Part 9A, Table 2, Part 2**
- Omit "section 125" from clause 3 (c).
Insert instead "section 3B, 125".
- [9] **Part 9A, Table 2, Part 2** 10
- Insert after clause 3:
- 3A Possession of implement of housebreaking**
- An offence under section 114 (1) (b) of the *Crimes Act 1900*.
- 1.5 **Justices Act 1902 No 27** 15
- [1] **Section 131AB Appeal by Crown to District Court against sentence**
- Insert after section 131AB (5):
- (6) This section does not apply to an appeal referred to in section 131ACA. 20

[2] Section 131AC Procedure

Insert "except as provided by section 131ACA" after "must" in section 131AC.

[3] Section 131ACA

Insert after section 131AC:

5

131ACA Appeal by Crown against reduced sentence for assistance to authorities

- (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed on a person that was reduced because the person undertook to assist law enforcement authorities if the person fails wholly or partly to fulfil the undertaking. 10
- (2) On such an appeal the District Court may, if satisfied that the person has failed wholly or partly to fulfil the undertaking, vary the sentence and impose such sentence as it thinks fit. 15
- (3) An appeal under this section may be lodged within such period after the date the Justice or Justices imposed the sentence as the District Court may allow.

1.6 Listening Devices Act 1984 No 69

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[1] Section 14 Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant

Omit "complaint" from section 14 (2) (b).
Insert instead "application".

[2] Section 15 Definitions

Omit the definition of *prescribed offence*. Insert instead:

prescribed offence means an offence (including an offence under a law of the Commonwealth or of another State or Territory) that:

5

- (a) is punishable on indictment, or
- (b) is of a class or description prescribed for the purposes of this Part (whether or not it is punishable on indictment).

[3] Section 16 Warrants authorising use of listening devices

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Omit "complaint" from section 16 (1).
Insert instead "application".

[4] Section 17 Particulars of warrant sought under section 16 to be notified to Attorney General

Omit "subsection (1)" from section 17 (2) (a).
Insert instead "this section".

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[5] Section 17 (3)

Insert after section 17 (2):

(3) A notice required by this section to be served on a person may be served:

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- (a) by delivering it personally to the person, or
- (b) by sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent.

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[6] Section 18 Radio/telephone warrants

Omit "complaint" from section 18 (2). Insert instead "application".

[7] Section 18 (4)

Omit "A complaint". Insert instead "The application".

[8] Section 18

5

Omit "the complaint" wherever occurring.
Insert instead "the application".

[9] Section 18 (5)

Omit "a complaint". Insert instead "an application".

[10] Section 18 (7)

10

Omit "the complainant" wherever occurring.
Insert instead "the applicant".

[11] Section 20A

Insert after section 20:

20A Use of assumed names or code-names in warrants

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(1) The Court may grant a warrant under this Part that refers to a person by an assumed name or code-name if the Court is satisfied that it is necessary to do so to protect the safety of the person.

(2) A person may be referred to by an assumed name or code-name in a notice under section 17 or report under section 5 (4) or 19 if the person who furnishes the notice or report believes on reasonable grounds that use of the assumed name is necessary to protect the safety of the person referred to.

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- (3) The only persons who may be referred to by assumed names or code-names are persons who are referred to as participants or potential participants in a conversation to which the warrant, notice or report relates.

[12] Section 21 Proceedings under this Part

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Omit "complaints" from section 21 (2) (a).
Insert instead "applications".

[13] Schedule 1 Savings and transitional provisions

Insert after clause 4:

5 Change in nomenclature

10

A warrant issued under section 16 or 18 before the commencement of Schedule 1.6 [3] or [6] to the *Criminal Legislation Further Amendment Act 1995* is taken to be a warrant issued under those sections as amended by that Act.

15

1.7 Summary Offences Act 1988 No 25

[1] Section 6A

Insert after section 6:

6A Unauthorised entry of vehicle or boat

A person must not, without reasonable excuse (proof of which lies on the person), enter any vehicle or boat in a public place without the consent of the owner or lawful occupier of the vehicle or boat.

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Maximum penalty: 4 penalty units.

[2] Section 10 Custody of offensive implement

Omit "10 penalty units or imprisonment for 6 months" from section 10 (1).

Insert instead "20 penalty units or imprisonment for 12 months".

1.8 Supreme Court Act 1970 No 52

5

Section 69A and 69B

Insert after section 69:

69A Release on bail and custody of claimants seeking judicial review of conviction or sentence

- (1) This section and section 69B apply to proceedings in the Court by a convicted person (*the claimant*) seeking judicial review in relation to a conviction or sentence for an offence. 10
- (2) A claimant who is not released on bail must, pending the determination of the proceedings, be treated in such manner as may be directed by regulations made under the *Prisons Act 1952* (which is referred to in this section as *special treatment*). 15
- (3) The time during which a claimant is at liberty on bail (pending the determination of the proceedings for review) does not count as part of any term of imprisonment or penal servitude under the claimant's sentence. 20
- (4) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the claimant's sentence. However, if the Court is satisfied that the claim was unarguable or frivolous, the Court may order that the time in custody with special treatment does not count. 25
- (5) In determining proceedings for judicial review, the Court may order that the imprisonment under the original sentence of imprisonment or penal servitude is to commence or recommence on a day specified by the Court. 30

-
- (6) Provision is to be made in regulations made under the *Prisons Act 1952* for:
- (a) the manner in which a claimant, when in custody, is to be brought to any place where the claimant is entitled to be present, or ordered to be taken, for the purposes of this Act, and 5
 - (b) the manner in which the appellant is to be kept in custody whilst absent from prison for the purpose.
- (7) A claimant while in custody in accordance with those regulations is taken to be in legal custody. 10
- 69B Other powers in relations to claimants for judicial review of convictions and sentences**
- (1) In determining proceedings for judicial review in relation to a conviction or sentence for an offence, the Court may make an order quashing either the conviction of, or the sentence imposed on, the claimant, or quash both the conviction and the sentence. 15
 - (2) This section applies to judicial review of orders made by a Local Court or the District Court despite anything contained in the *Justices Act 1902*. 20

