



New South Wales

Crimes Legislation Amendment (Sentencing) Act 1999 No 94

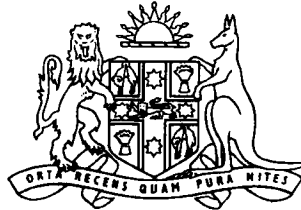
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New South Wales

Crimes Legislation Amendment (Sentencing) Act 1999 No 94

Act No 94, 1999

An Act to amend the *Criminal Procedure Act 1986*, the *Crimes Act 1900* and certain other Acts so as to rationalise provisions relating to criminal procedure, to abolish the penalty of penal servitude and the distinction between felonies and misdemeanours, and to make consequential amendments in connection with the enactment of the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*; and for other purposes. [Assented to 8 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Sentencing) Act 1999*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) The provisions of Schedule 2 [32], [33] and [34] commence:
 - (a) on the commencement of Schedule 2 to this Act, or
 - (b) on the commencement of the *Road Transport (Safety and Traffic Management) Act 1999*,whichever is the later.
- (3) The provisions of Schedule 2 [43]–[47] and Schedule 4.70 commence:
 - (a) on the commencement of Schedule 2 to this Act, or
 - (b) on the commencement of the *Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 1999*,whichever is the later.
- (4) The provisions of Schedule 4.66, 4.69 and 4.72 commence on the date of assent to this Act.
- (5) Different days may be appointed for the commencement of a single provision of this Act for the purpose of commencing the repeals or amendments effected by the provision on different days.

3 Repeals

Each Act and instrument specified in Schedule 1 is repealed.

4 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.

5 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 3.

6 Amendment of other Acts and instruments

Each Act and instrument specified in Schedule 4 is amended as set out in that Schedule.

7 Further amendment of other Acts and instruments with respect to abolition of penal servitude

- (1) Each Act referred to in Column 1 of Part 1 of Schedule 5 is amended by omitting the provision of that Act referred to in Column 2 of that Part and by inserting instead (with appropriate paragraph designation) the following paragraph:
 - () if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- (2) Each Act and instrument referred to in Column 1 of Part 2 of Schedule 5 is amended by omitting the provision of that Act or instrument referred to in Column 2 of that Part and by inserting instead (with appropriate paragraph designation) the following paragraph:
 - () is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- (3) Each Act and instrument referred to in Column 1 of Part 3 of Schedule 5 is amended by omitting the provision of that Act or instrument referred to in Column 2 of that Part and by inserting instead (with appropriate paragraph designation) the following paragraph:
 - () is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

Schedule 1 Repeals

(Section 3)

Community Service Orders Act 1979 No 192
Community Service Orders (Amendment) Act 1989 No 185
Community Service Orders Regulation 1995
Correctional Centres Act 1952 No 9
Correctional Centres Amendment Act 1998 No 2
Correctional Centres Amendment (Alternate Chairperson) Act 1997 No 57
Correctional Centres Amendment (Inspector-General) Act 1997 No 18
Forfeited Recognizances and Bail Act 1954 No 25
Home Detention Act 1996 No 78
Home Detention Regulation 1997
Periodic Detention of Prisoners Act 1981 No 18
Periodic Detention of Prisoners (Amendment) Act 1989 No 186
Periodic Detention of Prisoners Amendment Act 1998 No 43
Periodic Detention of Prisoners Further Amendment Act 1998 No 165
Prisons (Amendment) Act 1970 No 6
Prisons (Amendment) Act 1988 No 46
Prisons Amendment Act 1996 No 25
Sentencing Act 1989 No 87
Sentencing (Amendment) Act 1992 No 56
Sentencing Amendment (Parole) Act 1996 No 144
Sentencing Amendment (Transitional) Act 1997 No 8
Sentencing (Children) Regulation 1995
Sentencing (General) Regulation 1996
Sentencing Legislation Amendment Act 1997 No 5
Sentencing Legislation Further Amendment Act 1997 No 6
Sentencing (Savings and Transitional Provisions) Regulation 1989

Schedule 2 Amendment of Criminal Procedure Act 1986

(Section 4)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

apprehended violence order has the same meaning as it has in Part 15A of the *Crimes Act 1900*, and includes an interim apprehended violence order made under that Part.

court means:

- (a) the Supreme Court, the Court of Criminal Appeal, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or
- (b) any other court that, or person who, exercises criminal jurisdiction,

but, subject to the *Children (Criminal Proceedings) Act 1987*, does not include the Children's Court or any other court that, or person who, exercises the functions of the Children's Court.

prescribed sexual offence means:

- (a) an offence under section 61I, 61J, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the *Crimes Act 1900*, or
- (b) an offence that includes the commission, or an intention to commit, an offence referred to in paragraph (a), or
- (c) an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the *Crimes Act 1900*, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

[2] New sections 4, 5 and 6

Renumber existing sections 3A, 3B and 3C as sections 4, 5 and 6.

[3] New section 4 (3)

Omit “may be heard and determined in a summary manner only”.
Insert instead “is required to be dealt with summarily”.

[4] New section 4 (4)

Omit “heard and determined in a summary manner”.
Insert instead “dealt with summarily”.

[5] New section 6

Omit “Schedule 1”. Insert instead “Schedule 2”.

[6] Existing Part and Division headings

Omit the headings to existing Parts 2–12, including any Division headings in those Parts.

[7] Part 2, Headings

Insert the following headings after new section 6:

Part 2 Disposal of offences

Division 1 General

[8] New sections 7, 8 and 9

Insert after the heading to new Division 1 of Part 2:

7 Certain offences to be dealt with on indictment

- (1) An offence must be dealt with on indictment unless it is an offence that under this or any other Act is permitted or required to be dealt with summarily.

- (2) An offence may be dealt with on indictment if it is an offence that under this or any other Act is permitted to be dealt with summarily or on indictment.

8 Certain offences to be dealt with summarily

- (1) The following offences must be dealt with summarily:
- (a) an offence that under this or any other Act is required to be dealt with summarily,
 - (b) an offence that under this or any other Act is described as a summary offence,
 - (c) an offence (not being an offence that under this or any other Act is required to be dealt with on indictment) for which the maximum penalty that may be imposed is not, and does not include, imprisonment for more than 2 years.
- (2) An offence may be dealt with summarily if it is an offence that under this or any other Act is permitted to be dealt with summarily or on indictment.

9 Certain summary offences may be dealt with by Local Courts

- (1) An offence that is permitted or required to be dealt with summarily is to be dealt with by a Local Court constituted by a Magistrate sitting alone.
- (2) This section does not apply to an offence that, under this or any other Act, is required to be dealt with summarily otherwise than by a Local Court constituted by a Magistrate sitting alone.

[9] New sections 10, 11 and 12

Re-number existing sections 4, 5 and 6 as sections 10, 11 and 12.

[10] New section 13

Insert after new section 12:

13 Change of venue

In any criminal proceedings, if it appears to the Supreme Court or District Court:

- (a) that a fair or unprejudiced trial cannot otherwise be had, or
 - (b) that for any other reason it is expedient to do so,
- the Court may change the venue, and direct the trial to be held in such other district, or at such other place, as the Court thinks fit, and may for that purpose make all such orders as justice appears to require.

[11] New Part 2, Division 2

Insert the following heading after new section 13:

Division 2 Trial by jury

[12] New sections 14–17

Renumber existing sections 30–33 as sections 14–17 and transfer them to new Division 2 of Part 2.

[13] New Part 2, Division 3

Insert the following heading after new section 17:

Division 3 Summary disposal of indictable offences by Local Courts

[14] New sections 18–33

Renumber existing sections 33A–33P as sections 18–33 and transfer them to new Division 3 of Part 2.

[15] New sections 18–28

Omit “to this Part” and “of this Part” wherever occurring.
Insert instead “to Schedule 1” and “of this Division”, respectively.

[16] New sections 18–28

Omit “This Part” and “this Part” wherever occurring (otherwise than as referred to in item [15]).
Insert instead “This Division” and “this Division”, respectively.

[17] New section 27

Insert after new section 27 (4A):

(4AA) The maximum penalty that a Local Court may impose for an offence under section 310G of the *Crimes Act 1900* is 50 penalty units.

[18] New section 29

Omit “section 33F or 33H” from section 29 (2). Insert instead “section 23 or 25”.

[19] New section 34

Insert after new section 33:

34 Jurisdiction of Magistrates in respect of offences arising under Division 2 of Part 4 of Crimes Act 1900

If, by virtue of this Part, a Local Court has jurisdiction to deal with a charge arising under Division 2 of Part 4 of the *Crimes Act 1900*, the Local Court may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

[20] New Part 2, Division 4

Insert the following heading after new section 34:

Division 4 Supreme Court or District Court may deal with certain summary offences related to indictable offences

[21] New sections 35–39

Re-number existing sections 34–37 as sections 35–39 and transfer them to new Division 4 of Part 2.

[22] Part 3, headings

Insert the following headings after new section 39:

Part 3 Pre-trial matters

Division 1 Listing

[23] New sections 40–45

Re-number existing sections 7–12 as sections 40–45 and transfer them to new Division 1 of Part 3.

[24] Part 3, Division 2, heading

Insert the following heading after new section 45:

Division 2 Indemnities and undertakings

[25] New sections 46 and 47

Re-number existing sections 13 and 14 as sections 46 and 47 and transfer them to new Division 2 of Part 3.

[26] New Part 3, Division 3

Insert after new section 47:

Division 3 Pre-trial defence disclosure

48 Notice of alibi

- (1) This section applies only to trials on indictment.
- (2) An accused person may not, without the leave of the court, adduce evidence in support of an alibi unless, before the end of the prescribed period, he or she gives notice of particulars of the alibi.
- (3) Without limiting subsection (2), the accused person may not, without the leave of the court, call any other person to give evidence in support of an alibi unless:

-
- (a) the notice under that subsection includes the other person's name and address or, if the other person's name or address is not known to the accused person at the time he or she gives notice, any information in his or her possession that might be of material assistance in finding the other person, and
 - (b) if the other person's name or address is not included in the notice, the court is satisfied that the accused person before giving notice took, and thereafter continued to take, all reasonable steps to ensure that the other person's name or address would be ascertained, and
 - (c) if the other person's name or address is not included in the notice, but the accused person subsequently discovers the other person's name or address or receives other information that might be of material assistance in finding the other person, he or she immediately gives notice of the name, address or other information, and
 - (d) if the accused person is notified by or on behalf of the Crown that the other person has not been traced by the name or address given by the accused person, he or she immediately gives notice of any information that might be of material assistance in finding the other person and that is then in his or her possession or, on subsequently receiving any such information, immediately gives notice of it.
- (4) The court may not refuse leave under this section if it appears to the court that, on the committal for trial of the accused person, he or she was not informed by the committing justice of the requirements of subsections (2), (3) and (7) and, for that purpose, a statement in writing by the committing justice that the accused person was informed of those requirements is evidence that the accused person was so informed.
- (5) Any evidence tendered to disprove an alibi may, subject to any direction by the court, be given before or after evidence is given in support of the alibi.
- (6) Any notice purporting to be given under this section on behalf of the accused person by his or her legal practitioner is, unless the contrary is proved, to be taken to have been given with the authority of the accused person.

(7) A notice under this section must be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, by leaving it at the Director's office or by sending it in a letter addressed to the Director at the Director's office.

(8) In this section:

evidence in support of an alibi means evidence tending to show that, by reason of the presence of the accused person at a particular place or in a particular area at a particular time, the accused person was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

prescribed period means the period of 10 days commencing at the time of the accused person's committal for trial.

49 Notice of intention to adduce evidence of substantial mental impairment

(1) On a trial for murder, the accused person must not, without the leave of the court, adduce evidence tending to prove a contention of substantial mental impairment unless the accused person gives notice, as prescribed by the regulations, of his or her intention to raise that contention.

(2) Without limiting subsection (1), the accused person must not, without the leave of the court, call any other person to give evidence tending to prove a contention of substantial mental impairment unless the notice under this section includes:

- (a) the name and address of the other person, and
- (b) particulars of the evidence to be given by the other person.

(3) Any evidence tendered to disprove a contention of substantial mental impairment may, subject to any direction of the court, be given before or after evidence is given to prove that contention.

(4) Any notice purporting to be given under this section on behalf of the accused person by his or her legal practitioner is taken, unless the contrary is proved, to have been given with the authority of the accused person.

- (5) A notice under this section is to be given in writing to the Director of Public Prosecutions, and may be given by delivering it to the Director, by leaving it at the Director's office or by sending it in a letter addressed to the Director at the Director's office.
- (6) In this section, *contention of substantial mental impairment* means a contention by the accused person that the accused person is not liable to be convicted of murder by virtue of section 23A of the *Crimes Act 1900*.

[27] New Part 3, Division 4, heading

Insert the following heading after new section 49:

Division 4 Institution of proceedings

[28] New sections 50–56

Renumber existing sections 15–19 as sections 50–56 and transfer them to new Division 4 of Part 3.

[29] New Part 3, Division 5

Insert after new section 56:

Division 5 Form of indictments

57 Application of Division

This Division applies, to the extent that it is capable of being applied, to all offences, however arising (whether under an Act or at common law), whenever committed and in whatever court dealt with.

58 Certain defects do not affect indictment

An indictment is not bad, insufficient, void, erroneous or defective on any of the following grounds:

- (a) for the improper insertion or omission of the words “as appears by the record”, “with force and arms”, “against the peace”, “against the form of the statute” or “feloniously”,

- (b) for want of an averment of any matter unnecessary to be proved or necessarily implied,
- (c) for want of a proper or perfect venue or a proper or formal conclusion,
- (d) for want of any additional accused person or for any imperfection relating to any additional accused person,
- (e) for want of any statement of the value or price of any matter or thing, or the amount of damage or injury, if such value, price or amount is not of the essence of the offence,
- (f) for designating any person by the name of his or her office, or other descriptive appellation, instead of by his or her proper name,
- (g) except where time is an essential ingredient, for omitting to state the time at which an offence was committed, for stating the time wrongly or for stating the time imperfectly,
- (h) for stating an offence to have been committed on a day subsequent to the finding of the indictment, on an impossible day or on a day that never happened.

59 Indictment of bodies corporate

- (1) Unless a contrary intention appears, a provision of an Act relating to an offence applies to bodies corporate as well as to individuals.
- (2) On arraignment, a body corporate may enter a plea of “guilty” or “not guilty” by means of writing signed by its representative.
- (3) If no such plea is entered the court is to enter a plea of “not guilty”, and the trial is to proceed as though the body corporate had pleaded “not guilty”.
- (4) A representative of a body corporate need not be appointed under the body’s seal.
- (5) A written statement that:
 - (a) purports to be signed by one of the persons having the management of the affairs of the body corporate, and
 - (b) contains a statement to the effect that a named person is the body’s representative,

is admissible as evidence that the named person has been so appointed.

60 Venue in indictment

- (1) New South Wales is a sufficient venue for all places, whether the indictment is in the Supreme Court or any other court having criminal jurisdiction.
- (2) However, some district or place within, at or near which the offence is charged to have been committed must be mentioned in the body of the indictment.
- (3) Any such district or place is to be taken to be in New South Wales, and within the jurisdiction of the court, unless the contrary is shown.

61 When formal objections to be taken

- (1) An objection to an indictment for a formal defect apparent on its face must be taken, by demurrer or motion to quash the indictment, before the jury is sworn.
- (2) The court before which the objection is taken may cause the indictment to be amended and, in that case, the trial is to proceed as if there had been no defect.

62 Judgment on demurrer to indictment

The judgment against the accused person on demurrer is to be that the person “answer over” to the charge.

63 Traversing indictment

- (1) No traverse is to be allowed, or trial postponed, or time to plead to the indictment given, unless the court so orders.
- (2) However, if the court is of the opinion that the accused person ought to be allowed time, either to prepare for his or her defence or for any other reason, the court is to postpone the trial on such terms as it considers fit.

64 Orders for amendment of indictment, separate trial and postponement of trial

- (1) If of the opinion that an indictment is defective but, having regard to the merits of the case, can be amended without injustice, the court may make such order for the amendment of the indictment as it thinks necessary to meet the circumstances of the case.
- (2) If of the opinion:
 - (a) that an accused person may be prejudiced or embarrassed in his or her defence by reason of being charged with more than one offence in the same indictment, or
 - (b) that for any other reason it is desirable to direct that an accused person be tried separately for any one or more offences charged in an indictment,the court may order a separate trial of any count or counts of the indictment.
- (3) If of the opinion that the postponement of an accused person's trial is expedient as a consequence of it having amended an indictment or ordered a separate trial of a count, the court may make such order as appears necessary.
- (4) An order under this section may be made either before trial or at any stage during the trial.
- (5) The following provisions apply if an order is made under this section for a separate trial or for the postponement of a trial:
 - (a) if the order is made during the trial, the court may order that the jury be discharged from giving a verdict:
 - (i) on the count or counts in respect of which the trial is postponed, or
 - (ii) on the indictment,as the case may be,
 - (b) the procedure on the separate trial of a count, and the procedure on the postponed trial, are to be the same in all respects (if the jury has been discharged) as if the trial had not commenced,
 - (c) subject to the *Bail Act 1978*, the court may commit the accused person to a correctional centre.

- (6) Any power of the court under this section is in addition to and not in derogation of any other power of the court for the same or similar purposes.

65 Amended indictment

- (1) If any indictment is amended, a note of the order for amendment is to be endorsed on the indictment, and the indictment in its amended form is to be treated as the indictment for the purposes of the trial and all proceedings in connection with or consequent on the trial.
- (2) Any verdict or judgment given after the amendment of an indictment is to have the same force and effect as if the indictment had originally been in its amended form.
- (3) If it is necessary at any time to draw up a formal record of an indictment, the record may be drawn up in the words and form of the amended indictment, without notice of the fact of the amendment.

66 Indictment may contain up to 3 similar counts

- (1) Up to 3 counts may be inserted in the same indictment, against the same person, for distinct offences of the same kind committed against the same person.
- (2) This section does not apply if more than 6 months have elapsed between the first and last of the offences.
- (3) Nothing in this section affects the right of the Crown to insert alternative counts in any indictment.

67 Accessories may be charged together in one indictment

Any number of accessories (whether before or after the fact) may be charged with substantive serious indictable offences in the same indictment, and may be tried together, even though the principal offender is not included in the indictment, not in custody or not amenable to justice.

68 Indictment charging previous offence also

In an indictment against a person for an offence committed after the person was convicted of some previous offence (whether indictable or otherwise) it is sufficient, after charging the subsequent offence, to state that the accused person was (at a specified time and place) convicted of the previous offence, without particularly describing the previous offence.

69 Description of written instruments

If:

- (a) an indictment relates to an instrument that is written or printed, or partly written and partly printed, or
- (b) it is necessary to make an averment in an indictment with respect to an instrument that is written or printed, or partly written and partly printed,

it is sufficient to describe the instrument by any name or designation by which it is usually known, or by its purport, without setting out a copy of the instrument, or otherwise describing the instrument, and without stating the value of the instrument.

70 General averment of intent to defraud or injure

- (1) It is sufficient to allege that the accused person did an act with intent to defraud or injure without alleging an intent to defraud or injure any particular person.
- (2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it is not necessary to state the fraudulent intent or purpose.

71 Indecent assault

In an indictment for an indecent assault, it is sufficient to state that the accused person (at a specified time and place) committed an indecent assault on the person alleged to have been assaulted, without stating the mode of assault.

72 Partners and partnership property

- (1) In an indictment:
 - (a) it is sufficient to describe partners, joint tenants, parceners or tenants in common by naming one of them and referring to the others as “another” or “others”, as the case requires, and
 - (b) it is sufficient to state the ownership of property belonging to partners, joint tenants, parceners or tenants in common by naming one of them and alleging the property to belong to the person so named and “another” or “others”, as the case requires.
- (2) This section extends to all joint stock companies, executors, administrators and trustees.

73 Where not necessary to allege particular ownership

In any indictment in respect of any of the following matters:

- (a) stealing, destroying or injuring any testamentary instrument, any document issued by a court or anything fixed or growing in any place set aside for public use,
- (b) any offence committed in or in relation to a place of divine worship,
- (c) any offence committed in relation to property in any public library or other public building,
- (d) anything mentioned in section 202 or 210 of the *Crimes Act 1900*,

it is not necessary to allege that the thing in respect of which the offence was committed is the property of any person.

74 Stealing and receiving in one indictment

- (1) In an indictment containing a charge of stealing property, a further charge may be added against the same person for unlawfully receiving the property, or any part of the property, knowing it to have been stolen.
- (2) The prosecuting authority is not to be put to election as to those charges.

75 Separate receivers may be charged in one indictment

If property has been stolen, taken, embezzled, obtained, fraudulently applied or disposed of in such a manner as to amount to a serious indictable offence:

- (a) any number of receivers at different times of the property, and
- (b) any number of receivers of different parts of the property,

may be charged with substantive serious indictable offences in the same indictment, and be tried together, even if the principal offender is not included in the indictment, not in custody or not amenable to justice.

76 Allegations in indictment as to money or securities stolen

(1) In an indictment:

- (a) for stealing, taking, receiving, or embezzling any money or valuable security, or
- (b) for misappropriating, or fraudulently applying or disposing of, any money or valuable security, or
- (c) for obtaining any money or valuable security by any threat or false pretence, or partly by a false pretence and partly by a wilfully false promise,

it is sufficient to describe the property as a “certain amount of money” or a “certain valuable security”, without specifying any particular kind of money or security.

(2) Such a description may be sustained by proof of the stealing, taking, receiving, embezzling, appropriating, disposal or obtaining of any money or valuable security:

- (a) even if some part of its value was agreed to be, or was in fact, returned, and
- (b) even if, as regards money, the particular kind of money is not proved or provable.

77 Indictment for stealing by tenants

An indictment against a person for stealing property let to be used by the person as a tenant or lodger in relation to premises is sufficient:

- (a) in the case of a chattel, if it is in the common form for larceny, and
- (b) in the case of a fixture, if it is in the same form as if the person were not a tenant or lodger,

and in either case the property may be described as being owned by the owner of the premises or by the person letting the premises.

78 Indictment for stealing deeds

- (1) In an indictment for stealing, embezzling, destroying, cancelling, obliterating or concealing any document of title to land, or any part of land, it is sufficient:

- (a) to allege that the document contains evidence of the title to the land, and
- (b) to mention the person, or one of the persons, having an interest in the land or any part of the land.

- (2) In this section:

document of title to land includes any deed, certificate of title, map, paper or parchment (whether written or printed, or partly written and partly printed) that is or contains evidence of the title, or part of the title, to any real estate or any interest in or out of real estate.

79 Indictment for larceny by public servant, property to be described as property of the State

In an indictment for larceny or embezzlement as a public servant, the property may be described as the property of the State, from which it is taken to have been stolen.

80 Description in indictment for engraving

In an indictment:

- (a) for engraving or making the whole or any part of any instrument or thing, or
- (b) for using or having possession of any plate or material on which the whole or any part of any instrument or thing is engraved or made, or
- (c) for having possession of paper on which the whole or any part of any instrument or thing is made or printed,

it is sufficient to describe any such instrument or thing by any name or designation by which it is usually known, without setting out a copy of it or any part of it.

81 Indictment for sale of counterfeit coin

In an indictment with respect to the unlawful buying, selling, paying, putting off or receiving of counterfeit coin, it is not necessary to allege at what rate, or for what price, the coin was bought or sold or offered to be bought, sold, paid, put off or received.

82 Indictment for perjury

(1) In an indictment for perjury, it is sufficient:

- (a) to allege that, on a certain day, at a certain place and before a named person, the accused person falsely swore, declared or affirmed the matter charged as false:
 - (i) stating only the substance of the matter, and
 - (ii) averring that the matter was falsely sworn, declared or affirmed on an occasion when the truth of the matter was material, and
- (b) to state generally that the matter charged as false was false in fact without negating each or any aspect of the matter.

(2) Consequently, it is not necessary:

- (a) to specify the occasion on which the matter charged as false was falsely sworn, declared or affirmed, or
- (b) to show how the matter charged as false was material, or

- (c) to specify the proceedings in or in relation to which the matter charged as false was falsely sworn, declared or affirmed, or
- (d) to specify the judicial or official character of the person administering the oath, or taking the declaration or affirmation, charged as false.

83 Indictment for conspiracy

- (1) This section applies to an indictment for conspiracy.
- (2) It is not necessary to state any overt act of conspiracy.
- (3) Each accused person, whether 2 or more are included in the same indictment or not:
 - (a) may be charged separately, in any count:
 - (i) as having conspired with other persons, of whom it is sufficient to name one only, or
 - (ii) as having conspired with one other named person only, and
 - (b) may be convicted on any such count on proof of having unlawfully conspired, for the purpose alleged in the indictment, with any one of the named persons.
- (4) No more than 3 counts against the same accused person may be inserted in one indictment.
- (5) In any case before a plea is entered, the court may order such particulars to be given as the court considers appropriate.
- (6) If substantially different conspiracies are charged in the same indictment, the prosecuting authority may be put to election as to the one on which to proceed.

84 Procedures regarding obscene or blasphemous libel

- (1) In any indictment against the publisher of an obscene or blasphemous libel, it is not necessary to set out the obscene or blasphemous passages.
- (2) It is sufficient to tender the book, newspaper or other document containing the alleged libel with the indictment, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found.

- (3) The particulars referred to in subsection (2) are taken to form part of the record of the proceedings.
- (4) All proceedings may be taken as though the passages complained of had been set out in the indictment.

85 Supreme Court rules may prescribe forms of indictments

- (1) Without limiting the rule-making powers conferred by the *Supreme Court Act 1970*, rules may from time to time be made under that Act prescribing forms of indictments, records, informations, depositions, convictions, warrants and processes in all courts for any offence.
- (2) Any form prescribed by those rules is taken to be sufficient for the purpose, and to sufficiently state the offence, for which it is prescribed.

[30] New Part 3, Division 6

Insert after new section 85:

Division 6 Pleadings

86 Arraignment on charge of previous conviction

- (1) An accused person is not to be arraigned for any previous conviction charged in an indictment unless he or she is convicted of a subsequent offence charged in the indictment.
- (2) On the accused person's conviction of the subsequent offence:
 - (a) the accused person is to be arraigned, and
 - (b) the jury is to be charged, and
 - (c) the trial is to proceed,in relation to the previous conviction.
- (3) In the trial for the subsequent offence, evidence of the previous conviction may not be admitted, except in reply to evidence of character, unless the accused person is convicted of the subsequent offence.

87 Guilty plea to offence not charged

- (1) If an accused person:
 - (a) is arraigned on an indictment for an offence, and
 - (b) can lawfully be convicted on the indictment of some other offence not charged in the indictment,he or she may plead “not guilty” of the offence charged in the indictment, but “guilty” of the other offence.
- (2) The Crown may elect to accept the plea of “guilty” or may require the trial to proceed on the charge on which the accused person is arraigned.

88 Plea of “not guilty”

If an accused person arraigned on an indictment pleads “not guilty”, the accused person is taken to have put himself or herself on the country for trial, and the court is to order a jury for trial accordingly.

89 Refusal to plead

If an accused person who is arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of “not guilty” to be entered on behalf of the accused person, and the plea so entered has the same effect as if the accused person had actually pleaded “not guilty”.

90 Plea of autrefois convict

- (1) In any plea of autrefois convict, or of autrefois acquit, it is sufficient for the accused person to allege that he or she has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of the previous conviction or acquittal.
- (2) The issue of autrefois convict or autrefois acquit is to be determined by the court without the presence of a jury.

91 Change to guilty plea during trial

- (1) If an accused person pleads “guilty” to an offence at any time after having been given into the charge of a jury, and the court accepts the plea, the court is to discharge the jury from giving a verdict in the matter and to find the accused person guilty of the offence.
- (2) The finding has effect as if it were the verdict of the jury, and the accused person is liable to punishment accordingly.

[31] New Part 4

Insert after new section 91:

Part 4 Criminal procedure generally

Division 1 Application of Part

92 Application of Part

This Part applies, to the extent that it is capable of being applied, to all offences, however arising (whether under an Act or at common law), whenever committed and in whatever court dealt with.

Division 2 General trial procedure

93 Practice as to entering the dock

The Judge may order the accused person to enter the dock or other place of arraignment or may allow him or her to remain on the floor of the court, and in either case to sit down, as the Judge considers appropriate.

94 Right to inspect depositions on trial

An accused person is entitled on his or her trial to inspect, without fee, all depositions taken against the person and returned to, or held by, the court before which he or she is on trial.

95 Abolition of an accused person's right to make unsworn statement or to give unsworn evidence

Any rule of law, procedure or practice that permits a person who is charged with the commission of a criminal offence to make an unsworn statement or to give unsworn evidence in answer to the charge is abolished.

96 Accused person may be defended by counsel

An accused person is entitled to make full answer and defence by counsel.

97 Opening address to jury by accused person

- (1) An accused person or his or her counsel may address the jury immediately after the opening address of the prosecuting authority.
- (2) Any such opening address is to be limited generally to an address on:
 - (a) the matters disclosed in the prosecuting authority's opening address, including those that are in dispute and those that are not in dispute, and
 - (b) the matters to be raised by the accused person.
- (3) If the accused person intends to give evidence or to call any witness in support of the defence, the accused person or his or her counsel is entitled to open the case for the defence before calling evidence, whether or not an address has been made to the jury.

98 Closing address to jury by accused person

- (1) An accused person or his or her counsel may address the jury after the close of the evidence for the defence and any evidence in reply by the Crown and after the prosecuting authority has made a closing address to the jury or declined to make a closing address to the jury.
- (2) If, in the accused person's closing address, relevant facts are asserted that are not supported by any evidence that is before the jury, the court may grant leave for the Crown to make a supplementary address to the jury replying to any such assertion.

99 Summary by Judge

- (1) At the end of a criminal trial before a jury, a Judge need not summarise the evidence given in the trial if of the opinion that, in all the circumstances of the trial, a summary is not necessary.
- (2) This section applies despite any rule of law or practice to the contrary.
- (3) Nothing in this section affects any aspect of a Judge's summing up function other than the summary of evidence in a trial.

100 Witnesses in mitigation

- (1) After convicting an accused person of an offence, and before passing sentence, the court may summon witnesses and examine them on oath in respect of any matter in mitigation of the offence.
- (2) The court may do so on application made by or on behalf of the Crown or by or on behalf of the accused person.

Division 3 Evidentiary provisions

101 Proof of service of notice to produce

An affidavit by:

- (a) the Director of Public Prosecutions or the Solicitor for Public Prosecutions, or
- (b) a member of the staff of the Director of Public Prosecutions, or
- (c) a legal practitioner or legal practitioner's clerk, or
- (d) the accused person, or
- (e) a police officer,

as to the service of any notice to produce and of the time when it was served, with a copy of the notice annexed to the affidavit, is sufficient evidence of the service of the original of the notice and of the time when it was served.

102 Stealing goods from vessel or wharf

- (1) This section applies to the following offences:
- (a) any offence involving the stealing of property:
 - (i) from any vessel, barge, boat or train, or
 - (ii) from any dock, wharf, quay, railway yard or other railway premises, or
 - (iii) from any store or shed used in connection with and adjoining any such dock, wharf, quay, railway yard or other railway premises, or
 - (iv) in the course of transit from any vessel, barge, boat or train, or from any store or shed used in connection with and adjoining such wharf, dock, quay, railway yard or other railway premises, or
 - (b) any offence involving the receiving of property so stolen knowing it to have been stolen.
- (2) On the prosecution of any person for an offence to which this section applies:
- (a) evidence may be given of any writing, printing, or marks on any property alleged to have been stolen or received, or on any package containing such property, without producing or giving notice to produce the original writing, printing or marks, and
 - (b) any document purporting to be a document of title to any property alleged to have been stolen or received:
 - (i) is admissible in evidence on production and without further proof, and
 - (ii) is evidence of the particulars contained in the document, and that the ownership of the property is in the consignee referred to in the document or his or her assignee.
- (3) In this section:
- document of title*** to property includes:
- (a) any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant, or order for the delivery or transfer of any goods or valuable thing, and
 - (b) any bought and sold note or other document:
 - (i) used in the ordinary course of business as proof of the possession or control of goods, or

- (ii) purporting to authorise, by endorsement or delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

train includes any railway carriage, railway truck or other railway vehicle that is on any railway.

103 Incriminating statements admissible though on oath

An incriminating statement made voluntarily by an accused person before any charge has been preferred against the accused person in respect of an indictable offence is not to be rejected merely because the statement was made on oath.

104 Compellability of spouses to give evidence in certain proceedings

(1) In this section:

- (a) a reference to the husband or wife of an accused person includes a reference to a person living with the accused person as the husband or wife of the accused person on a bona fide domestic basis although not married to the accused person, and
- (b) a reference to a domestic violence offence is a reference to a domestic violence offence within the meaning of the *Crimes Act 1900*, and
- (c) a reference to a domestic violence offence committed on the husband or wife of an accused person includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended violence order that was made against the accused person and in respect of which the husband or wife was the protected person, and
- (d) a reference to a child assault offence is a reference to:
 - (i) a prescribed sexual offence committed on a child under the age of 18 years, or
 - (ii) an offence under, or mentioned in, section 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 42, 43, 44, 46, 47, 48, 49, 58, 59 or 61 of the *Crimes Act 1900* committed on a child under the age of 18 years, or

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- (iii) an offence that, at the time it was committed, was a child assault offence for the purposes of this section or section 407AA of the *Crimes Act 1900*, or
 - (iv) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in subparagraph (i), (ii) or (iii), and
 - (e) a reference to a child assault offence committed on a child includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended violence order that was made against the accused person and in respect of which that child was the protected person.
 - (2) The husband or wife of an accused person in proceedings in any court:
 - (a) for a domestic violence offence (other than an offence arising from a negligent act or omission) committed on the husband or wife, or
 - (b) for a child assault offence (other than an offence arising from a negligent act or omission) committed on:
 - (i) a child living in the household of the accused person, or
 - (ii) a child who, although not living in the household of the accused person, is a child of the accused person and the husband or wife,

is compellable to give evidence in the proceedings, either for the prosecution or for the defence, without the consent of the accused person.
 - (3) The husband or wife of an accused person is not compellable to give evidence for the prosecution as referred to in subsection (2) if the husband or wife has applied to, and been excused by, the court.
 - (4) A court may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) if satisfied:
 - (a) that the application to be excused is made by that husband or wife freely and independently of threat or any other improper influence by any person, and

- (b) that it is relatively unimportant to the case to establish the facts in relation to which it appears that the husband or wife is to be asked to give evidence, or there is other evidence available to establish those facts, and
 - (c) that the offence with which the accused person is charged is of a minor nature.
- (5) When excusing the husband or wife of an accused person from giving evidence under subsection (4), the court:
 - (a) must state the reasons for doing so, and
 - (b) must cause those reasons to be recorded in writing in a form prescribed by the regulations.
- (6) An application under this section by the husband or wife of an accused person to be excused from giving evidence is to be made and determined in the absence of the jury (if any) and the accused person, but in the presence of the accused person's counsel.
- (7) A court may conduct the hearing of an application under this section in any manner it thinks fit, and is not bound to observe rules of law governing the admission of evidence but may obtain information on any matter in any manner it thinks fit.
- (8) The fact that the husband or wife of an accused person in proceedings for an offence has applied to be excused, or has been excused, from giving evidence in the proceedings is not to be made the subject of any comment by the court or by any party in the proceedings.

105 Admissibility of evidence relating to sexual experience

- (1) This section applies to prescribed sexual offence proceedings.
- (2) Evidence relating to the sexual reputation of the complainant is inadmissible.
- (3) Evidence that discloses or implies:
 - (a) that the complainant has or may have had sexual experience or a lack of sexual experience, or
 - (b) has or may have taken part or not taken part in any sexual activity,is inadmissible.

- (4) Subsection (3) does not apply:
- (a) if the evidence:
 - (i) is of the complainant's sexual experience or lack of sexual experience, or of sexual activity or lack of sexual activity taken part in by the complainant, at or about the time of the commission of the alleged prescribed sexual offence, and
 - (ii) is of events that are alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed,
 - (b) if the evidence relates to a relationship that was existing or recent at the time of the commission of the alleged prescribed sexual offence, being a relationship between the accused person and the complainant,
 - (c) if:
 - (i) the accused person is alleged to have had sexual intercourse (as defined in section 61H (1) of the *Crimes Act 1900*) with the complainant, and the accused person does not concede the sexual intercourse so alleged, and
 - (ii) the evidence is relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person,
 - (d) if the evidence is relevant to:
 - (i) whether at the time of the commission of the alleged prescribed sexual offence there was present in the complainant a disease that, at any relevant time, was absent in the accused person, or
 - (ii) whether at any relevant time there was absent in the complainant a disease that, at the time of the commission of the alleged prescribed sexual offence, was present in the accused person,

- (e) if the evidence is relevant to whether the allegation that the prescribed sexual offence was committed by the accused person was first made following a realisation or discovery of the presence of pregnancy or disease in the complainant (being a realisation or discovery that took place after the commission of the alleged prescribed sexual offence),
- (f) if the evidence has been given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question that may, pursuant to subsection (6), be asked,

and if the probative value of the evidence outweighs any distress, humiliation or embarrassment that the complainant might suffer as a result of its admission.

- (5) A witness must not be asked:
 - (a) to give evidence that is inadmissible under subsection (2) or (3), or
 - (b) by or on behalf of the accused person, to give evidence that is or may be admissible under subsection (4) unless the court has previously decided that the evidence would, if given, be admissible.
- (6) If the court is satisfied:
 - (a) that it has been disclosed or implied in the case for the prosecution against the accused person that the complainant has or may have, during a specified period or without reference to any period:
 - (i) had sexual experience, or a lack of sexual experience, of a general or specified nature, or
 - (ii) had taken part in, or not taken part in, sexual activity of a general or specified nature, and
 - (b) the accused person might be unfairly prejudiced if the complainant could not be cross-examined by or on behalf of the accused person in relation to the disclosure or implication,

the complainant may be so cross-examined, but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.

(7) On the trial of a person, any question as to the admissibility of evidence under subsection (2) or (3) or the right to cross-examine under subsection (6) is to be decided by the court in the absence of the jury.

(8) If the court decides that evidence is admissible under subsection (4), the court must, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.

(9) In this section:

accused person, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence.

complainant, in relation to any proceedings, means the person, or any of the persons, on whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

prescribed sexual offence proceedings means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

106 Disclosure of address or telephone number of witness

(1) A witness in proceedings for an offence, or a person who makes a written statement that is likely to be produced in proceedings for an offence, is not required to disclose his or her address or telephone number, unless:

- (a) the address or telephone number is a materially relevant part of the evidence, or
- (b) the court makes an order requiring the disclosure.

(2) An application for such an order may be made by the prosecution or the defence.

(3) The court may make such an order only if it is satisfied that disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice outweigh any such risk.

- (4) An address or telephone number that is not required to be disclosed and that is contained in a written statement may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is produced in court or given to the accused person.
- (5) A written statement is not inadmissible as evidence on the ground that it either does or does not disclose any such address or telephone number as referred to in this section.
- (6) This section does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address.
- (7) This section does not affect the operation of section 48BA of the *Justices Act 1902*.
- (8) In this section:
address includes a private, business or official address.
telephone number includes a private, business or official telephone number.

107 Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings

- (1) This section applies if, on the trial of a person for a prescribed sexual offence, evidence is given or a question is asked of a witness that tends to suggest:
 - (a) an absence of complaint in respect of the commission of the alleged offence by the person on whom the offence is alleged to have been committed, or
 - (b) delay by that person in making any such complaint.
- (2) In circumstances to which this section applies, the Judge:
 - (a) must warn the jury that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and
 - (b) must inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault.

108 Admissions by suspects

- (1) This section applies to an admission:
 - (a) that was made by an accused person who, at the time when the admission was made, was or could reasonably have been suspected by an investigating official of having committed an offence, and
 - (b) that was made in the course of official questioning, and
 - (c) that relates to an indictable offence, other than an indictable offence that can be dealt with summarily without the consent of the accused person.
- (2) Evidence of an admission to which this section applies is not admissible unless:
 - (a) there is available to the court:
 - (i) a tape recording made by an investigating official of the interview in the course of which the admission was made, or
 - (ii) if the prosecution establishes that there was a reasonable excuse as to why a tape recording referred to in subparagraph (i) could not be made, a tape recording of an interview with the person who made the admission, being an interview about the making and terms of the admission in the course of which the person states that he or she made an admission in those terms, or
 - (b) the prosecution establishes that there was a reasonable excuse as to why a tape recording referred to in paragraph (a) could not be made.
- (3) The hearsay rule and the opinion rule (within the meaning of the *Evidence Act 1995*) do not prevent a tape recording from being admitted and used in proceedings before the court as mentioned in subsection (2).
- (4) In this section:

investigating official means:

 - (a) a police officer (other than a police officer who is engaged in covert investigations under the orders of a superior), or

- (b) a person appointed by or under an Act (other than a person who is engaged in covert investigations under the orders of a superior) whose functions include functions in respect of the prevention or investigation of offences prescribed by the regulations.

official questioning means questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence.

reasonable excuse includes:

- (a) a mechanical failure, or
- (b) the refusal of a person being questioned to have the questioning electronically recorded, or
- (c) the lack of availability of recording equipment within a period in which it would be reasonable to detain the person being questioned.

tape recording includes:

- (a) audio recording, or
- (b) video recording, or
- (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.

Division 4 Medical examinations and law enforcement devices

109 Medical examinations

- (1) Unless otherwise directed by the court, it is not necessary for a person who has made a scientific examination of any article or living person or dead body to give evidence of the result of the examination.
- (2) A certificate under the hand of any such person stating:
 - (a) that he or she has made the examination, and
 - (b) the nature of his or her scientific qualifications, and
 - (c) the facts and conclusions he or she has arrived at,is admissible as evidence of the matters stated in the certificate.

- (3) If such a certificate is tendered by the prosecuting authority, a court may not dispose of the case summarily except with the consent of the accused person.

110 Law enforcement devices

- (1) A certificate:
- (a) that would, by virtue of section 4AB, 4AC, 4DA, 4E, 4G or 5AB of the *Traffic Act 1909*, be admissible in proceedings for an offence under that Act as evidence of the particulars certified in and by the certificate, or
 - (b) that would, by virtue of section 24, 25 or 26 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*, be admissible in proceedings for an offence under that Act as evidence of the particulars certified in and by the certificate,

is admissible in all criminal proceedings as evidence of those particulars.

- (2) Despite subsection (1), such a certificate is not admissible in proceedings under the *Drug Misuse and Trafficking Act 1985* as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.
- (3) Evidence is not required in any criminal proceedings:
- (a) as to the accuracy or reliability of any approved camera detection device, approved camera recording device, approved speed measuring device or breath analysing instrument to which such a certificate relates, or
 - (b) as to the manner in which any approved camera detection device, approved camera recording device, approved speed measuring device or breath analysing instrument to which such a certificate relates was operated,

unless evidence is adduced that the device or instrument was not accurate, was not reliable or was not properly operated.

- (4) A photograph that would, by virtue of section 4AC or 4DA of the *Traffic Act 1900*, be admissible in proceedings under that Act as evidence of the matters shown or recorded on the photograph is admissible in all criminal proceedings as evidence of those matters.
- (5) In this section, *approved camera detection device*, *approved camera recording device*, *approved speed measuring device* and *breath analysing instrument* have the same meanings as they have in the *Traffic Act 1909*.

Division 5 Depositions and written statements

111 Depositions by persons dangerously ill

- (1) If it appears to a justice that:
 - (a) a person who is able to give material information about an indictable offence is dangerously ill, and
 - (b) the person's evidence will probably be lost if not immediately taken,the justice may take the deposition of the person in connection with the offence in the same way as if a prosecution for the offence were then pending before the court.
- (2) The deposition must be in the form prescribed by the regulations and must be signed by the justice.
- (3) As soon as practicable after the deposition is taken, a copy of the deposition must be delivered to the Attorney General, to the Director of Public Prosecutions and to each person whom the deposition tends to incriminate.
- (4) If practicable, each person whom the deposition tends to incriminate is entitled, before being committed or placed on trial, to be given full opportunity to cross-examine the deponent.
- (5) If in proceedings against an accused person:
 - (a) for the offence to which the deposition relates, or

- (b) for the murder or manslaughter of the deponent, in the case of his or her death or alleged death by reason of the offence,

it is proved to the satisfaction of the court that the deponent is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the deponent's life, the deposition may be admitted as evidence for or against the accused person, whether or not it was taken in the presence or hearing of the prosecuting authority or the accused person.

112 Depositions tendered by prosecution

- (1) A deposition may be admitted as evidence for the prosecution at the trial of an accused person on proof on oath of each of the following matters:
 - (a) that the deponent:
 - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the deponent's life, or
 - (ii) is absent from Australia,
 - (b) that the deposition was recorded:
 - (i) by or in the presence of the justice before whom it was taken, and
 - (ii) in the presence of the accused person or during any period when the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent,
 - (c) that the accused person, or his or her counsel, had full opportunity to cross-examine the witness, or that the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent when the deposition was taken and was not represented by counsel.
- (2) The deposition:
 - (a) must be in writing, signed by the justice by or before whom the deposition was taken, or
 - (b) must be in the form of a written transcript of matter recorded by means, other than writing, authorised by law for the recording of depositions.

- (3) If the deposition is in the form of a written transcript referred to in subsection (2) (b), it must be proved on oath:
- (a) that the record so made is a true record of the matter so deposed, and
 - (b) that the transcript of the record is a correct transcript of that record.
- (4) If it appears from the deposition:
- (a) that it was made in the presence of the accused person, and
 - (b) that the accused person, or his or her counsel, had full opportunity to cross-examine the witness,
- the deposition is taken to have been so made and the accused person, or his or her counsel, is taken to have had such an opportunity, unless proved to the contrary.
- (5) If it appears from the deposition:
- (a) that it was made while the accused person (having been excused under section 41 (1B) of the *Justices Act 1902*) was absent, and
 - (b) that the accused person was not represented by counsel at that time,
- the deposition is taken to have been so made and the accused person is taken to have not been represented by counsel, unless proved to the contrary.
- (6) In this section, *justice* includes a coroner holding office under the *Coroners Act 1980*.

113 Depositions tendered by accused person

- (1) The deposition of any witness called and examined before a justice by and on behalf of the accused person may, if the accused person so requires, be admitted as evidence in his or her defence at the trial:
- (a) if the witness:
 - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the witness's life, or
 - (ii) is absent from Australia, or

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- (b) if the committing justice has certified, before committing the accused person for trial, that in the opinion of the justice:
 - (i) the evidence of the witness is material, and
 - (ii) the witness is willing to attend the trial, but is unable to bear the expense of attendance.
 - (2) A deposition may not be admitted as evidence on the ground referred to in subsection (1) (b) if the witness has, in due time before the trial, been subpoenaed by the Crown.
 - (3) In this section, *justice* includes a coroner holding office under the *Coroners Act 1980*.

114 Evidentiary effect of certain transcripts

- (1) If a deposition referred to in section 112 or 113 is in the form of a written transcript of matter recorded by means, other than writing, authorised by law for the recording of depositions:
 - (a) the record so made is taken to be a true record of the matter so deposed, and
 - (b) the transcript of the record is taken to be a correct transcript of that record,unless proved to the contrary.
- (2) Subsection (1) applies only to:
 - (a) a transcript made in the form of shorthand notes, being a transcript identified by, and signed in the handwriting of, the person purporting to have made those notes, or
 - (b) a transcript made by other means (other than writing) authorised by law for the recording of depositions, being a transcript certified in the manner prescribed by the regulations made under the *Justices Act 1902*.

115 Depositions taken during pre-trial investigations

A deposition taken on the preliminary or other investigation of an indictable offence:

- (a) may be admitted as evidence on the trial of the accused person for any other offence, whether of the same or of a different kind, if it would be admissible on his or her trial for the offence in respect of which it was taken, and

- (b) may be proved in the same manner as if the accused person were on trial for that offence.

116 Written statements admitted in committal proceedings

- (1) This section applies to:
 - (a) a written statement the whole or any part of which has been admitted as evidence under section 48A of the *Justices Act 1902*, including any part of the statement that has been rejected under section 48F of that Act,
 - (b) a written statement the whole or any part of which has been tendered as evidence under section 51A of the *Justices Act 1902*,referred to in this section as a *prescribed written statement*.
- (2) Except in so far as the court otherwise orders, a prescribed written statement may be admitted as evidence for the prosecution at the trial of the accused person on proof on oath that the person who made the statement:
 - (a) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the person's life, or
 - (b) is absent from Australia.
- (3) If the accused person so requires, a prescribed written statement may be admitted as evidence in the accused person's defence at the trial of the accused person whenever:
 - (a) the person who made the statement:
 - (i) is dead, or so ill as not to be able to travel or to give evidence without a risk of endangering the person's life, or
 - (ii) is absent from Australia, or
 - (b) the committing justice has certified, before committing the person for trial, that in the opinion of the justice:
 - (i) the evidence of the person who made the statement is material, and
 - (ii) the person is willing to attend the trial, but is unable to bear the expense of attendance.

- (4) A statement may not be admitted as evidence on the ground referred to in subsection (3) (b) if the person who made the statement has, in due time before the trial, been subpoenaed by the Crown.
- (5) A prescribed written statement made in respect of an indictable offence may be admitted as evidence on the trial of the accused person for any other offence, whether of the same or of a different kind, if it would be admissible on his or her trial for the offence in respect of which it was made.
- (6) If at a trial it appears to the court that the whole or any part of a prescribed written statement is inadmissible, the court may reject the statement or that part, as the case may be, as evidence.

Division 6 Restrictions on disclosure of evidence in certain sexual offence proceedings

117 Application of Division

This Division applies to and in respect of the following offences:

- (a) a prescribed sexual offence, or
- (b) an offence under section 66, 73, 74, 78A, 78B, 78N, 78O, 78Q, 79, 80, 86, 87, 89, 90, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
- (c) an offence that, at the time it was committed, was an offence to which this Division, or section 77A or 578 of the *Crimes Act 1900*, applied, or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

118 Proceedings in camera in certain cases

- (1) Any proceeding, or any part of any proceeding, in respect of an offence to which this Division applies is, if the court so directs, to be held in camera.

- (2) If the court makes a direction under this section, it may (either absolutely or subject to conditions) exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose that the court thinks fit.
- (3) The court may make a direction under this section on its own motion or at the request of any party to the proceedings.
- (4) In determining whether to make a direction under this section the court is to consider the following matters:
 - (a) the need of the complainant to have any person excluded from those proceedings,
 - (b) the need of the complainant to have any person present in those proceedings,
 - (c) the interests of justice,
 - (d) any other matter that the court thinks relevant.
- (5) In this section:

complainant, in relation to any proceedings for an offence, means the person, or any of the persons, on whom the offence is alleged to have been committed and includes:

 - (a) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
 - (b) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

119 Publication of evidence may be forbidden in certain cases

- (1) In any proceedings against a person for an offence to which this Division applies, the court may from time to time make an order forbidding publication of the whole or any part of the evidence tendered in the proceedings or of any report or account of that evidence.

- (2) If the prosecuting authority or the accused person indicates to the court that it is desired that any particular matter given in evidence should be available for publication, no such order is to be made in respect of that matter.
- (3) Any person who contravenes an order under this section is guilty of a summary offence and liable to a maximum penalty of 20 penalty units.
- (4) This section is subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

Division 7 Miscellaneous

120 No court fees to be taken from accused persons

- (1) This section applies to criminal proceedings in any court in respect of any offence.
- (2) Despite subsection (1), this section does not apply to:
 - (a) proceedings for a summary offence for which a penalty notice has been issued as referred to in section 20 of the *Fines Act 1996*, but in respect of which the accused person has elected to have the matter dealt with by a court under section 36 of that Act, or
 - (b) proceedings that are brought in a court for the purpose of appealing against, or obtaining a review of, some other court's order or decision in proceedings for a summary offence.
- (3) No court fees are payable:
 - (a) for the issuing of any process on behalf of the accused person, or
 - (b) for the recording of any appearance or plea made by the accused person,

in connection with criminal proceedings to which this section applies.

121 Witnesses neglecting to attend trial captured under warrant may be admitted to bail

If a person bound by a bail undertaking, or served with a subpoena, to attend as a witness in any court at a trial:

- (a) fails to appear when called in open court, either at such trial, or on the day appointed for such trial, and
- (b) is arrested under a warrant issued by the court,

bail may be taken before any justice for his or her appearance at the trial.

122 On trial for perjury: presumption of authority to administer oath

On a trial for perjury, the person before whom the perjury is alleged to have been committed is presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown.

123 Joint trial in case of perjury

If:

- (a) a number of persons are severally indicted for perjury or false swearing, and
- (b) the statements alleged to be false:
 - (i) are alleged to have been made on the same occasion, before the same court or tribunal and in respect of the same subject-matter, and
 - (ii) are in each case to the same effect, whether in identical terms or not,

all of those persons may be tried together, at the same time and before the same jury, provided that each person is to have his or her full right of challenge.

124 Alternative verdict of attempt on trial for any indictable offence

If, on the trial of a person for any indictable offence, the jury is not satisfied that the person is guilty of the offence, but is satisfied that he or she is guilty of:

- (a) an attempt to commit the offence, or
- (b) an assault with intent to commit the offence,

it may acquit the person of the offence charged and find the person guilty of the attempt or assault, and the person is liable to punishment accordingly.

125 No further prosecution after trial for serious indictable offence where alternative verdict possible

If under any Act a person who is tried for a serious indictable offence may be acquitted of that offence but found guilty of some other offence, the person is not liable to further prosecution on the same facts for that other offence.

126 Restitution of property

- (1) In any criminal proceedings in which it is alleged that the accused person has unlawfully acquired or disposed of property, the court may order that the property be restored to such person as appears to the court to be lawfully entitled to its possession.
- (2) Such an order may be made whether or not the court finds the person guilty of any offence with respect to the acquisition or disposal of the property.
- (3) Such an order may not be made in respect of:
 - (a) any valuable security given by the accused person in payment of a liability to which the person was subject when the payment was made, or
 - (b) any negotiable instrument accepted by the accused person as valuable consideration in circumstances in which the person had no notice, or cause to suspect, that the instrument had been dishonestly come by.

127 When case not to be proceeded with: accused person to be released from custody

- (1) On deciding that no further proceedings are to be taken with respect to a person who is in custody on remand, whether or not the person has been committed for trial, the Attorney General or Director of Public Prosecutions may cause a certificate to that effect, in the form prescribed by the regulations, to be delivered to the Supreme Court.

- (2) On receipt of such a certificate, the Supreme Court may, by order, direct that the person to whom the certificate relates be released from custody.

[32] New section 110 Law enforcement devices

Omit “section 4AB, 4AC, 4DA, 4E, 4G or 5AB of the *Traffic Act 1909*” from section 110 (1) (a).

Insert instead “section 33, 35, 46, 47 or 57 of the *Road Transport (Safety and Traffic Management) Act 1999*”.

[33] New section 110 (4)

Omit “section 4AC or 4DA of the *Traffic Act 1909*”.

Insert instead “section 47 or 57 of the *Road Transport (Safety and Traffic Management) Act 1999*”.

[34] New section 110 (5)

Omit “*Traffic Act 1909*”.

Insert instead “*Road Transport (Safety and Traffic Management) Act 1999*”.

[35] New Part 5

Insert after new section 127:

Part 5 Proceedings for treason and related offences

128 Definitions

In this Part:

expressed by spoken word, in relation to treasonable sentiments, means expressed, uttered or declared by open and advised speaking, and in no other manner.

treason-related offence means an offence arising under section 12 of the *Crimes Act 1900*.

treason means any of the offences whose existence is saved by operation of section 11 of the *Crimes Act 1900*.

treasonable sentiments means the compassings, imaginations, inventions, devices or intentions giving rise to a treason-related offence.

129 Time within which prosecution to be commenced and warrant issued for treason-related offence

- (1) No person is to be prosecuted for treasonable sentiments expressed by spoken word unless:
 - (a) information of those sentiments, and of the words by which they were so expressed, was given on oath to one or more justice or justices within 6 days after the words were spoken, and
 - (b) a warrant for the apprehension of the person was issued within 10 days after the information was given.
- (2) No person may be convicted in respect of treasonable sentiments expressed by spoken word unless:
 - (a) the person confesses to those sentiments in open court, or
 - (b) the words by which those sentiments were so expressed are proved by at least 2 witnesses.

130 More than one act may be charged in indictment for treason-related offence

In any indictment for a treason-related offence, any number of matters, acts or deeds by which treasonable sentiments have been expressed, uttered, or declared may be charged against the accused person.

131 Indictment for treason-related offence valid though facts may amount to treason

- (1) An indictment for a treason-related offence is not bad, insufficient, void, erroneous or defective merely because the facts or matters alleged in the indictment amount in law to treason.
- (2) A person is not entitled to be acquitted of a treason-related offence merely because the facts or matters proved on the person's trial amount in law to treason, but no person tried for a treason-related offence may subsequently be prosecuted on the same facts for treason.

132 Procedure for treason to be as for murder

In all cases of treason, the person charged is to be arraigned and tried in the same manner, and according to the same course and order of trial, as if the person stood charged with murder.

[36] New Part 6, heading

Insert the following headings after new section 132:

Part 6 Police custody of property

Division 1 General

[37] New sections 133–138

Re-number existing sections 38–43 as sections 133–138 and transfer them to new Division 1 of Part 6.

[38] New section 135

Omit “section 39” from new section 135 (1). Insert instead “section 134”.

[39] New section 136

Omit “section 40” from new section 136. Insert instead “section 135”.

[40] New Part 6, Division 2, heading

Insert the following heading after new section 138:

Division 2 Livestock

[41] New sections 139–146

Re-number existing sections 44–51 as sections 139–146 and transfer them to new Division 2 of Part 6.

[42] New section 144

Omit “section 50” from new section 144. Insert instead “section 145”.

[43] New Part 7

Insert the following heading after new section 146:

Part 7 Sexual assault communications privilege

[44] New sections 147–159

Re-number existing sections 57–69 as sections 147–159 and transfer them to new Part 7.

[45] New section 147 Interpretation

Omit the definition of *court* from new section 147 (1).

[46] New section 147 (1), definition of “sexual assault offence”

Omit paragraph (a). Insert instead:

- (a) an offence to which Division 6 of Part 4 applies, or

[47] New section 154 Ancillary orders

Omit “section 577A, 578 or” from section 154 (2).
Insert instead “section 106 or 119 of this Act or section”.

[48] New Part 8

Insert the following heading after new section 159:

Part 8 Sentencing by reference to outstanding charges

[49] New sections 160–163

Re-number existing sections 20–23 as sections 160–163 and transfer them to new Part 8.

[50] New section 160

Omit “section 22” from new section 160 (1). Insert instead “section 162”.

[51] New section 162

Omit “section 21” from new section 162 (1). Insert instead “section 161”.

[52] New section 163

Omit “section 21” wherever occurring in new section 163.
Insert instead “section 161”.

[53] New Part 9

Insert the following heading after new section 163:

Part 9 Victim impact statements

[54] New sections 164–169

Re-number existing sections 23A–23E as sections 164–169 and transfer them to new Part 9.

[55] New Part 10

Insert the following heading after new section 169:

Part 10 Correction and adjustment of sentences

[56] New sections 170–172

Re-number existing sections 23F–24A as sections 170–172 and transfer them to new Part 10.

[57] New section 172

Omit “section 24” from new section 172 (4). Insert instead “section 171”.

[58] New Part 11

Insert the following heading after new section 172:

Part 11 Sentencing guidelines

[59] New sections 173–180

Renumber existing sections 25–29A as sections 173–180 and transfer them to new Part 11.

[60] New sections 175–180

Omit “section 26” wherever occurring. Insert instead “section 174”.

[61] Existing sections 52–56

Omit the sections.

[62] New Schedule 1, heading

Insert after new section 180 the following heading:

Schedule 1 Indictable offences triable summarily

[63] New Schedule 1, Tables 1 and 2

Transfer to new Schedule 1 Tables 1 and 2 to existing Part 9A.

[64] New Schedule 1, Table 1, item 16

Insert after item 16 (2):

- (3) Any offence under Part 6A (other than an offence arising under section 310B of the *Crimes Act 1900*).

[65] New Schedule 1, Table 1, item 18A

Omit the item.

[66] New Schedule 2

Renumber existing Schedule 1 as Schedule 2.

[67] New Schedule 2, clause 1

Insert at the end of clause 1 (1):

Crimes Legislation Amendment (Sentencing) Act 1999

Crimes (Sentencing Procedure) Act 1999

Crimes (Administration of Sentences) Act 1999

[68] New Schedule 2 Part 4

Insert after Part 3 of new Schedule 2:

**Part 4 Provisions consequent on enactment of
Crimes Legislation Amendment (Sentencing)
Act 1999**

Division 1 Preliminary

5 Definitions

In this Part:

1999 amending Act means the *Crimes Legislation Amendment (Sentencing) Act 1999*.

amended legislation means any Act or instrument amended by Schedule 2, 3, 4 or 5 to the 1999 amending Act, as so amended.

appointed day means:

- (a) in relation to a provision of the old legislation that has been repealed or amended by the 1999 amending Act, the day on which the repeal or amendment commences, or
- (b) in relation to a new provision inserted into the amended legislation by the 1999 amending Act, the day on which the new provision commences.

old legislation means:

- (a) any Act or instrument repealed by Schedule 1 to the 1999 amending Act, as in force immediately before its repeal, and
- (b) any Act or instrument amended by Schedule 2, 3, 4 or 5 to the 1999 amending Act, as in force immediately before its amendment.

Division 2 Crimes Act 1900

6 Definitions

In this Division:

1900 Act means the *Crimes Act 1900*, as in force immediately before the appointed day.

7 Certificates under section 358

A certificate prepared in accordance with section 358 of the 1900 Act is taken to have been prepared in accordance with section 127 of this Act.

8 Notices under section 405A and 405AB

A notice served on a person for the purposes of section 405A or 405AB of the 1900 Act is taken to have been served on the person for the purposes of section 48 or 49 of this Act, as the case requires.

9 Depositions under section 406

A deposition made in accordance with section 406 of the 1900 Act is taken to have been made in accordance with section 111 of this Act.

10 Certificate evidence under section 414A

Any certificate prepared for the purposes of a provision of section 414A of the 1900 Act is taken to have been prepared for the purposes of section 109 or 110 of this Act, as the case requires.

11 Operation of section 442A

Section 442A of the 1900 Act continues to have effect in relation to offences under section 61B, 61C and 61D of that Act, as in force before their repeal on 17 March 1991 by the *Crimes (Amendment) Act 1989*.

12 Orders under section 578

Any order that, immediately before the appointed day, was in force under section 578 of the 1900 Act is taken to be an order in force under section 119 of this Act, and may be amended and revoked accordingly.

Division 3 Correctional Centres Act 1952

13 Definitions

In this Division:

1952 Act means the *Correctional Centres Act 1952*, as in force immediately before the appointed day.

14 Persons kept in custody under section 42A

Anything done under or for the purposes of section 42A of the 1952 Act is taken to have been done under or for the purposes of Part 7 of this Act.

Division 4 General

15 Application of section 95

- (1) Section 95 does not apply to the trial of a person charged with an offence before 10 June 1994 (the date on which the right to make unsworn dock statements was originally abolished).
- (2) The re-enactment by section 95 of section 404A of the *Crimes Act 1900* does not limit the operation of section 30 of the *Interpretation Act 1987* in relation to the repeal of section 404A by the 1999 amending Act.

16 Application of section 105

Nothing in section 105 authorises the admission of evidence of a kind that was inadmissible immediately before 14 July 1981 (the date on which section 409B of the *Crimes Act 1900* commenced).

17 Continued operation of Forfeited Recognizances and Bail Act 1954

The *Forfeited Recognizances and Bail Act 1954* continues to apply to a recognizance entered into before the commencement of this clause as if that Act had not been repealed.

18 Delegations

Any delegation that was in force immediately before the commencement of the 1999 amending Act under a provision of the old legislation for which there is a corresponding provision in the amended legislation is taken to be a delegation in force under the corresponding provision of the amended legislation.

19 Construction of certain references

Subject to the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* and the regulations under this Act, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding provision of the amended legislation, and
- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in the amended legislation extends to the corresponding act, matter or thing referred to in the corresponding provision of the amended legislation.

20 General saving

Subject to the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* and the regulations under this Act:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in the amended legislation may be continued and completed under the old legislation as if the 1999 amending Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in the amended legislation (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended legislation.

Schedule 3 Amendment of Crimes Act 1900

(Section 5)

Part 1 Amendments consequent on enactment of Crimes (Sentencing Procedure) Act 1999 and Crimes (Administration of Sentences) Act 1999

[1] Part 6A

Insert after Part 6:

Part 6A Offences relating to escape from lawful custody

310A Definitions

In this Part:

correctional centre means a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and includes a correctional complex within the meaning of that Act.

inmate has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

310B Rescuing inmate from lawful custody

Any person who, by force, rescues or attempts to rescue an inmate from lawful custody is guilty of an offence.

Maximum penalty: imprisonment for 14 years.

310C Aiding escape

Any person:

- (a) who aids an inmate in escaping or attempting to escape from lawful custody, or

- (b) who conveys anything or causes anything to be conveyed into a correctional centre or to an inmate with intent to facilitate the escape of an inmate,

is guilty of an offence.

Maximum penalty: imprisonment for 7 years.

310D Escaping

Any inmate:

- (a) who escapes or attempts to escape from lawful custody, or
(b) who, having been temporarily released from lawful custody, fails to return to lawful custody at the end of the time for which the inmate has been released,

is guilty of an offence.

Maximum penalty: imprisonment for 10 years.

310E Tunnels to facilitate escape

- (1) A person who constructs, or takes part in the construction of, a tunnel that could reasonably be thought likely to be intended for use in facilitating an inmate's escape from lawful custody is guilty of an offence.

Maximum penalty: imprisonment for 10 years.

- (2) It is not necessary for the prosecution to prove that the tunnel was actually intended for use in facilitating an escape, but it is a defence for the accused person to establish that he or she did not intend it to be so used.

- (3) In this section:

tunnel includes any partially completed tunnel and any excavation.

310F Permitting escape

- (1) Any person who, being an officer of a correctional centre or a police officer, has actual custody of an inmate for the time being is guilty of an offence if he or she wilfully permits the inmate to escape from custody.

Maximum penalty: imprisonment for 7 years.

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- (2) Any person who, being an officer of a correctional centre or a police officer, has actual custody of an inmate for the time being is guilty of an indictable offence if he or she negligently permits the inmate to escape from custody.

Maximum penalty: imprisonment for 2 years.

- (3) Any person who is employed by the management company of a managed correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) as a custodian of inmates at, or travelling to or from, the correctional centre is, for the purposes of this section, an officer of a correctional centre.

310G Harboursing escapee

Any person who knowingly harbours, maintains or employs an escaped inmate is guilty of an offence.

Maximum penalty: imprisonment for 3 years.

310H Application of Division

This Division does not apply to or in respect of:

- (a) an inmate who is in lawful custody for the purpose of serving a sentence of imprisonment the subject of a periodic detention order or home detention order under the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) a detention centre or a detainee within the meaning of the *Children (Detention Centres) Act 1987*.

[2] Section 353AC Taking of finger-prints at court—pilot scheme

Omit the section.

[3] Section 360A Indictment etc of corporations

Omit section 360A (6).

[4] Sections 431B, 432, 438–447A

Omit the sections and any italic headings appearing above the sections.

[5] Part 13 Proceedings after sentence

Omit the Part.

[6] Sections 547, 548, 549, 552, 553, 554 and 555

Omit the sections and any italic headings appearing above the sections.

[7] Part 15 Conditional release of offenders

Omit the Part.

Part 2 Amendments consequent on transfer of provisions from Crimes Act 1900 to Criminal Procedure Act 1986

[8] Section 4 Definitions

Omit the definitions of *Prescribed sexual offence* and *Prescribed sexual offence proceedings* from section 4 (1).

[9] Sections 13, 14, 15 and 16A

Omit the sections.

[10] Section 77A Proceedings in camera in certain cases

Omit the section.

[11] Section 358 Discharge of prisoner on certificate from Attorney General or Director of Public prosecutions

Omit the section and the italic heading appearing above the section.

[12] Sections 359, 360, 361–407AA

Omit the sections and any italic headings appearing above the sections.

[13] Section 360A Indictment etc of corporations

Omit section 360A (1)–(5) and (7).

[14] Sections 409–414B

Omit the sections.

[15] Sections 419–427

Omit the sections and any italic headings appearing above the sections.

[16] Section 475C Effect of certain provisions

Omit “section 33P”. Insert instead “section 33”.

[17] Sections 550, 551, 564–567A, 574A and 575–578

Omit the sections and any italic headings appearing above the sections.

[18] First, Third, Fourth and Fifth Schedules

Omit the Schedules.

[19] Second Schedule

Omit the matter in the Schedule. Insert instead:

Part 1.

Sections 23, 34, 40, 62 and 77 (in Part 3).

Sections 116, 118–124, 128–130, 163, 183, 191, 193 and 194
(in Part 4).

Sections 250 and 251 (in Part 5).

Section 310B (in Part 6A).

Sections 345–347 and 351 (in Part 9).

Parts 10, 10A, 10B, 11, 12 and 13A.

Sections 547A–547C (in Part 14).

Part 16.

Part 3 Amendments abolishing penal servitude and distinction between felony and misdemeanour

[20] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Minor indictable offence means an indictable offence that is not a serious indictable offence.

Serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

[21] Sections 7, 121, 122, 190, 384 and Table to section 428B

Omit “felonious” and “feloniously” wherever occurring.
Insert instead “unlawful” and “unlawfully” respectively.

[22] Sections 9 and 10

Omit the sections.

[23] Section 11

Omit the italicized heading appearing above the section.

[24] Section 13 Time within which prosecution to be commenced and arrest warrant issued

Omit “felony” from section 13 (1).
Insert instead “offence under section 12”.

[25] Section 14 More than one matter may be charged

Omit “felony under this Part”. Insert instead “offence under section 12”.

[26] Section 15 Informations valid though facts may amount to treason

Omit “felony under this Part” and “such felony” wherever occurring.
Insert instead “offence under section 12” and “the offence”, respectively.

[27] Section 55 Possessing explosives etc with intent to injure

Omit “an offence being felony” wherever occurring.
Insert instead “a serious indictable offence”.

[28] Sections 58, 101, 107, 111, 113 and 190

Omit “felony” wherever occurring.
Insert instead “a serious indictable offence”.

[29] Sections 106, 112 and 344A

Omit “felony” wherever occurring.
Insert instead “serious indictable offence”.

[30] Section 109 Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence

Omit “felony” where firstly occurring in section 109 (1).
Insert instead “a serious indictable offence”.

[31] Section 109 (1)

Omit “felony” where secondly occurring.
Insert instead “serious indictable offence”.

[32] Section 114 Being armed with intent to commit indictable offence

Omit “or to enter a building and to commit a misdemeanour therein” from section 114 (1) (a).

[33] Section 114 (1) (c)

Omit “a felony or misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

[34] Section 115 Being convicted offender armed with intent to commit indictable offence

Omit “felony or misdemeanour”. Insert instead “indictable offence”.

[35] Section 117 Punishment for larceny

Omit “felony”. Insert instead “indictable offence”.

[36] Section 123 Verdict of minor indictable offence

Omit “a misdemeanour”. Insert instead “a minor indictable offence”.

[37] Section 123

Omit “such misdemeanour”. Insert instead “the minor indictable offence”.

[38] Section 168 Fraudulent sale of property by agent

Omit “a misdemeanour”.

Insert instead “an indictable offence and liable to imprisonment for 5 years”.

[39] Section 188 Receiving stolen property where stealing a serious indictable offence

Omit “felony” where firstly and secondly occurring.

Insert instead “a serious indictable offence”.

[40] Section 188

Omit “felony” where thirdly occurring. Insert instead “offence”.

[41] Section 188

Omit “felon”. Insert instead “offender”.

[42] Sections 189 and 351

Omit “misdemeanour” and “misdemeanours” wherever occurring.

Insert instead “minor indictable offence” and “minor indictable offences”, respectively.

[43] Section 189B Prosecution under section 188 or 189 where property stolen in course of transmission

Omit “a felony or a misdemeanour” from section 189B (1) (b).

Insert instead “a serious indictable offence or a minor indictable offence”.

[44] Section 311 Definitions

Omit the definition of *serious offence* from section 311 (1).

[45] Part 7 Public justice offences

Omit “serious offence” wherever occurring.
Insert instead “serious indictable offence”.

[46] Section 345 Principals in the second degree—how tried and punished

Omit “any felony, whether the same is a felony at Common Law, or by this or any other statute, now existing or hereafter to be passed,”.
Insert instead “any serious indictable offence”.

[47] Section 346 Accessories before the fact—how tried and punished

Omit “any such felony”. Insert instead “a serious indictable offence”.

[48] Section 346

Omit “principal felon” wherever occurring.
Insert instead “principal offender”.

[49] Section 346

Omit “such felon”. Insert instead “the principal offender”.

[50] Section 346

Omit “the felony”. Insert instead “the offence”.

[51] Section 347 Accessories after the fact—how tried and punished

Omit “any such felony”. Insert instead “a serious indictable offence”.

[52] Section 347

Omit “principal felon”. Insert instead “principal offender”.

[53] Section 347

Omit “such felon”. Insert instead “the principal offender”.

[54] Section 348 Punishment of accessories after the fact to certain treason-related offences

Omit “any felony under Part 2, relating to treason-felony,”.

Insert instead “an offence under section 12”.

[55] Section 350

Omit the section. Insert instead:

350 Punishment of accessories after the fact to other serious indictable offences

An accessory after the fact to any other serious indictable offence is liable to imprisonment for 5 years, except where otherwise specifically enacted.

[56] Section 351 Trial and punishment of abettors of minor indictable offences

Omit “any misdemeanour” and “a misdemeanour”.

Insert instead “a minor indictable offence” and “an offence”, respectively.

[57] Section 352 Person in act of committing or having committed offence

Omit “felony” wherever occurring in section 352 (1) and (2).

Insert instead “serious indictable offence”.

[58] Section 352 (2) (a)

Omit “or crime”.

[59] Section 352 (3)

Omit “misdemeanour, or an offence punishable as a misdemeanour,”.

Insert instead “minor indictable offence”.

[60] Section 352 (4)

Omit “other than a charge of felony or misdemeanour or offence punishable as a misdemeanour”.

Insert instead “(other than a charge of an indictable offence)”.

[61] Section 360A Indictment etc of corporations

Omit section 360A (6A).

[62] Sections 363, 378, 400, 409, 411, 427, 428B and 443

Omit “felony” and “misdemeanour” wherever occurring.

Insert instead “serious indictable offence” and “minor indictable offence”, respectively.

[63] Sections 371 and 385

Omit “felony”, “felonies” and “felon” wherever occurring.

Insert instead “a serious indictable offence”, “serious indictable offences” and “offender”, respectively.

[64] Section 425 Conviction for minor indictable offence where facts amount to serious indictable offence

Omit “felony” and “misdemeanour” wherever occurring.

Insert instead “a serious indictable offence” and “minor indictable offence”, respectively.

[65] Section 426 No double jeopardy where alternative verdict possible under this Act

Omit “felony”. Insert instead “a serious indictable offence”.

[66] Section 475A Offences punishable summarily

Omit “penal servitude or” wherever occurring in section 475A (4).

[67] Section 476 Indictable offences punishable summarily with consent of accused person

Insert after section 476 (9):

(9A) In this section, a reference to a felony is a reference to an offence that, immediately before the commencement of this subsection, was a felony.

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- (9B) If, immediately before the commencement of this subsection, a conviction for an offence would have been a conviction for a felony, a conviction under this section for that offence is, for all purposes, taken to be a conviction for a serious indictable offence.

[68] Sections 580E, 580F and 580G

Insert after section 580D:

580E Abolition of distinction between felony and misdemeanour

- (1) All distinctions between felony and misdemeanour are abolished.
- (2) In all matters in which a distinction has previously been made between felony and misdemeanour, the law and practice in regard to indictable offences is to be the law and practice applicable, immediately before the commencement of this section, to misdemeanours.
- (3) Any proceedings for an offence that were commenced before the commencement of this section (being proceedings for an offence that was previously a felony or misdemeanour) are to continue to be dealt with, and to be disposed of, as if the *Crimes Legislation Amendment (Sentencing) Act 1999* had not been enacted.
- (4) Subject to the regulations, in any Act or instrument:
 - (a) a reference to a felony is taken to be a reference to a serious indictable offence, and
 - (b) a reference to a misdemeanour is taken to be a reference to a minor indictable offence.
- (5) This section does not affect the operation of any Act or instrument that restricts the commencement of proceedings against any person in respect of any offence.

580F Abolition of penal servitude

- (1) The punishment of penal servitude is abolished.

- (2) Any sentence of penal servitude that was in force, immediately before the commencement of this section, is to be taken to be a sentence of imprisonment and is to continue in force as such for the remainder of the term for which the sentence of penal servitude would, but for this section, have continued in force.
- (3) Subject to the regulations, in any Act or instrument, a reference to penal servitude is taken to be a reference to imprisonment.

580G Abolition of imprisonment with light or hard labour

- (1) The punishments of imprisonment with light labour and imprisonment with hard labour are abolished.
- (2) Any sentence of imprisonment with light labour or imprisonment with hard labour that was in force, immediately before the commencement of this section, is to be taken to be a sentence of imprisonment only and is to continue to have effect as such for the remainder of the term for which the sentence of imprisonment with light labour or imprisonment with hard labour would, but for this section, have had effect.

[69] Second Schedule

Omit “to 10”. Insert instead “to 8”.

[70] The whole Act

Omit “penal servitude” wherever occurring (except where otherwise amended by this Act).

Insert instead “imprisonment”.

Schedule 4 Amendment of other Acts and instruments

(Section 6)

Part 1 Amendments consequent on enactment of Crimes (Sentencing Procedure) Act 1999 and Crimes (Administration of Sentences) Act 1999

4.1 Bail Act 1978 No 161

[1] Section 4 Definitions

Omit “section 556A of the *Crimes Act 1900*” from the definition of *conviction* in section 4 (1).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 4 (2) (e)

Omit the paragraph. Insert instead:

- (e) a person who may appear or be brought before a court under section 98 of the *Crimes (Sentencing Procedure) Act 1999* or section 116 of the *Crimes (Administration of Sentences) Act 1999*, and

[3] Section 6 Grant of bail for certain periods

Insert “or sentence” after “conviction” in section 6 (d).

[4] Section 6 (g1)

Omit “*Community Service Orders Act 1979*”.

Insert instead “*Crimes (Sentencing Procedure) Act 1999*”.

[5] Section 6 (g2)

Omit the paragraph.

[6] Section 16 Extension of meaning of “adjournment” in section 6

Omit “section 365 of the *Crimes Act 1900*” from section 16 (e).
Insert instead “section 64 of the *Criminal Procedure Act 1986*”.

[7] Section 16 (e1) and (e2)

Insert after section 16 (e):

- (e1) the period between the conviction of a person and the sentencing of the person,
- (e2) the period between the finding of a person’s guilt and the making of an order under section 33 of the *Children (Criminal Proceedings) Act 1987* against the person,

[8] Section 16 (h)

Omit the paragraph. Insert instead:

- (h) the term of a stay of execution of sentence under section 80 of the *Crimes (Sentencing Procedure) Act 1999*.

[9] Section 51 Offence of failing to appear

Omit “section 444 of the *Crimes Act 1900*” from section 51 (8).
Insert instead “Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*”.

[10] Section 58 Indemnification of agreeing parties

Omit “Part 9A” from section 58 (4). Insert instead “Division 3 of Part 2”.

4.2 Children (Care and Protection) Act 1987 No 54

[1] Section 121 Proceedings for offences

Omit “Part 9A” from section 121 (2). Insert instead “Division 3 of Part 2”.

[2] Section 122 Evidence of young children

Omit “section 406 of the *Crimes Act 1900*” wherever occurring in section 122 (1) and (2).

Insert instead “section 111 of the *Criminal Procedure Act 1986*”.

4.3 Children (Community Service Orders) Act 1987 No 56

Section 5 Making of children’s community service orders

Omit “section 554 (2), 556A (1) or 558 (1) of the *Crimes Act 1900*” from section 5 (3).

Insert instead “Division 3 of Part 2 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.4 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 24 Compensation

Omit “, whether under a condition of a recognizance or otherwise” from section 24 (a).

[2] Section 33 Penalties

Omit section 33 (1) (b). Insert instead:

- (b) it may make an order releasing the person on condition that the person enters into a good behaviour bond for such period of time, not exceeding 2 years, as it thinks fit,

[3] Section 33 (1) (g)

Omit “*Sentencing Act 1989*”.

Insert instead “*Crimes (Sentencing Procedure) Act 1999*”.

[4] Section 33 (1A)

Insert after section 33 (1):

- (1A) A good behaviour bond referred to in subsection (1) (b):
- (a) must contain a condition to the effect that the person to whom the bond relates (the *person under bond*) will appear before the court if called on to do so at any time during the term of the bond, and
 - (b) must contain a condition to the effect that, during the term of the bond, the person under bond:
 - (i) will be of good behaviour, and
 - (ii) will inform the Children’s Court of any change in the person’s residential address, and
 - (c) may contain such other conditions as are specified in the order by which the bond is imposed, other than conditions requiring the person under bond:
 - (i) to perform community service work, or
 - (ii) to make any payment, whether in the nature of a fine, compensation or otherwise.

[5] Section 33 (5) (c)

Omit “section 438 of the *Crimes Act 1900*”.

Insert instead “section 126 of the *Criminal Procedure Act 1986*”.

[6] Section 33C

Insert after section 33B:

33C Application of Crimes (Sentencing Procedure) Act 1999 to children

The provisions of Parts 3 and 4 of the *Crimes (Sentencing Procedure) Act 1999* apply to the Children’s Court in the same way as they apply to a Local Court, and so apply as if:

- (a) a reference in those provisions to the sentencing of an offender to imprisonment were a reference to the making of a control order, and
- (b) a reference in those provisions to a conviction were a reference to a finding of guilt.

[7] Section 36 Compensation

Insert “or 77B” after “section 71” in section 36 (1).

[8] Section 36 (2)

Omit “under this section”.

[9] Section 36 (3)

Insert after section 36 (2):

- (3) The maximum amount of compensation that may be awarded is \$1,000.

[10] Section 40 Variation of good behaviour bond or probation

Omit “of recognizance or probation” wherever occurring.

Insert instead “referred to in section 33 (1) (b) or (e)”.

[11] Section 40 (1) (c)

Omit “the recognizance”. Insert instead “the good behaviour bond”.

[12] Section 41 Enforcement of conditions of good behaviour bond or probation or of compliance with outcome plan

Omit “recognizance” wherever occurring.

Insert instead “good behaviour bond”.

[13] Section 43 Definition

Omit “section 556A (1) (b) of the *Crimes Act 1900*” from section 43 (b) (ii).

Insert instead “section 10 (1) (b) of the *Crimes (Sentencing Procedure) Act 1999*”.

4.5 Children (Detention Centres) Act 1987 No 57

[1] Section 3 Definitions

Omit paragraph (c) of the definition of *detention order* in section 3 (1).

Insert instead:

- (c) an order in force under section 10 of this Act whereby the Minister administering the *Crimes (Administration of Sentences) Act 1999* has directed the transfer of a person who is a prisoner from a prison to a detention centre.

[2] Section 3 (1), definition of “prison”

Omit the definition. Insert instead:

prison has the same meaning as *correctional centre* has in the *Crimes (Administration of Sentences) Act 1999*.

[3] Section 3 (1), definition of “prisoner”

Insert in alphabetical order:

prisoner has the same meaning as *inmate* has in the *Crimes (Administration of Sentences) Act 1999*.

[4] Section 3 (3)

Omit “*Prisons Act 1952*”.

Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[5] Section 9 Persons on remand and persons subject to control to be detained in detention centres

Omit “*Sentencing Act 1989*” from section 9 (5).

Insert instead “*Crimes (Sentencing Procedure) Act 1999*”.

[6] Sections 10 (1) and (3), 28 (1) and (3), 28D (1) and (2) (b) and 28F (1)

Omit “*Prisons Act 1952*” wherever occurring.

Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[7] Section 10 (1)

Omit “within the meaning of that Act”.

[8] Sections 10 (2) (a) and 28 (2)

Omit “within the meaning of the *Prisons Act 1952*” wherever occurring.

[9] Section 21 Punishments for misbehaviour

Omit “*Sentencing Act 1989*” wherever occurring in section 21 (1) (e) and (5).

Insert instead “*Crimes (Sentencing Procedure) Act 1999*”.

[10] Section 27 Release on licence under the Crimes Act 1900

Omit the section.

[11] Section 29

Insert after section 28F:

29 Application of Crimes (Administration of Sentences) Act 1999 to detainees

Parts 6 and 7 of the *Crimes (Administration of Sentences) Act 1999* applies to a detainee within the meaning of this Act in the same way as it applies to an offender referred to in that Part, and so applies as if in that Part:

- (a) a reference to a correctional centre were a reference to a detention centre, and
- (b) a reference to the Parole Board or a member of the Parole Board were a reference to the Children’s Court or a Children’s Magistrate, respectively, and
- (c) a reference to the Secretary of the Parole Board were a reference to a Registrar of the Children’s Court, and
- (d) a reference to the Commissioner were a reference to the Director-General of the Department of Juvenile Justice.

[12] Section 30 Discharge generally

Omit “*Sentencing Act 1989*” from section 30 (3).
Insert instead “*Crimes (Sentencing Procedure) Act 1999*”.

4.6 Companion Animals Act 1998 No 87

Sections 7 (6) (a), 23 (5), 48 (5) and 94 (2)

Omit “section 556A of the *Crimes Act 1900*” wherever occurring.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.7 Confiscation of Proceeds of Crime Act 1989 No 90

[1] Section 4 Definitions

Omit “section 556A of the *Crimes Act 1900*” from paragraph (b) of the definition of *relevant period* in section 4 (1).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 4 (1), paragraph (c) of definition of “relevant period”

Omit “section 447B of the *Crimes Act 1900* or section 21 of the *Criminal Procedure Act 1986*”.
Insert instead “Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*”.

[3] Section 5 Meaning of “conviction of serious offence”

Omit “section 556A of the *Crimes Act 1900*” wherever occurring in section 5 (1) (b) and (2) (b) (ii).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[4] Section 5 (1) (c) and (2) (b) (iii)

Omit “section 447B of the *Crimes Act 1900* or section 21 of the *Criminal Procedure Act 1986*” wherever occurring.

Insert instead “Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.8 Conveyancers Licensing Act 1995 No 57

[1] Section 13 Suspension and cancellation of licences

Omit section 13 (1) (j). Insert instead:

- (j) that the licensee is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*,

[2] Sections 43 (1) (d) and 55 (2) (d)

Omit “is a prisoner within the meaning of the *Prisons Act 1952*” wherever occurring.

Insert instead “is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*”.

4.9 Co-operation Act 1923 (1924 No 1)

Section 110A False statements in loan application etc

Omit “section 556A (1) of the *Crimes Act 1900*” from section 110A (2).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.10 Co-operatives Act 1992 No 18

Section 401 False statements in loan application etc

Omit “section 556A (1) of the *Crimes Act 1900*” from section 401 (4).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.11 Coroners Act 1980 No 27

Section 13A Deaths in custody etc examinable only by State Coroner or Deputy State Coroner

Omit “a prison within the meaning of the *Prisons Act 1952*” from section 13A (1) (c).

Insert instead “a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*”.

4.12 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Omit the definition of *Sentence* from section 2 (1). Insert instead:

Sentence means:

- (a) any order made by the court of trial on convicting a person of an offence, including:
 - (i) any sentence of imprisonment (including any sentence of imprisonment the subject of a periodic detention order or home detention order and any sentence of imprisonment whose execution is suspended), and
 - (ii) any community service order, and
 - (iii) any good behaviour bond, and
 - (iv) any fine,imposed under Part 2 of the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) any order made by the court of trial in respect of a person under section 10 of the *Crimes (Sentencing Procedure) Act 1999* on finding the person guilty of an offence, or
- (c) any order made by the court of trial in respect of a person under section 11 or 12 of the *Crimes (Sentencing Procedure) Act 1999* on convicting the person of an offence, or

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- (d) any order made by the court of trial imposing a limiting term of imprisonment on a person under section 23 (1) of the *Mental Health (Criminal Procedure) Act 1990*, and any other order or penalty made or imposed by the court of trial in respect of the person under section 23 (2) of that Act, or
 - (e) any order made by the court of trial in respect of a person under section 39 of the *Mental Health (Criminal Procedure) Act 1990*, or
 - (f) any direction for compensation made by the court of trial in respect of a person under section 71 or 77B of the *Victims Compensation Act 1996*, or
 - (g) any order for restitution made by the court of trial in respect of a person under section 126 of the *Criminal Procedure Act 1986*, or
 - (h) any order for the payment of costs made by the court of trial in respect of a person under section 14 of the *Supreme Court (Summary Jurisdiction) Act 1967*, section 52 of the *Land and Environment Court Act 1979* or section 153 of the *Coal Mines Regulation Act 1982*,

and the power of the Court of Criminal Appeal to pass any such sentence includes power to make any such order or direction.

[2] Section 2 (2)

Omit the subsection.

[3] Sections 5AD (1) and 5DB (1)

Omit “Part 10” wherever occurring. Insert instead “Division 4 of Part 2”.

[4] Section 9 Revesting and restitution of property

Insert “or 77B” after “section 71” wherever occurring in section 9 (4) and (5).

[5] Section 9 (4) and (5)

Omit “section 21 of the *Criminal Procedure Act 1986*” wherever occurring. Insert instead “Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*”.

[6] Section 18 Certain time to count as part of appellant’s sentence

Omit section 18 (1).

[7] Section 18 (3)

Omit “receives special treatment”. Insert instead “is held in custody”.

[8] Section 18 (3)

Omit “with special treatment”.

[9] Section 18 (4)

Omit the subsection.

[10] Section 25A Certain time to count as part of appellant’s sentence

Omit section 25A (2).

[11] Section 25A (3)

Omit “receives special treatment”. Insert instead “is held in custody”.

[12] Section 25A (4)

Omit the subsection.

4.13 Criminal Procedure Act 1986 No 209

[1] Section 27 Maximum penalties for Table 1 offences

Omit “section 444 of the *Crimes Act 1900*” from section 27 (7). Insert instead “Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 28 Maximum penalties for Table 2 offences

Omit “section 444 of the *Crimes Act 1900*” from section 28 (3).

Insert instead “Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*”.

[3] Section 54 Supreme Court or District Court may require indictment to be presented

Omit “section 365 of the *Crimes Act 1900*” from section 54 (7).

Insert instead “section 64”.

[4] Parts 8–11

Omit the Parts.

4.14 Criminal Records Act 1991 No 8

Section 16 Proceedings before courts

Omit “section 414 of the *Crimes Act 1900*” from section 16 (3).

Insert instead “section 86 of the *Criminal Procedure Act 1986*”.

4.15 Crown Lands Act 1989 No 6

Section 157 Compensation

Omit “section 556A of the *Crimes Act 1900*” from section 157 (4).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.16 Defamation Act 1974 No 18

[1] Section 17CA Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee

Omit “Part 10 of the *Prisons Act 1952* or Part 3 of, or Part 2 of Schedule 2 to, the *Sentencing Act 1989*” from section 17CA (a).

Insert instead “the *Crimes (Administration of Sentences) Act 1999* by the Parole Board or the Serious Offenders Review Council”.

[2] Section 17CB Matters relating to the operation of the Inspector-General of Corrective Services

Omit “appointed under the *Correctional Centres Act 1952* as Inspector-General” from section 17CB (a).

4.17 District Court Act 1973 No 9

[1] Section 166 Criminal jurisdiction of the Court

Omit “section 5 (2)” from section 166 (2). Insert instead “section 11 (2)”.

[2] Section 171 Criminal procedure rules

Omit “section 438 of the *Crimes Act 1900*” from section 171 (2) (j).
Insert instead “section 126 of the *Criminal Procedure Act 1986*”.

[3] Section 194 Pending proceedings etc

Omit “section 577 of the *Crimes Act 1900*” from section 194 (2).
Insert instead “section 13 of the *Criminal Procedure Act 1986*”.

4.18 Drug Court Act 1998 No 150

[1] Section 5 Definition of “eligible person”

Omit “Part 9A” from section 5 (2) (a). Insert instead “Division 3 of Part 2”.

[2] Section 12 Imposition of final sentence

Omit section 12 (3). Insert instead:

- (3) After considering a drug offender's initial sentence, the Drug Court is to determine the drug offender's final sentence:
 - (a) by making an order setting aside the initial sentence and taking such action under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* as it could have taken for the offence to which the initial sentence related, or
 - (b) by making an order confirming the initial sentence.

[3] Section 12 (5)

Omit the subsection.

[4] Section 15 Sentences imposed by Drug Court

Omit "Part 9A" wherever occurring in section 15 (1).
Insert instead "Division 3 of Part 2".

[5] Section 18 Application of criminal procedure legislation

Omit the section. Insert instead:

18 Application of criminal procedure legislation

- (1) The provisions of Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* that enable the Drug Court, when sentencing a person, to take other offences into account in imposing a penalty on the person do not enable the Drug Court to take into account any offence of the kind referred to in section 5 (2) of this Act.
- (2) The provisions of Division 3 of Part 2 of the *Criminal Procedure Act 1986* are subject to such modifications (if any) as are prescribed by the regulations under this Act.

4.19 Drug Misuse and Trafficking Act 1985 No 226

Sections 30 (2), 31 (2), 32 (2)

Omit “Part 9A”. Insert instead “Division 3 of Part 2”.

4.20 Electricity (Pacific Power) Act 1950 No 22

Section 95 Recovery of penalties

Omit “Part 9A” from section 95 (3). Insert instead “Division 3 of Part 2”.

4.21 Evidence Act 1995 No 25

[1] Section 19 Compellability of spouses and others in certain criminal proceedings

Omit “section 407AA (Compellability of spouses to give evidence in certain proceedings) of the *Crimes Act 1900*”.

Insert instead “section 104 (Compellability of spouses to give evidence in certain proceedings) of the *Criminal Procedure Act 1986*”.

[2] Section 126G Definitions

Omit “section 578 of the *Crimes Act 1900*” from paragraph (a) of the definition of *sexual assault offence* in section 126G (1).

Insert instead “section 119 of the *Criminal Procedure Act 1986*”.

[3] Section 126K Ancillary orders

Omit “section 577A, 578 or” from section 126K (2).

Insert instead “section 106 or 119 of the *Criminal Procedure Act 1986* or section”.

4.22 Financial Institutions Commission Act 1992 No 47

Section 38 Proceedings for offences

Omit “Part 9A” from section 38 (2). Insert instead “Division 3 of Part 2”.

4.23 Fines Act 1996 No 99

[1] Section 79 Making of community service order against fine defaulter

Insert after section 79 (5):

(6) Subject to this Division:

- (a) Divisions 1 and 4 of Part 7 of the *Crimes (Sentencing Procedure) Act 1999*, and
- (b) Part 5 of the *Crimes (Administration of Sentences) Act 1999*,

apply to a community service order under this section in the same way as they apply to a community service order under section 8 of the *Crimes (Sentencing Procedure) Act 1999*.

(7) In the application of the provisions referred to in subsection (6) to a community service order under this section, a reference in those provisions to a court is taken to be a reference to the State Debt Recovery Office.

[2] Section 84 Suspension of orders during imprisonment or detention

Omit “prison” from section 84 (2) (a). Insert instead “a correctional centre”.

[3] Section 86 Revocation of community service order

Omit “*Community Service Orders Act 1979*” from section 86 (1).
Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[4] Section 87 Imprisonment following breach of community service order

Omit “prison” from section 87 (1). Insert instead “a correctional centre”.

[5] Section 87 (2)

Omit “to prison”.

[6] Section 89 Periodic detention

Omit “prison” wherever occurring in section 89 (1) and (4).

Insert instead “a correctional centre”.

[7] Section 89 (3)

Omit “prison” wherever occurring. Insert instead “correctional centre”.

[8] Section 89 (8), (9) and (10)

Insert after section 89 (7):

(8) Subject to this section:

(a) Divisions 1 and 4 of Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, and

(b) Parts 3 and 7 of the *Crimes (Administration of Sentences) Act 1999*,

apply to a periodic detention order under this section in the same way as they apply to a periodic detention order under section 6 of the *Crimes (Sentencing Procedure) Act 1999*.

(9) In the application of those provisions to a periodic detention order under this section, a reference in those provisions to a court is taken to be a reference to the Commissioner of Corrective Services.

(10) The functions of the Parole Board under Part 7 of the *Crimes (Administration of Sentences) Act 1999* with respect to the revocation of periodic detention orders are, in relation to a periodic detention order under this Division, to be exercised by the Commissioner of Corrective Services.

[9] Section 92 Special provision relating to children

Omit “prison” wherever occurring. Insert instead “a correctional centre”.

[10] Section 95 Execution of warrant

Omit “prison” where firstly and secondly occurring in section 95 (1).
Insert instead “a correctional centre”.

[11] Section 95 (1)

Omit “prison” where thirdly occurring. Insert instead “correctional centre”.

[12] Section 96 Discharge from custody

Omit “the prison”. Insert instead “the correctional centre”.

[13] Section 96

Omit “in prison”. Insert instead “in the correctional centre”.

[14] Section 103 Electronic transmission of orders and warrants

Omit “prison” from section 103 (1) (d).
Insert instead “a correctional centre”.

[15] Section 125 Abolition of imprisonment as primary enforcement action for fine default

Omit “prison” wherever occurring. Insert instead “a correctional centre”.

[16] Schedule 1 Statutory provisions under which penalty notices issued

Omit “Periodic Detention of Prisoners Act 1981, section 33B”.
Insert instead, in alphabetical order of Acts, “Crimes (Administration of Sentences) Act 1999, section 97”.

4.24 Firearms Act 1996 No 46

Section 84 Proceedings for offences

Omit “Part 9A” from section 84 (2). Insert instead “Division 3 of Part 2”.

4.25 Fisheries Management Act 1994 No 38

Sections 219 (4), 220ZG (4), 269 (1) (c) and 271 (1) (e)

Omit “section 556A of the *Crimes Act 1900*” wherever occurring.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.26 Forestry Act 1916 No 55

Section 48 Compensation

Omit “section 556A of the *Crimes Act 1900*” from section 48 (1).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.27 Guardianship Act 1987 No 257

Section 87 Assessment of certain removal expenses

Omit “section 556A of the *Crimes Act 1900*” from section 87 (4).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.28 Habitual Criminals Act 1957 No 19

Section 2 Repeals and savings

Omit “a convicted prisoner within the meaning of the *Prisons Act 1952*”
from section 2 (2) (d).
Insert instead “a convicted inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*”.

4.29 Imperial Acts Application Act 1969 No 30

Section 30 Powers of Justices

Omit the section.

4.30 Independent Commission Against Corruption Act 1988 No 35

[1] Section 10 Complaints about possible corrupt conduct

Omit section 10 (5). Insert instead:

- (5) For the purposes of subsection (4), *prisoner* and *governor of a prison* have the same meanings as *inmate* and *governor* have in the *Crimes (Administration of Sentences) Act 1999*.

[2] Section 39 Attendance of prisoner before Commission

Omit section 39 (5). Insert instead:

- (5) In this section, *governor of a prison*, *prison* and *prisoner* have the same meanings as *governor*, *correctional centre* and *inmate* have in the *Crimes (Administration of Sentences) Act 1999*.

[3] Section 49 Indemnities and undertakings

Omit “section 13” from section 49 (1). Insert instead “section 46”.

[4] Section 49 (2)

Omit “section 14”. Insert instead “section 47”.

[5] Section 49 (3)

Omit “Section 14”. Insert instead “Section 47”.

4.31 Inebriates Act 1912 No 24

[1] Section 13 Institutions for inebriates committed under section 11

Omit “prison under the *Prisons Act 1899*” from section 13 (2).
Insert instead “correctional centre under the *Crimes (Administration of Sentences) Act 1999*”.

[2] Section 13 (3) and (4)

Omit “Comptroller-General of Prisons” wherever occurring.
Insert instead “Commissioner of Corrective Services”.

4.32 International Transfer of Prisoners (New South Wales) Act 1997 No 144

[1] Section 7 Powers and functions of prison officers, police officers and others

Omit “*Correctional Centres Act 1952*” from section 7 (3).
Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[2] Section 10 Prisoners transferred to Australia

Omit “*Correctional Centres Act 1952*” wherever occurring in the definitions of *prison* and *prisoner* in section 10 (5).
Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

4.33 Interpretation Act 1987 No 15

[1] Section 21 Meaning of commonly used words and expressions

Insert after the definition of *penalty* in section 21 (1):

penalty unit is defined in section 17 of the *Crimes (Sentencing Procedure) Act 1999*.

[2] Part 9 Penalties

Omit the Part.

4.34 Jury Act 1977 No 18

Section 71 Proceedings for offences

Omit “Part 9A” from section 71 (2). Insert instead “Division 3 of Part 2”.

4.35 Justices Act 1902 No 27

[1] Section 4 Application of Act where no express provisions

Omit the section.

[2] Section 25 Issue of warrant where indictment filed

Omit “prison” where firstly and secondly occurring in section 25 (2) (a).
Insert instead “a correctional centre”.

[3] Section 25 (2) (a)

Omit “the prison”. Insert instead “the correctional centre”.

[4] Section 34 How defendant to be dealt with during period of adjournment

Omit “prison, watch-house or lock-up” from section 34 (1) (a).
Insert instead “correctional centre, police station or court cell complex”.

[5] Section 34 (2)

Omit “prison, watch-house, or lock-up” from section 34 (2).
Insert instead “correctional centre, police station or court cell complex”.

[6] Section 39 Documents to be transmitted for trial

Omit “section 34A” from section 39 (1). Insert instead “section 36”.

[7] Sections 42 and 47

Omit “prison” wherever occurring. Insert instead “a correctional centre”.

[8] Section 43 Conveying person committed for trial to correctional centre

Omit “the prison” and “such prison” from section 43 (1).
Insert instead “the correctional centre”.

[9] Sections 48H (2), 51A (6) (a), 51B (3) and 66H (1)

Omit “Part 9A” wherever occurring. Insert instead “Division 3 of Part 2”.

[10] Section 51A Effect of plea of guilty in committal proceedings

Omit “section 358 of the *Crimes Act 1900*” from section 51A (4) (b).
Insert instead “section 127 of the *Criminal Procedure Act 1986*”.

[11] Section 51B Application of Division 2 to indictable offences

Omit “section 548 or 549 of the *Crimes Act 1900* or of” from section 51B (2).

[12] Section 66H Indictable offences dealt with summarily

Omit “section 33H” from section 66H (2) (a). Insert instead “section 25”.

[13] Section 69 How defendant to be dealt with during period of adjournment

Omit “prison or lock-up” wherever occurring.
Insert instead “correctional centre, police station or court cell complex”.

[14] Section 75E Determination of ex parte proceedings

Omit section 75E (2) and (3).

[15] Section 75F Application of section 10 of the Crimes (Sentencing Procedure) Act 1999

Omit “section 556A of the *Crimes Act 1900*”.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[16] Section 80AA Absent defendant not to be imprisoned

Omit the section.

[17] Section 81 Payment of costs by defendant or by prosecutor or complainant

Omit “subsection (1) of section 556A of the *Crimes Act 1900*” from section 81 (3) (a).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[18] Section 81 (3) (b)

Omit “subsection (1) of the said section 556A”.

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[19] Section 96A Arrest etc of person discharged on recognizance

Omit “prison, watch-house or lock-up” from section 96A (2) (a).

Insert instead “correctional centre, police station or court cell complex”.

[20] Section 100AG Arrest warrant

Omit “prison, or some lock-up or place of security” from section 100AG (3) (a) (i).

Insert instead “correctional centre, police station or court cell complex”.

[21] Section 100B Application of Part to sentences

Omit “section 556A (1) of the *Crimes Act 1900*” from section 100B (1) (b).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[22] Section 100B (1) (c)

Omit “section 558 (1) of the *Crimes Act 1900*”.

Insert instead “section 9 of the *Crimes (Sentencing Procedure) Act 1999*”.

[23] Section 102 Application of Part generally

Omit “section 556A (1) of the *Crimes Act 1900*” from section 102 (2) (c).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[24] Section 102 (2) (d)

Omit “section 558 (1) of the *Crimes Act 1900*”.

Insert instead “section 9 of the *Crimes (Sentencing Procedure) Act 1999*”.

[25] Section 117 Application of Part generally

Omit “section 556A (1) of the *Crimes Act 1900*” from section 117 (2) (c).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[26] Section 117 (2) (d)

Omit “section 558 (1) of the *Crimes Act 1900*”.

Insert instead “section 9 of the *Crimes (Sentencing Procedure) Act 1999*”.

[27] Section 133X Application of Part generally

Omit “section 556A (1) of the *Crimes Act 1900*” from section 133X (2) (c).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[28] Section 133X (2) (d)

Omit “section 558 (1) of the *Crimes Act 1900*”.

Insert instead “section 9 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.36 Land and Environment Court Act 1979 No 204

Section 52 Judge may order payment of costs

Omit “section 556A (1) of the *Crimes Act 1900*” from section 52 (1) (c).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.37 Marine (Boating Safety—Alcohol and Drugs) Act 1991 No 80

Section 9 Application of section 10 of Crimes (Sentencing Procedure) Act 1999

Omit “section 556A (Power to permit release of offenders) of the *Crimes Act 1900*” from section 9 (1).

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.38 Mental Health Act 1990 No 9

[1] Section 95 Security conditions for forensic patients

Omit “prison within the meaning of the *Prisons Act 1952*” from section 95 (4) (a).

Insert instead “correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*”.

[2] Section 95 (4) (b)

Omit “a prisoner”. Insert instead “an inmate”.

[3] Schedule 1 Dictionary of terms used in the Act

Omit the definition of *prison*. Insert instead:

prison has the same meaning as *correctional centre* has in the *Crimes (Administration of Sentences) Act 1999*.

4.39 Mining Act 1992 No 29

Section 12E Proceedings for offences under Division 2

Omit “Part 9A” from section 12E (1). Insert instead “Division 3 of Part 2”.

4.40 Motor Dealers Act 1974 No 52

Section 55B Other orders on conviction of person

Omit “section 556A of the *Crimes Act 1900*” from section 55B (1).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.41 National Parks and Wildlife Act 1974 No 80

Sections 5 (2A) and 118E (4)

Omit “section 556A of the *Crimes Act 1900*” wherever occurring.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.42 New South Wales Crime Commission Act 1985 No 117

[1] Section 16A Appearance of inmate before Commission

Omit section 16A (5). Insert instead:

- (5) In this section, *correctional centre*, *governor of a correctional centre* and *inmate* have the same meanings as *correctional centre*, *governor* and *inmate* have in the *Crimes (Administration of Sentences) Act 1999*.

[2] Section 21A Indemnities and undertakings

Omit “section 13” from section 21A (1). Insert instead “section 46”.

[3] Section 21A (2)

Omit “section 14”. Insert instead “section 47”.

[4] Section 21A (3)

Omit “Section 14”. Insert instead “Section 47”.

[5] Section 36 Proceedings for offences

Omit “section 444 of the *Crimes Act 1900*” from section 36 (2).
Insert instead “Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.43 Oaths Act 1900 No 20

Section 2A Proceedings for offences

Omit “Part 9A”. Insert instead “Division 3 of Part 2”.

4.44 Parliamentary Electorates and Elections Act 1912 No 41

Sections 114A (1) (f) and 114AA (1), paragraph (d) of the definition of “prescribed elector”

Omit “prison (within the meaning of the *Prisons Act 1952*)” wherever occurring.

Insert instead “correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*)”.

4.45 Parole Orders (Transfer) Act 1983 No 190

Section 8 Registration

Omit “*Sentencing Act 1989*” from section 8 (2) (a).

Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

4.46 Pawnbrokers and Second-hand Dealers Act 1996 No 13

Section 23 Direction for restoration of goods

Omit “Part 11” from section 23 (3). Insert instead “Part 6”.

4.47 Petroleum (Submerged Lands) Act 1982 No 23

Section 132 Prosecution of offences

Omit “Part 9A” from section 132 (3A). Insert instead “Division 3 of Part 2”.

4.48 Police Integrity Commission Act 1996 No 28

[1] Section 44 Attendance of prisoner before Commission

Omit section 44 (5). Insert instead:

- (5) In this section, *governor of a prison*, *prison* and *prisoner* have the same meanings as *governor*, *correctional centre* and *inmate* have in the *Crimes (Administration of Sentences) Act 1999*.

[2] Section 55 Indemnities and undertakings

Omit “section 13” from section 55 (1). Insert instead “section 46”.

[3] Section 55 (2)

Omit “section 14”. Insert instead “section 47”.

[4] Section 55 (3)

Omit “Section 14”. Insert instead “Section 47”.

4.49 Pre-Trial Diversion of Offenders Act 1985 No 153

Section 19 Certain child sexual assault cases may not be disposed of summarily

Omit “Part 9A”. Insert instead “Division 3 of Part 2”.

4.50 Prisoners (Interstate Transfer) Act 1982 No 104

[1] Section 5 Definitions

Omit the definition of *gaoler* from section 5 (1). Insert instead:

gaoler has the same meaning as *governor* has in the *Crimes (Administration of Sentences) Act 1999*.

[2] Section 5 (1)

Omit the definitions of *prison* and *prison officer*. Insert instead:

prison has the same meaning as *correctional centre* has in the *Crimes (Administration of Sentences) Act 1999*.

prison officer has the same meaning as *correctional officer* has in the *Crimes (Administration of Sentences) Act 1999*.

[3] Section 33 Escape from custody—penalty

Omit “section 447A of the *Crimes Act 1900*” from section 33 (2).

Insert instead “section 254 of the *Crimes (Administration of Sentences) Act 1999*”.

4.51 Protection of the Environment Operations Act 1997 No 156

[1] Sections 242 (a) and (b) and 243 (2) (b)

Omit “section 556A of the *Crimes Act 1900*” wherever occurring.

Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 242 (c)

Omit “section 558 of the *Crimes Act 1900*”.

Insert instead “section 9 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.52 Road Transport (General) Act 1999 No 18

[1] Section 24 Court may impose penalty and disqualify driver on conviction

Omit “Section 556A of the *Crimes Act 1900*” from section 24 (6).
Insert instead “Section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 27 Relevant offences

Omit “section 556A of the *Crimes Act 1900*” from section 27 (2).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.53 Royal Commission (Police Service) Act 1994 No 60

[1] Section 14 Attendance of prisoner before Commission

Omit section 14 (5). Insert instead:

- (5) In this section, *governor of a prison*, *prison* and *prisoner* have the same meanings as *governor*, *correctional centre* and *inmate* have in the *Crimes (Administration of Sentences) Act 1999*.

[2] Section 29 Indemnities and undertakings

Omit “section 13” from section 29 (1). Insert instead “section 46”.

[3] Section 29 (2)

Omit “section 14”. Insert instead “section 47”.

[4] Section 29 (3)

Omit “Section 14”. Insert instead “Section 47”.

4.54 Rural Fires Act 1997 No 65

Section 134 Proceedings for offences

Omit “Part 9A” from section 134 (2). Insert instead “Division 3 of Part 2”.

4.55 Summary Offences Act 1988 No 25

[1] Section 4A Offensive language

Omit section 4A (3), (4) and (5). Insert instead:

- (3) Instead of imposing a fine on a person, the court:
- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, or
 - (b) may make an order under section 5 (1) of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work,
- as the case requires.

[2] Section 10A Damaging and defacing property by means of spray paint

Omit section 10A (2) (a). Insert instead:

- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, being an order containing a recommendation of the kind referred to in section 91 of that Act, or

[3] Section 10B Possession of spray paint

Omit section 10B (2) (a). Insert instead:

- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, being an order containing a recommendation of the kind referred to in section 91 of that Act, or

[4] Section 11C Custody of knife in public place or school

Omit “section 556A of the *Crimes Act 1900*” from section 11C (4) (c).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[5] Part 4A

Insert after Part 4:

Part 4A Offences relating to places of detention

27A Definitions

In this Part:

correctional officer means:

- (a) a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or
- (b) a person holding an authority under section 240 of the *Crimes (Administration of Sentences) Act 1999* to perform custodial duties.

inmate has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*, and includes an offender who is detained in a periodic detention centre.

place of detention means a correctional centre, correctional complex or periodic detention centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

27B Trafficking

- (1) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any spiritous or fermented liquor.

Maximum penalty: imprisonment for 6 months or 10 penalty units, or both.

-
- (2) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any poison listed in Appendix D of Schedule Four, or in Schedule Eight, to the Poisons List in force under the *Poisons and Therapeutic Goods Act 1966*.

Maximum penalty: imprisonment for 2 years or 20 penalty units, or both.

- (3) Section 40 of the *Poisons and Therapeutic Goods Act 1966* applies to proceedings for an offence under subsection (2) in the same way as it applies to legal proceedings under that Act.

- (4) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention a quantity of any prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* that constitutes a small quantity (or constitutes less than a small quantity) of the drug or plant concerned within the meaning of that Act.

Maximum penalty: imprisonment for 2 years or 50 penalty units, or both.

- (5) Section 43 of the *Drug Misuse and Trafficking Act 1985* applies to proceedings for an offence under subsection (4) in the same way as it applies to legal proceedings under that Act.

- (6) In respect of an offence under this section, the powers of arrest of a police officer may be exercised by a correctional officer.

27C Introduction or supply of syringes

- (1) A person:
- (a) who brings or attempts by any means whatever to introduce a syringe into a place of detention, or
 - (b) who supplies or attempts by any means whatever to supply a syringe to an inmate who is in lawful custody,
- is guilty of an offence.

Maximum penalty: imprisonment for 2 years.

- (2) A person is not guilty of an offence of bringing or attempting to introduce a syringe into a place of detention if the person satisfies the court that the officer in charge of the place of detention had consented to the person's bringing or introducing the syringe into the place of detention.
- (3) A person is not guilty of an offence of supplying or attempting to supply a syringe to an inmate in lawful custody if the person satisfies the court:
 - (a) that the supply was authorised on medical grounds by a registered medical practitioner, and
 - (b) if the inmate is in lawful custody in a place of detention, that the officer in charge of the place of detention had consented in writing to the supply.
- (4) In respect of an offence under this section, the powers of arrest of a police officer may be exercised by a correctional officer.
- (5) While absent from a place of detention in any of the circumstances referred to in section 38 (1) of the *Crimes (Administration of Sentences) Act 1999*, an inmate is taken to be in lawful custody for the purposes of an offence under this section only if the inmate is being escorted by a correctional officer (within the meaning of that section) or a police officer.
- (6) In this section, **syringe** means a hypodermic syringe, and includes:
 - (a) anything designed for use or intended to be used as part of such a syringe, and
 - (b) a needle designed for use or intended to be used in connection with such a syringe.

27D Unlawful possession of offensive weapons and implements

- (1) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an offensive weapon or implement in a place of detention.

Maximum penalty: imprisonment for 2 years or 50 penalty units, or both.

- (2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive weapon or implement be forfeited to the Crown, and the weapon or implement is forfeited accordingly.
- (3) In this section, *offensive weapon or implement* has the same meaning as it has in the *Crimes Act 1900*.

27E Miscellaneous offences

- (1) Any person who without lawful authority:
 - (a) loiters about or near any place of detention, or
 - (b) enters or attempts by any means whatever to enter any place of detention, or
 - (c) communicates, or attempts by any means whatever to communicate, with any inmate,is guilty of an offence.
Maximum penalty: imprisonment for 6 months or 10 penalty units, or both.
 - (2) Any person who without lawful authority:
 - (a) delivers or attempts to deliver anything to an inmate, or
 - (b) brings or attempts to bring anything into a place of detention, or
 - (c) conveys or attempts to convey anything out of a place of detention, or
 - (d) receives or attempts to receive anything for conveyance out of a place of detention, or
 - (e) secretes or leaves anything at any place (whether inside or outside a place of detention) for the purpose of its being found or received by an inmate,is guilty of an offence.
Maximum penalty: imprisonment for 2 years or 20 penalty units, or both.
 - (3) In respect of any offence referred to in subsection (1) or (2), the powers of arrest of a police officer may be exercised by a correctional officer.
-

27F Time within which proceedings may be taken

Proceedings for an offence under this Part that are taken by the Commissioner of Corrective Services may be commenced at any time within 6 months from the time when the facts first come to the knowledge of the Commissioner.

[6] Schedule 2 Savings and transitional provisions

Insert after clause 1:

2 Provision consequent on enactment of Crimes Legislation Amendment (Sentencing) Act 1999

Section 37A of the *Correctional Centres Act 1952*, as in force immediately before its repeal by the *Crimes Legislation Amendment (Sentencing) Act 1999*, continues to have effect in relation to any offence under section 37 or 38 of the *Correctional Centres Act 1952*, as so in force, as if it had not been repealed.

4.56 Supreme Court Act 1970 No 52

[1] Section 69A Release on bail and custody of claimants seeking judicial review of conviction or sentence

Omit “*Prisons Act 1952*” wherever occurring in section 69A (2) and (6).
Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[2] Third Schedule Criminal proceedings

Omit paragraph (c). Insert instead:

- (c) proceedings in the Court under the *Crimes Act 1900*, other than proceedings under section 88 of that Act and applications for leave to institute prosecutions under section 172 of that Act,

4.57 Traffic Act 1909 No 5

[1] Section 10 Court may impose penalty and disqualify driver on conviction

Omit “section 556A of the *Crimes Act 1900*” from section 10 (5).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 10 (5)

Omit “the said section 556A”.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

[3] Section 10EA Habitual traffic offenders—mandatory disqualifications after 3 convictions within 5 years

Omit “section 556A of the *Crimes Act 1900*” from section 10AE (1).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.58 Travel Agents Act 1986 No 5

Section 38 Orders etc that may be made on conviction

Omit “section 556A of the *Crimes Act 1900*” from section 38 (1).
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.59 Unlawful Gambling Act 1998 No 113

Section 51 Proceedings for offences

Omit “Part 9A” from section 51 (2). Insert instead “Division 3 of Part 2”.

4.60 Victims Compensation Act 1996 No 115

[1] Section 24 Other persons not eligible to receive compensation

Omit “*Correctional Centres Act 1952*” from section 24 (4).
Insert instead “*Crimes (Administration of Sentences) Act 1999*”.

[2] Sections 46 (2) (b), 71 (1) and 78 (2)

Omit “section 21 of the *Criminal Procedure Act 1986*” wherever occurring.
Insert instead “Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*”.

[3] Section 70 Definitions

Omit “section 21 of the *Criminal Procedure Act 1986*” from paragraph (a) (ii) of the definition of *aggrieved person*.
Insert instead “Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*”.

[4] Dictionary

Omit “section 556A of the *Crimes Act 1900*” from paragraph (a) of the definition of *conviction*.
Insert instead “section 10 of the *Crimes (Sentencing Procedure) Act 1999*”.

4.61 Victims Rights Act 1996 No 114

[1] Section 23C When victim impact statements may be received and considered by court

Omit “section 13A of the *Sentencing Act 1989*” from section 23C (2).
Insert instead “clause 2 of Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*”.

[2] Section 23C (2)

Omit “that section”. Insert instead “that clause”.

4.62 Water Act 1912 No 44

Section 4G Proceedings for offences

Omit “Part 9A” from section 4G (6). Insert instead “Division 3 of Part 2”.

4.63 Weapons Prohibition Act 1998 No 127

Section 43 Proceedings for offences

Omit “Part 9A” from section 43 (2). Insert instead “Division 3 of Part 2”.

4.64 Witness Protection Act 1995 No 87

Section 41 Proceedings for offences

Omit “Part 9A” from section 41 (2). Insert instead “Division 3 of Part 2”.

4.65 Young Offenders Act 1997 No 54

Section 8 Offences covered by Act

Omit “Part 9A” from section 8 (1) (b). Insert instead “Division 3 of Part 2”.

Part 2 Amendments consequent on transfer of provisions from Crimes Act 1900 to Criminal Procedure Act 1986

4.66 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 11 Publication and broadcasting of names

Insert after section 11 (4) (b):

, or

- (c) the publication or broadcasting of the name of a child who has been convicted of a serious indictable offence, if the publication or broadcasting is authorised by a court under subsection (4B).

[2] Section 11 (4B)

Insert after section 11 (4A):

- (4B) A court that sentences a child on conviction for a serious indictable offence may, by order made at the time of sentencing, authorise the publication or broadcasting of the name of the child (whether or not the child consents or concurs).
- (4C) A court is not to make an order referred to in subsection (4B) unless it is satisfied:
 - (a) that the making of such an order is in the interests of justice, and
 - (b) that the prejudice to the child arising from the publication or broadcasting of the child's name in accordance with such an order does not outweigh those interests.
- (4D) The burden of establishing the matters referred to in subsection (4C) (a) and (b) lies on the prosecuting authority.
- (4E) A court that makes an order referred to in subsection (4B) must indicate to the child, and make a record of, its reasons for doing so.

[3] Schedule 2 Savings and transitional provisions

Insert after clause 6:

Part 4 Crimes Legislation Amendment (Sentencing) Act 1999

7 Convictions recorded before commencement of amendments

Section 11 (4B), as inserted by the *Crimes Legislation Amendment (Sentencing) Act 1999*, does not apply to or in respect of a conviction recorded before the commencement of this clause.

4.67 Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158

Schedule 2 Amendment of other Acts

Omit “Part 9A” from the matter in Schedule 2.12 relating to the *Criminal Procedure Act 1986*.

Insert instead “Schedule 1”.

4.68 Coroners Act 1980 No 27

Section 34A

Insert after section 34:

34A Documentary evidence

Divisions 4 and 5 of Part 4 of the *Criminal Procedure Act 1986* apply to and in respect of an inquest or inquiry in the same way as they apply to and in respect of proceedings before a court, and any function exercisable by a justice under those Divisions may, for the purposes of an inquest or inquiry, be exercised by a coroner.

4.69 Criminal Procedure Act 1986 No 209

[1] Section 25 Definitions

Omit the definition of *guideline judgment*. Insert instead:

guideline judgment means a judgment containing guidelines to be taken into account by courts sentencing offenders, being:

- (a) guidelines that apply generally, or
- (b) guidelines that apply to particular courts or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of offenders (but not to particular offenders).

[2] Section 26 Guideline judgments on application of Attorney General

Omit section 26 (2). Insert instead:

- (2) An application for a guideline judgment may include submissions with respect to the framing of the proposed guidelines.

[3] Section 26 (4)

Omit the subsection. Insert instead:

- (4) The powers and jurisdiction of the Court to give a guideline judgment in proceedings relating to an indictable or summary offence under this section are the same as the powers and jurisdiction that it has to give a guideline judgment in a pending proceeding relating to an indictable offence apart from this section.

[4] Section 26 (6)–(9)

Insert the following section number and heading before section 26 (6) and renumber section 26 (6)–(9) as section 26A (1)–(4):

26A Senior Public Defender may intervene

[5] Section 26 (6) (renumbered as section 26A (1))

Omit “this section”. Insert instead “section 26”.

[6] Section 26 (7) (renumbered as section 26A (2))

Omit “The”. Insert instead “Without limiting subsection (1), the”.

[7] Section 26 (7) (c) (renumbered as section 26A (2) (c))

Omit the paragraph. Insert instead:

- (c) inform the court with respect to any relevant pending appeal with respect to sentence,
- (d) assist the Court with respect to any relevant matter.

[8] Section 26 (9) (renumbered as section 26A (4))

Omit “subsection (8)”. Insert instead “subsection (3)”.

[9] Section 26B

Insert after section 26 (6) (9) as renumbered:

26B Director of Public Prosecutions may intervene

- (1) The Director of Public Prosecutions may appear in person or be represented by a legal practitioner in proceedings under section 26.
- (2) Without limiting subsection (1), the Director of Public Prosecutions or his or her representative may do any one or more of the following:
 - (a) oppose or support the giving of the guideline judgment by the Court,
 - (b) make submissions with respect to the framing of the guidelines,
 - (c) inform the court with respect to any relevant pending appeal with respect to sentence,
 - (d) assist the Court with respect to any relevant matter.

- (3) Nothing in the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Director of Public Prosecutions or any representative of the Director who is a Crown Prosecutor under this section.
- (4) Without limiting subsection (3), in exercising any function conferred on the Director of Public Prosecutions under this section, the Director is not, despite section 4 (3) of the *Director of Public Prosecutions Act 1986*, responsible to the Attorney General.

4.70 Evidence Act 1995 No 25

[1] Section 126G Definitions

Omit “Part 13” wherever occurring. Insert instead “Part 7”.

[2] Section 126H Exclusion of evidence of protected sexual assault communications

Omit “Part 13” from section 126H (2). Insert instead “Part 7”.

4.71 Justices Act 1902 No 27

[1] Section 41AA

Insert after section 41:

41AA Depositions of previous connected proceedings may be read as evidence in committal proceedings

- (1) In a hearing referred to in section 41, being a hearing in relation to a prescribed sexual offence within the meaning of the *Criminal Procedure Act 1986*, if:
 - (a) the offence is alleged to have been committed in the course of a connected set of circumstances in which another prescribed sexual offence is alleged to have been committed, and

-
- (b) a person has been committed for trial in respect of, or has been convicted of, the other offence, and
 - (c) each of the offences is alleged to have been committed on the same person,

any of the depositions of the person referred to in paragraph (c) that were taken at the proceedings in which the person referred to in paragraph (b) was committed or tried in respect of the other offence may, in so far as they are relevant to the offence the subject of the hearing, be admitted as evidence.

- (2) If, in such a hearing, the person charged with the offence has been served with a copy of any such deposition and has had a reasonable opportunity to examine it, the person on whom the offence is alleged to have been committed may not, without the leave of the court, be asked by or on behalf of the person so charged:
 - (a) to give in evidence any material contained in the deposition, or
 - (b) to answer a question that is the same or substantially similar to a question an answer to which is contained in the deposition.

[2] Section 47A

Insert after section 47:

47A Corporations

- (1) If a corporation (whether alone or jointly with some other person) is charged before a court with an indictable offence, the court may, if of the opinion that the evidence is sufficient to put the accused corporation on trial, make an order authorising an indictment to be filed:
 - (a) for the offence named in the order, or
 - (b) for such other offence as the Attorney General or Director of Public Prosecutions considers proper,and the order is taken to be a committal for trial.

- (2) The offence to which such a charge relates may be dealt with summarily if:
 - (a) the offence is an offence that, in the case of an adult, may be dealt with summarily, and
 - (b) the corporation does not appear by a representative or, if it does so appear, consents that the offence should be dealt with summarily.
- (3) If a corporation appears to such a charge by a representative, any answer to the question referred to in section 41 (4) (a) may be made on behalf of the corporation by that representative.
- (4) If a corporation does not appear to such a charge, it is not necessary to put the question referred to in section 41 (4) (a).

[3] Section 48E Direction to witness to attend

Omit “Table 1 to Part 9A of” from the definition of *offence involving violence* in section 48E (9).

Insert instead “Table 1 in Schedule 1 to”.

[4] Section 48E (9), definition of “offence involving violence”

Omit “*Crimes Act 1900*” from paragraph (a).

Insert instead “*Criminal Procedure Act 1986*”.

4.72 Victims Compensation Act 1996 No 115

[1] Section 43 Effect of award on subsequent civil proceedings

Omit “or 76” from section 43 (4).

Insert instead “, 76 or 77G”.

[2] Section 57 Effect of order for restitution on subsequent civil proceedings

Omit “or 76” from section 57 (5).

Insert instead “, 76 or 77G”.

[3] Part 4, Division 1 heading

Insert before section 70:

Division 1 Compensation for injury

[4] Sections 70, 71, 72, 73 and 76

Omit “or loss” wherever occurring.

[5] Section 72 Restrictions on court’s power to give directions for compensation

Omit “this Part” wherever occurring.

Insert instead “this Division”.

[6] Part 4, Division 2

Insert after section 77:

Division 2 Compensation for loss

77A Definitions

In this Division:

aggrieved person, in relation to an offence, means a person who has sustained loss through or by reason of:

- (a) an offence for which the offender has been convicted, or
- (b) a further offence that a court has taken into account under Division 3 of Part 3 in imposing a penalty for an offence for which the offender has been convicted.

court means the Supreme Court, the Court of Criminal Appeal, the District Court or a Local Court.

direction for compensation means a direction for compensation under section 77B.

77B Directions for compensation

- (1) If a person is convicted by a court of an offence, the court may (on the conviction or at any time afterwards) on notice given to the offender direct that a specified sum be paid out of the property of the offender:
- (a) to any aggrieved person, or
 - (b) to any aggrieved persons in such proportions as may be specified in the direction,
- by way of compensation for any loss sustained through, or by reason of, the offence or, if applicable, any further offence that the court has taken into account under Division 3 of Part 3 in imposing a penalty for an offence for which the offender has been convicted.
- (2) A direction for compensation may be given by a court on its own initiative or on an application made to it by or on behalf of the aggrieved person.

77C Restrictions on court's power to give directions for compensation

A court may not give a direction for compensation:

- (a) for any loss for which compensation is payable under Part 2 or under Division 1 of this Part, or
- (b) for an amount in excess of the maximum amount that, in its civil jurisdiction, the court is empowered to award in proceedings for the recovery of a debt.

77D Factors to be taken into consideration

In determining whether or not to give a direction for compensation, and in determining the sum to be paid under such a direction, the court must have regard to:

- (a) any behaviour (including past criminal activity), condition, attitude or disposition of the aggrieved person that directly or indirectly contributed to the loss sustained by the aggrieved person, and

- (b) any amount that has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted, and
- (c) such other matters as it considers relevant.

77E Payment of sum directed

Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Justices Act 1902*, any sum that a court directs to be paid by an offender to an aggrieved person under a direction for compensation must be paid immediately, or within such period (if any) as is specified in the direction, to the registrar or clerk of the court for payment to the aggrieved person.

77F Enforcement of directions for compensation

- (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar or clerk of the court must, on the application of the aggrieved person, issue to the aggrieved person a certificate:
 - (a) that identifies the direction, and
 - (b) that specifies the offender, and
 - (c) that specifies the amount required by the direction to be paid that has not, as at the date of the certificate, been paid to the registrar or clerk.
- (2) If a certificate is issued under this section, the registrar or clerk must not subsequently accept any payment from the offender in respect of the direction for compensation identified in the certificate.

- (3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the amount specified in the certificate, and the registrar or clerk of that court must immediately enter judgment in favour of the aggrieved person against the offender specified in the certificate for:
 - (a) the amount specified in the certificate as having not been paid, and
 - (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.
- (4) A direction for compensation may only be enforced in accordance with this section and any amount not paid is not payable from any public money.

77G Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of a loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based.
- (2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the direction.
- (3) The judgment of the court in which the civil proceedings are determined:
 - (a) must not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid under the direction for compensation, and
 - (b) must not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid under the direction for compensation.

77H Directions for compensation not appealable on certain grounds

An appeal does not lie against a direction for compensation merely because, in civil proceedings arising from substantially the same facts as those on which the offender was convicted, the aggrieved person is awarded a lesser amount in damages than the amount of compensation required to be paid by the direction.

Part 3 Amendments abolishing penal servitude and distinction between felony and misdemeanour

4.73 Ambulance Services (Staff) Regulation 1995

Clause 13 Offences to be reported

Omit “or penal servitude” from the definition of *serious offence* in clause 13 (4).

4.74 Architects Act 1921 No 8

Section 17 Removal from register

Omit section 17 (1) (c). Insert instead:

- (c) is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or upwards, or if he or she is convicted elsewhere than in New South Wales of an indictable offence that, if committed in New South Wales, would be an offence so punishable,

4.75 Bail Act 1978 No 161

Section 4 Definitions

Omit the definition of *sentence of imprisonment* from section 4 (1).

4.76 Bail Regulation 1999

Schedule 1 Forms

Omit “or penal servitude” from the note to Form 4.

4.77 Broken Hill Abattoirs, Markets, and Cattle Sale-yards Act (1900)

Section 18 Legal procedure

Omit “with or without hard labour”.

4.78 Casino Control Act 1992 No 15

[1] Section 59 Disciplinary action against licensee

Omit “or penal servitude” from paragraph (b) of the definition of *grounds for disciplinary action* in section 59 (1).

[2] Section 150 Bribery

Omit “penal servitude” wherever occurring. Insert instead “imprisonment”.

[3] Schedule 1 Provisions relating to the members and procedure of the Authority

Omit “penal servitude or” wherever occurring in clauses 6 (7) (g) and 7 (1) (h).

4.79 Centre Based and Mobile Child Care Services Regulation (No 2) 1996

Clause 25 Provision of information to the Director-General

Omit “penal servitude or” from clause 25 (2) (a).

4.80 Children (Care and Protection) Regulation 1996

Clauses 68 (2) (a) and (3) (a) and 84 (2) (a)

Omit “penal servitude or” wherever occurring.

4.81 Children (Community Service Orders) Act 1987 No 56

Section 3 Definitions

Omit the definition of *imprisonment* from section 3 (1).

4.82 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 3 Definitions

Omit the definition of *imprisonment* from section 3 (1).

[2] Section 3 (1), definition of “serious indictable offence”

Omit “penal servitude” from paragraph (b) of the definition.
Insert instead “imprisonment”.

4.83 Children (Detention Centres) Act 1987 No 57

Section 3 Definitions

Omit the definition of *imprisonment* from section 3 (1).

4.84 Coastal Protection Act 1979 No 13

Section 15 Vacation of office

Omit “a felony or a misdemeanour” wherever occurring in section 15 (f).
Insert instead “an indictable offence”.

4.85 Common Carriers Act 1902 No 48

Section 10 Nothing to protect certain acts

Omit “felonious or fraudulent”. Insert instead “unlawful”.

4.86 Community Justice Centres Act 1983 No 127

Section 28 Privilege

Omit “misprision of felony” from section 28 (7).
Insert instead “concealing a serious indictable offence without reasonable cause”.

4.87 Community Service Orders Act 1979 No 192

Section 3 Definitions

Omit the definition of *imprisonment* from section 3 (1).

4.88 Companies (Administration) Act 1981 No 64

Schedule 1B Provisions relating to the membership etc of the Board

Omit “penal servitude or” from clause 4 (1) (c).

4.89 Compensation to Relatives Act 1897 No 31

Section 3 An action to be maintainable against any person causing death through neglect despite the death of the person injured

Omit “felony” from section 3 (1).

Insert instead “a serious indictable offence”.

4.90 Constitution Act 1902 No 32

Section 13A Further disqualifications

Omit section 13A (e). Insert instead:

- (e) is convicted of an infamous crime, or of an offence punishable by imprisonment for life or for a term of 5 years or more,

4.91 Conveyancing Act 1919 No 6

[1] Sections 162A (1) and (2) and 163A (5)

Omit “a misdemeanour” wherever occurring.

Insert instead “an indictable offence and liable to imprisonment for 5 years”.

[2] Section 183 Punishing of vendor for fraudulent concealment of deeds or falsifying pedigree

Omit “a misdemeanour” from section 183 (1).

Insert instead “an indictable offence”.

[3] Section 183 (1)

Omit “, with or without hard labour,”.

4.92 Co-operation Act 1923 (1924 No 1)

Sections 107 and 108

Omit “a misdemeanour” wherever occurring.

Insert instead “an indictable offence and liable to imprisonment for 5 years”.

4.93 Coroners Act 1980 No 27

Sections 33 and 45 (3) (b)

Omit “felony, misdemeanour or” wherever occurring.

4.94 Correctional Centres Act 1952 No 9

[1] Section 4 Definitions

Omit “penal servitude or” from paragraph (a) of the definition of *convicted inmate* in section 4 (1).

[2] Section 29B Certain absences not to affect length of sentence

Omit “, penal servitude”.

[3] Sections 32, 33 and 35 (1) (a) and (b)

Omit “shall be guilty of a felony and shall be liable to penal servitude” wherever occurring.

Insert instead “is guilty of an indictable offence and liable to imprisonment”.

[4] Sections 34 (1) and (2), 34A (1) and (3) and 36 (a)

Omit “penal servitude” wherever occurring. Insert instead “imprisonment”.

[5] Section 47 Proceedings for offences

Omit “(not being offences for which a sentence of penal servitude may be imposed)” from section 47 (1).

Insert instead “(not being offences arising under sections 32–36)”.

[6] Section 47 (2)

Omit “penal servitude”. Insert instead “imprisonment”.

[7] Section 59 Definitions

Omit “penal servitude” from paragraph (a) of the definition of *serious offender*.

Insert instead “imprisonment”.

[8] Schedule 3, clause 5 (2) (d), Schedule 4A, clause 4 (1) (g) and Schedule 5, clause 7 (1) (g)

Omit “penal servitude or” wherever occurring.

4.95 Correctional Centres (General) Regulation 1995

Clause 3 Definitions

Omit the definition of *imprisonment* from clause 3 (1).

4.96 Council of Law Reporting Act 1969 No 59

Section 4 Vacation of office

Omit section 4 (1) (d). Insert instead:

- (d) the member is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an indictable offence that if committed in New South Wales would be an offence so punishable, or

4.97 Criminal Appeal Act 1912 No 16

[1] Section 5AA Appeal in criminal cases dealt with by Supreme Court in its summary jurisdiction

Omit “penal servitude or” from section 5AA (6).

[2] Section 18 Release of appellant on bail and custody when attending court

Omit “or penal servitude” wherever occurring in section 18 (2) and (3).

4.98 Criminal Procedure Act 1986 No 209

[1] Section 21 Outstanding charges may be taken into account

Omit “penal servitude” from section 21 (5) (a).
Insert instead “imprisonment”.

[2] Section 23F Definitions

Omit the definition of *sentence of imprisonment*.

[3] Section 33J Maximum penalties for Table 1 offences

Omit section 33J (8).

[4] Part 9A, Table 1

Omit “felony” wherever occurring in clauses 5, 6, 7 and 8 of Part 2 and clause 27 of Part 5.
Insert instead “serious indictable offence”.

[5] Part 9A, Table 1

Omit clause 18A of Part 4.

[6] Part 9A, Table 1

Omit “misdemeanour” from clause 28 of Part 5.
Insert instead “minor indictable offence”.

[7] Part 9A, Table 2

Omit “felony” from clause 12 of Part 7.
Insert instead “serious indictable offence”.

[8] Part 9A, Table 2

Omit “misdemeanour” from clause 13 of Part 7.
Insert instead “minor indictable offence”.

4.99 Criminal Records Act 1991 No 8

Section 4 Definitions

Omit the definition of *imprisonment* from section 4 (1).

4.100 Crown Prosecutors Act 1986 No 208

Section 9 Vacation of office

Omit “or penal servitude” from section 9 (3) (b) (i).

4.101 Dangerous Goods Act 1975 No 68

Section 27A Commissioner of Police to report on explosives licences and permits

Omit “penal servitude or” wherever occurring in section 27A (2) (a).

4.102 Dangerous Goods (General) Regulation 1999

Clause 61 Issue of permits

Omit “penal servitude or” wherever occurring in clause 61 (2) (b) (i).

4.103 Defamation Act 1974 No 18

Section 50 Offence

Omit “indictable misdemeanour” from section 50 (3).
Insert instead “indictable offence”.

4.104 Dental Technicians Registration Act 1975 No 40

[1] Sections 16 (2), 18C (2) and 24

Omit “a misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

[2] Section 19 Proceedings before board against dental technician

Omit “felony, misdemeanour, crime or” wherever occurring in section 19 (1) (a) and (3).

4.105 Dentists Act 1989 No 139

Section 58 False entries in Register, misrepresentation etc

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.106 Director of Public Prosecutions Act 1986 No 207

Schedule 1 Provisions relating to Senior Officers

Omit “or penal servitude” from clause 4 (3) (b) (i).

4.107 Drainage Act 1939 No 29

Section 16 Qualification for office

Omit section 16 (2) (c). Insert instead:

- (c) the person is convicted in New South Wales of a serious indictable offence or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be a serious indictable offence, or

4.108 Driving Instructors Act 1992 No 3

Sections 18 (2), 26 (1) (f) and 36 (b)

Omit “penal servitude or” wherever occurring.

4.109 Education (Ancillary Staff) Act 1987 No 240

Section 30 Punishment where permanent employee guilty of offence

Omit “penal servitude or” from section 30 (1) (a).

4.110 Family Day Care and Home Based Child Care Services Regulation 1996

Clauses 25 (1) (a) and 31 (3) (d) (i)

Omit “penal servitude or” wherever occurring.

4.111 Felons (Civil Proceedings) Act 1981 No 84

[1] Section 3 Felon may sue

Omit the section.

[2] Section 4 Leave to sue required for persons convicted of serious indictable offences

Omit “felony”. Insert instead “serious indictable offence”.

[3] Section 9

Insert after section 8:

9 Provisions consequent on enactment of Crimes Legislation Amendment (Sentencing) Act 1999

- (1) Section 3, as in force immediately before its repeal by the 1999 amending Act, continues to have effect in relation to any person who was convicted of a felony before the repeal of that section.
- (2) Sections 4–7, as in force immediately before their amendment by the 1999 amending Act, apply to a person who was convicted of a felony before their amendment as if the person had been convicted of a serious indictable offence.
- (3) In this section, *1999 amending Act* means the *Crimes Legislation Amendment (Sentencing) Act 1999*.

4.112 Firearms (General) Regulation 1997

Clause 5 Offences that disqualify applicants

Omit “penal servitude or” from clause 5 (c) (ii).

4.113 Habitual Criminals Act 1957 No 19

Section 3 Definitions

Omit the definitions of *Imprisonment* and *imprison* from section 3 (1).

4.114 Health Services Act 1997 No 154

Section 99 (1), note, section 117 (1), note, Schedule 5, clause 7 (g) and Dictionary, definition of “serious sex or violence offence” in Part 1

Omit “penal servitude or” wherever occurring.

4.115 Heritage Act 1977 No 136

Section 11 Vacation of office

Omit section 11 (f). Insert instead:

- (f) is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or upwards, or if the member is convicted elsewhere than in New South Wales of an indictable offence that if committed in New South Wales, would be an offence so punishable,

4.116 Hunter Water Act 1991 No 53

Section 18 Cancellation of operating licence

Omit “penal servitude or” from section 18 (1) (c).

4.117 Imperial Acts Application Act 1969 No 30

Section 20 Penalty

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.118 Industrial Relations Act 1996 No 17

Section 272 Interpretation

Omit “penal servitude or” from section 272 (1) (a).

4.119 Inebriates Act 1912 No 24

Section 10 Penalty for interfering with such institutions

Omit “with or without hard labour”.

4.120 Inscribed Stock (Issue and Renewals) Act 1912 No 51

Section 15 Counterfeiting certificates to be forgery

Omit “shall be guilty of a felony, and shall be liable to penal servitude”.
Insert instead “is guilty of an indictable offence and is liable to imprisonment”.

4.121 Institute of Rural Studies Act 1973 No 54

Section 7 Casual vacancy

Omit section 7 (1) (e). Insert instead:

- (e) the member is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an indictable offence that if committed in New South Wales would be an offence so punishable,

4.122 Interpretation Act 1987 No 15

Section 21 Meaning of commonly used words and expressions

Omit the definitions of *felony* and *misdemeanour* from section 21 (1).

Insert instead in alphabetical order:

minor indictable offence means an indictable offence that is not a serious indictable offence.

serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

4.123 Irrigation Corporations Act 1994 No 41

Section 45 Cancellation of operating licence

Omit “penal servitude or” from section 45 (1) (d).

4.124 Jury Act 1977 No 18

Schedule 1 Persons disqualified from serving as jurors

Omit “or penal servitude” from clause 1.

4.125 Justices Act 1902 No 27

[1] Section 4 Application of Act where no express provisions

Omit “treason, felony, or misdemeanour” from section 4 (2).
Insert instead “treason or other indictable offence”.

[2] Section 51A Effect of plea of guilty in committal proceedings

Omit “penal servitude” from section 51A (1) (f).
Insert instead “imprisonment”.

4.126 Law Foundation Act 1979 No 32

Section 13 (e) and Schedule 1, clause 8 (f)

Omit “a felony or a misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

4.127 Lie Detectors Act 1983 No 62

Section 4 Definitions

Omit “, imprisonment or penal servitude” from paragraph (f) of the definition of *prohibited purpose*.
Insert instead “or imprisonment”.

4.128 Liens on Crops and Wool and Stock Mortgages Act 1898 No 7

[1] Section 10 Penalties for frauds on lienee

Omit “a misdemeanour”. Insert instead “an indictable offence”.

[2] Section 10

Omit “with or without hard labour”.

[3] Section 20 (3)

Omit “an indictable fraud and misdemeanour”.
Insert instead “an indictable offence”.

[4] Section 20 (3)

Omit “, with or without hard labour,”.

4.129 Listening Devices Act 1984 No 69

**Section 13 Inadmissibility of evidence of private conversations
when unlawfully obtained**

Omit “penal servitude” from section 13 (2) (d) (i).
Insert instead “imprisonment”.

4.130 Local Government Act 1993 No 30

[1] Section 275 Who is disqualified from holding civic office?

Omit “felony” from section 275 (1) (c).
Insert instead “serious indictable offence”.

[2] Section 336 Filling of vacancy in position of general manager

Omit “penal servitude or” from section 336 (2) (e).

[3] Dictionary

Omit “felony” and “misdemeanour” from the note at the end of the Dictionary.

4.131 Matrimonial Causes Act 1899 No 14

Sections 13 (c) and 16 (c)

Omit “penal servitude or” wherever occurring.

4.132 Mental Health Act 1990 No 9

[1] Section 3 Definitions

Omit “imprisonment”.

[2] Schedule 1 Dictionary of terms used in the Act

Omit the definition of *imprisonment*.

[3] Schedule 4, clause 6 (1) (g), Schedule 5, clause 3 (1) (g) and Schedule 6, clause 7 (1) (g)

Omit “penal servitude or” wherever occurring.

4.133 Mental Health (Criminal Procedure) Act 1990 No 10

Section 23 Procedure after completion of special hearing

Omit “or penal servitude” wherever occurring in section 23 (1) (a) and (2).

4.134 Mines Inspection Act 1901 No 75

Section 24 Penalty for forgery of or false declaration as to certificate

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.135 Murray Valley Citrus Marketing Act 1989 No 155

Schedule 2 Constitution of the Board

Omit “penal servitude or” from clause 5 (1) (a) (iii).

4.136 Navigation Act 1901 No 60

[1] Sections 10, 95, 96, 97, 103, 104 (2), 132 (3) and 152 (1)

Omit “a misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

[2] Section 97 Punishment

Omit “with or without hard labour”.

[3] Section 168 Indictable offences

Omit “misdemeanours” from section 168 (1).
Insert instead “indictable offences”.

4.137 New South Wales Crime Commission Act 1985 No 117

[1] Section 3 Definitions

Omit the definition of *imprisonment* from section 3 (1).

[2] Schedule 1 Provisions relating to Commissioner and Assistant Commissioners

Omit “penal servitude or” from clause 7 (1) (h).

4.138 New South Wales—Queensland Border Rivers Act 1947 No 10

Section 25 Penalty for damaging works

Omit “with hard labour”.

4.139 Nursing Homes Act 1988 No 124

Section 31 (1) (d) and Schedule 1, clause 4 (1) (d)

Omit “penal servitude or” wherever occurring.

4.140 Oaths Act 1900 No 20

[1] Section 25 False declaration

Omit “a misdemeanour”.

Insert instead “an indictable offence and liable to imprisonment for 5 years”.

[2] Section 30 Untrue document purporting to be affidavit

Omit “be punished as for a misdemeanour” from section 30 (a).

Insert instead “imprisonment for 5 years”.

[3] Section 31 Alternative verdict where false swearing not proved

Omit “a misdemeanour”. Insert instead “an offence under section 30”.

4.141 Optical Dispensers Act 1963 No 35

[1] Section 25 Removal of name on account of misconduct

Omit “a felony or misdemeanour” wherever occurring in section 25 (1) (a).
Insert instead “an indictable offence”.

[2] Sections 30 and 31

Omit “a misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

4.142 Optometrists Act 1930 No 20

[1] Section 6 Vacation of office

Omit “a felony or of a misdemeanour” from section 6 (d).
Insert instead “an indictable offence”.

[2] Sections 6 (d) and 15 (1) (a)

Omit “a felony or misdemeanour” wherever occurring.
Insert instead “an indictable offence”.

4.143 Parliamentary Electorates and Elections Act 1912 No 41

Section 135 Violation of secrecy by officers

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.144 Parliamentary Evidence Act 1901 No 43

Section 13 Penalty for false evidence

Omit “penal servitude”. Insert instead “imprisonment”.

4.145 Parole Orders (Transfer) Act 1983 No 190

Section 3 Definitions

Omit the definition of *imprisonment*.

4.146 Periodic Detention of Prisoners Act 1981 No 18

Section 4 Definitions

Omit the definition of *imprisonment* from section 4 (1).

4.147 Physiotherapists Registration Act 1945 No 9

[1] Section 24 Misconduct

Omit “a felony, misdemeanour, crime or offence” wherever occurring in section 24 (1) (a) and (2A).

Insert instead “an offence”.

[2] Sections 27 and 28 (1)

Omit “a misdemeanour” wherever occurring.

Insert instead “an indictable offence”.

4.148 Physiotherapists Registration Regulation 1995

Schedule 1 Forms

Omit “a felony or misdemeanour” wherever occurring in Form 5.

Insert instead “an indictable offence”.

4.149 Pipelines Act 1967 No 90

Section 54 Offences

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.150 Police Department (Transit Police) Act 1989 No 58

Section 29 Punishment where member guilty of offence

Omit “penal servitude or” from section 29 (1) (a).

4.151 Police (Special Provisions) Act 1901 No 5

[1] Section 101 Magistrates or Justices may appoint special constables

Omit “felony” from section 101 (1).
Insert instead “serious indictable offence”.

[2] Section 108 Assaulting or resisting special constables

Omit “with or without hard labour”.

4.152 Prisoners (Interstate Transfer) Act 1982 No 104

[1] Section 5 Definitions

Omit “a sentence of penal servitude,” from the definition of *State sentence of imprisonment* in section 5 (1).

[2] Section 33 Escape from custody—penalty

Omit “a felony and is liable to penal servitude” from section 33 (1).
Insert instead “an indictable offence and is liable to imprisonment”.

[3] Section 33 (1)

Omit “, penal servitude”.

4.153 Private Hospitals and Day Procedure Centres Act 1988 No 123

Section 34 (1) (d), Schedule 1, clause 5 (1) (e) and Schedule 2, clause 4 (1) (d)

Omit “penal servitude or” wherever occurring.

4.154 Property, Stock and Business Agents Act 1941 No 28

Section 88 Wrongful conversion and false accounts

Omit “a misdemeanour”. Insert instead “an indictable offence”.

4.155 Public Defenders Act 1995 No 28

Schedule 1 Provisions relating to Public Defenders

Omit “or penal servitude” from clause 5 (2) (e).

4.156 Public Sector Management Act 1988 No 33

Section 76 Punishment where officer is guilty of a serious offence

Omit “penal servitude or” from section 76 (a).

4.157 Real Property Act 1900 No 25

[1] Sections 28E (3), 28L, 28QA (2), 28ZD (2) and 141 (1)

Omit “a misdemeanour” wherever occurring.

Insert instead “an indictable offence”.

[2] Section 142 Conviction not to affect civil remedy

Omit “any act, hereby declared to be a misdemeanour or a felony,”.

Insert instead “an indictable offence against this Act”.

[3] Section 142

Omit “such act” wherever occurring. Insert instead “the offence”.

4.158 Security Industry Regulation 1998

Clause 11 Offences that disqualify applicants: section 16

Omit “penal servitude or” from clause 11 (c) (i).

4.159 Sentencing Act 1989 No 87

[1] Section 4 Definitions

Omit the definition of *imprisonment* from section 4 (1).

[2] Schedule 1 Provisions relating to the members of the Board, Divisions of the Board and procedure

Omit “penal servitude or” from clause 6 (1) (g).

4.160 Summary Offences Act 1988 No 25

Section 11C Custody of knife in public place or school

Omit “penal servitude or” wherever occurring in section 11C (5) (b) and (c).

4.161 Supreme Court Act 1970 No 52

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

Omit “or penal servitude” wherever occurring in section 69A (3), (4) and (5).

4.162 Supreme Court (Summary Jurisdiction) Act 1967 No 72

[1] Section 13 Provision for hearing cases together

Omit “and whether they are either felonies or misdemeanours only or some one or more are felonies and some one or more are misdemeanours” wherever occurring.

[2] Section 28B Effect of convictions under this Act

Omit section 28B (a).

4.163 Surveyors Act 1929 No 3

[1] Section 14 Power of board to deal with offences

Omit “any felony or misdemeanour” from section 14 (1) (e).
Insert instead “an indictable offence”.

[2] Section 14 (1) (e)

Omit “a felony or misdemeanour”. Insert instead “an indictable offence”.

[3] Section 17 Power of board to examine on oath

Omit “, with or without hard labour,” from section 17 (2).

[4] Section 19 Penalty for forging registration

Omit “, with or without hard labour,”.

4.164 Sydney Water Act 1994 No 88

Section 20 (1) (d) and Schedule 1, clause 6 (1) (g)

Omit “penal servitude or” wherever occurring.

4.165 Thoroughbred Racing Board Act 1996 No 37

Sections 7 (1) (d), 32 (1) (b) and 45 (4) (c)

Omit “penal servitude or” wherever occurring.

4.166 Tow Truck Act 1989 No 158

Section 46 What are the grounds for action against the holder of a licence?

Omit “or penal servitude” from section 46 (1) (d).

4.167 Transport Administration (Staff) Regulation 1995

Clauses 14 (2), 30 (2) and 35 (5), definition of “serious criminal offence”

Omit “penal servitude or” wherever occurring.

4.168 Trustee Act 1925 No 14

Section 70 New trustees

Omit “felony” from section 70 (3).
Insert instead “a serious indictable offence”.

4.169 Victims Compensation Act 1996 No 115

Dictionary

Omit the definition of *imprisonment*.

4.170 Water Act 1912 No 44

Section 21 Injuries to works

Omit “, with or without hard labour,”.

4.171 Wild Dog Destruction Act 1921 No 17

Section 3C Extraordinary vacancy

Omit “felony” from section 3C (1) (d).
Insert instead “serious indictable offence”.

4.172 Workers Compensation (Workplace Injury Management) Regulation 1995

Clause 24 Cancellation or suspension of certificate

Omit “or penal servitude” from clause 24 (1) (c).

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Schedule 5 Further amendment of other Acts and instruments with respect to abolition of penal servitude

Schedule 5 Further amendment of other Acts and instruments with respect to abolition of penal servitude

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Thoroughbred Racing Board Act 1996 No 37—Schedule 4
Totalizator Agency Board Privatisation Act 1997 No 43—Schedule 5
Tow Truck Act 1989 No 158—Schedule 4
Traffic Act 1909 No 5—Schedule 4
Transport Administration Act 1988 No 109—Schedule 5
Transport Administration (Staff) Regulation 1995—Schedule 4
Travel Agents Act 1986 No 5—Schedule 4
Treasury Corporation Act 1983 No 75—Schedule 5
Trustee Act 1925 No 14—Schedule 4
University of New England Act 1993 No 68—Schedule 5
University of New South Wales Act 1989 No 125—Schedule 5
University of Newcastle Act 1989 No 68—Schedule 5
University of Sydney Act 1989 No 124—Schedule 5
University of Technology, Sydney, Act 1989 No 69—Schedule 5
University of Western Sydney Act 1997 No 116—Schedule 5
University of Wollongong Act 1989 No 127—Schedule 5
Unlawful Gambling Act 1998 No 113—Schedule 4
Victims Compensation Act 1996 No 115—Schedule 4
Victims Rights Act 1996 No 114—Schedules 4, 5
Vocational Education and Training Accreditation Act 1990 No 120—Schedule 5
Waste Minimisation and Management Act 1995 No 102—Schedule 5
Waste Recycling and Processing Service Act 1970 No 97—Schedule 5
Water Act 1912 No 44—Schedule 4
Water Supply Authorities Act 1987 No 140—Schedule 5
Weapons Prohibition Act 1998 No 127—Schedule 4
Wild Dog Destruction Act 1921 No 17—Schedule 4
Witness Protection Act 1995 No 87—Schedule 4

Crimes Legislation Amendment (Sentencing) Act 1999 No 94

Notes

Workers Compensation (Workplace Injury Management) Regulation 1995—Schedule 4

Young Offenders Act 1997 No 54—Schedules 4, 5

Young Offenders Regulation 1997—Schedule 5

Youth Advisory Council Act 1989 No 39—Schedule 5

Zoological Parks Board Act 1973 No 34—Schedule 5

[Minister's second reading speech made in—
Legislative Assembly on 28 October 1999
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BY AUTHORITY
