

Version No. 189
Crimes Act 1958

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TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1. Short title and commencement	1
2. Repeals and savings	2
2A. Definitions	3
2B. Offences under this Act deemed to be indictable offences	4
PART I—OFFENCES	5
Division 1—Offences against the Person	5
(1) <i>Homicide</i>	5
3. Punishment for murder	5
3A. Unintentional killing in the course or furtherance of a crime of violence	5
3B. Provocation no longer a partial defence to murder	6
4. Alternative verdict of defensive homicide on charge for murder	6
5. Punishment of manslaughter	6
6. Infanticide	7
6A. Suicide no longer a crime	7
6B. Survivor of suicide pact who kills deceased party is guilty of manslaughter	7
7. <i>Repealed</i>	9
8. Petit treason	9
9. Provision for trial for murder or manslaughter in Victoria where death or cause of death only happens in Victoria	10
9AA. Abolition of year-and-a-day rule	10
(1AA) <i>Exceptions to Homicide Offences</i>	11
9AB. Definitions and application of Subdivision	11
9AC. Murder—"self-defence"	11
9AD. Defensive homicide	12
9AE. Manslaughter—"self-defence"	12
9AF. Self-defence exceptions do not apply in the case of lawful conduct	12
9AG. Duress	13

<i>Section</i>	<i>Page</i>
9AH. Family violence	13
9AI. Sudden or extraordinary emergency	17
9AJ. Intoxication	17
(1A) Treasonable Offences	19
9A. Treason	19
(2) Child Destruction	21
10. Offence of child destruction	21
(3) Repealed	22
11–14. <i>Repealed</i>	22
(4) Offences against the person	22
15. Definitions	22
16. Causing serious injury intentionally	24
17. Causing serious injury recklessly	25
18. Causing injury intentionally or recklessly	25
19. Offence to administer certain substances	25
19A. Intentionally causing a very serious disease	26
20. Threats to kill	27
21. Threats to inflict serious injury	27
21A. Stalking	27
22. Conduct endangering life	31
23. Conduct endangering persons	31
24. Negligently causing serious injury	31
25. Setting traps etc. to kill	31
26. Setting traps etc. to cause serious injury	32
27. Extortion with threat to kill	32
28. Extortion with threat to destroy property etc.	32
29. Using firearm to resist arrest etc.	33
30. Threatening injury to prevent arrest	34
31. Assaults	34
31A. Use of firearms in the commission of offences	35
31B. Being armed with criminal intent	36
32. Offence to perform female genital mutilation	36
33. Offence to take a person from the State with the intention of having prohibited female genital mutilation performed	37
34. Consent not a defence to a charge under sections 32 or 33	38
34A. Exceptions to offences under section 32	38
(5) Corpses	39
34B. Offence to interfere with corpse of a human being	39
(6), (7) Repealed	40

<i>Section</i>	<i>Page</i>
(8) Sexual Offences (General Provisions)	41
35. Definitions	41
36. Meaning of consent	42
37. Jury directions on consent	43
(8A) Rape and Indecent Assault	44
38. Rape	44
39. Indecent assault	45
40. Assault with intent to rape	46
41–43. <i>Repealed</i>	44
(8B) Incest	46
44. Incest	46
(8C) Sexual Offences against Children	48
45. Sexual penetration of child under the age of 16	48
46. <i>Repealed</i>	50
47. Indecent act with child under the age of 16	51
47A. Sexual relationship with child under the age of 16	51
48. Sexual penetration of 16 year old child	53
49. Indecent act with 16 year old child	53
49A. Facilitating sexual offences against children	54
(8D) Sexual Offences against People with Impaired Mental Functioning	55
50. Definitions	55
51. Sexual offences against people with impaired mental functioning	56
52. Sexual offences against residents of residential facilities	57
(8E) Other Sexual Offences	58
53. Administration of drugs etc.	58
54. Occupier etc. permitting unlawful sexual penetration	58
55. Abduction or detention	59
56. Abduction of child under the age of 16	59
57. Procuring sexual penetration by threats or fraud	60
58. Procuring sexual penetration of child under the age of 16	60
59. Bestiality	61
60. Soliciting acts of sexual penetration or indecent acts	61
60A. Sexual offence while armed with an offensive weapon	62

<i>Section</i>	<i>Page</i>
(8EAA) Sexual Servitude	63
60AB. Sexual servitude	63
60AC. Aggravated sexual servitude	65
60AD. Deceptive recruiting for commercial sexual services	65
60AE. Aggravated deceptive recruiting for commercial sexual services	66
(8EA) Loitering by sexual offender	66
60B. Loitering near schools etc.	66
(8F) Jury Warnings	69
61. Jury warnings	69
(8G) Abrogation of Obsolete Rules of Law	70
62. Abrogation of obsolete rules of law	70
(9) Child Stealing	71
63. Child stealing	71
(9A) Kidnapping	72
63A. Kidnapping	72
(10) Bigamy	72
64. Bigamy	72
(11) Attempts to Procure Abortion	73
65. Abortion	73
66. Supplying or procuring anything to be employed in abortion	73
(12) Concealing the Birth of a Child	74
67. Concealing birth of a child	74
(13) Child Pornography	74
67A. Definitions	74
68. Production of child pornography	76
69. Procurement etc. of minor for child pornography	77
70. Possession of child pornography	78
70AA. Forfeiture	79
(14) Sexual Performances involving a Minor	81
70AB. Definitions	81
70AC. Sexual performance involving a minor	82

<i>Section</i>	<i>Page</i>
Division 1A—Piracy	82
70A. Piracy with violence	82
70B. Piratical acts	83
70C. Trading etc. with pirates	85
70D. Being found on board piratical vessel and unable to prove non-complicity	85
Division 2—Theft and Similar or Associated Offences	86
71. Definitions	86
72. Basic definition of theft	87
73. Further explanation of theft	87
<i>Theft, robbery, burglary, &c.</i>	91
74. Theft	91
75. Robbery	91
75A. Armed robbery	92
76. Burglary	92
77. Aggravated burglary	93
78. Removal of articles from places open to the public	94
79. <i>Repealed</i>	95
80. Unlawfully taking control of an aircraft	96
<i>Fraud and blackmail</i>	96
80A. Extra-territorial offences	96
81. Obtaining property by deception	97
82. Obtaining financial advantage by deception	98
83. False accounting	99
83A. Falsification of documents	100
83B. Abolition of common law offences of forgery and uttering	104
84. Liability of company officers for certain offences by company	105
85. False statements by company directors etc.	105
86. Suppression etc. of documents	106
87. Blackmail	107
<i>Offences relating to goods stolen, &c.</i>	108
88. Handling stolen goods	108
88A. Alternative counts of theft and handling stolen goods	109
89. Advertising rewards for return of goods stolen or lost	109
90. Scope of offences relating to stolen goods	110
<i>Possession of housebreaking implements, &c.</i>	111
91. Going equipped for stealing etc.	111
92. Search for stolen goods	112
93. Procedure and evidence	113
94. <i>Repealed</i>	114

<i>Section</i>	<i>Page</i>
<i>General and consequential provisions</i>	114
95. Husband and wife	114
96–174. <i>Repealed</i>	115
<i>Secret Commissions Prohibition</i>	115
175. Definitions	115
176. Receipt or solicitation of secret commission by an agent an indictable offence	118
177. Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent	119
178. Giving or receiving false or misleading receipt or account an indictable offence	120
179. Gift or receipt of secret commission in return for advice given	120
180. Secret commission to trustee in return for substituted appointment	122
181. Aiding and abetting offences within or outside Victoria	123
182. Liability of directors etc. acting without authority	124
183. <i>Repealed</i>	124
184. Protection of witness giving answers criminating himself	124
185. Stay of proceedings against such witness	125
186. Custom of itself no defence	125
<i>Fraudulently inducing persons to invest</i>	126
187–190. <i>Repealed</i>	126
191. Fraudulently inducing persons to invest money	126
192. Evidence of financial position of company	129
<i>Division 2A—Money Laundering etc.</i>	129
193. Definitions	129
194. Dealing with proceeds of crime	131
195. Dealing with property suspected of being proceeds of crime	131
195A. Dealing with property which subsequently becomes an instrument of crime	132
<i>Division 3—Criminal Damage to Property</i>	133
<i>(1) General Offences and Procedural Provisions</i>	133
196. Definition	133
197. Destroying or damaging property	134
197A. Arson causing death	136
198. Threats to destroy or damage property	136
199. Possessing anything with intent to destroy or damage property	136
200. <i>Repealed</i>	137
201. Lawful excuse	137
201A. Intentionally or recklessly causing a bushfire	139
202. Jurisdiction of magistrates' courts	140
203–205. <i>Repealed</i>	140

<i>Section</i>	<i>Page</i>
(2) <i>Injuries to Buildings &c. by Rioters and Forcible Entries and Detainers</i>	141
206. Rioters demolishing buildings	141
207. Forcible entry	142
208–224. <i>Repealed</i>	143
(3) <i>Interference with Mines, Sea Banks &c., Railways and Navigation Aids</i>	144
225. Conveying water into a mine	144
226, 227. <i>Repealed</i>	144
228. Removing etc. piles of sea banks	145
229–231. <i>Repealed</i>	145
232. Placing things on railways to obstruct or overturn engine etc.	145
233. Obstructing engine, carriage etc. on railway	146
234–243. <i>Repealed</i>	146
244. Altering signals or exhibiting false ones	147
245. Removing buoy etc.	147
246. <i>Repealed</i>	148
(4) <i>Injuries to Aircraft</i>	148
246A. Endangering safe operation of an aircraft	148
246B. Setting fire etc. to aircraft	148
246C. Endangering safety of aircraft	149
246D. Dangerous goods on aircraft	149
246E. Threats to safety of aircraft	150
246F. <i>Repealed</i>	150
(5) <i>False Statements</i>	151
247. False statements	151
(6) <i>Computer Offences</i>	152
247A. Interpretation	152
247B. Unauthorised access, modification or impairment with intent to commit serious offence	155
247C. Unauthorised modification of data to cause impairment	156
247D. Unauthorised impairment of electronic communication	156
247E. Possession of data with intent to commit serious computer offence	157
247F. Producing, supplying or obtaining data with intent to commit serious computer offence	158
247G. Unauthorised access to or modification of restricted data	158
247H. Unauthorised impairment of data held in computer disk, credit card or other device	159
247I. Extra-territorial operation of offences	160

<i>Section</i>	<i>Page</i>
(7) Sabotage	160
247J. Interpretation	160
247K. Sabotage	162
247L. Threats to sabotage	162
Division 4—Contamination of Goods	164
248. Interpretation	164
249. Contaminating goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss	165
250. Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss	166
251. Making false statements concerning contamination of goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss	167
252. Territorial nexus for offences	168
Division 5—Destruction of Evidence	168
253. Definitions	168
254. Destruction of evidence	169
255. Corporate criminal responsibility for offence against section 254	170
256–289. <i>Repealed</i>	164
290–313. <i>Repealed</i>	168
Division 6—Perjury	173
314. Perjury	173
315. All evidence material with respect to perjury	174
Division 7—Unlawful Oaths	174
316. Unlawful oaths to commit treason, murder etc.	174
Division 8—Offences Connected with Explosive Substances	177
317. Offences connected with explosive substances	177
317A. Bomb hoaxes	180
Division 9—Driving Offences Connected with Motor Vehicles	181
318. Culpable driving causing death	181
319. Dangerous driving causing death or serious injury	184
Division 9A—Penalties for Certain Common Law Offences	184
320. Maximum term of imprisonment for certain common law offences	184

<i>Section</i>	<i>Page</i>
Division 10—Conspiracy	186
321. Conspiracy to commit an offence	186
321A. Agreements to commit offences outside Victoria	187
321B. As to consequences of acquittal of co-conspirators	187
321C. Penalties for conspiracy	188
321D. Application of certain provisions	190
321E. Limitations on prosecution	190
321F. Abolition of certain offences of conspiracy at common law	191
Division 11—Incitement	192
321G. Incitement	192
321H. Incitement to commit offences outside Victoria	193
321I. Penalties for incitement	193
321J. Application of certain provisions	195
321K. Limitations on prosecution	195
321L. Incitement at common law abolished	196
Division 12—Attempts	196
321M. Attempt	196
321N. Conduct constituting attempt	196
321O. Attempts to commit offence outside Victoria	197
321P. Penalties for attempt	197
321Q. Limitations on prosecution	200
321R. Application of Division	201
321S. Abolition of attempt at common law	201
322. <i>Repealed</i>	186
PART IA—ABOLITION OF OBSOLETE OFFENCES	202
322A. Maintenance and certain other offences abolished	202
PART IB—ABOLITION OF HISTORICAL CLASSIFICATIONS	203
322B. Abolition of distinctions between felony and misdemeanour	203
322C. Nomenclature	203
322D. Transitional provisions	204
322E. Treason and misprision of treason not affected	205
322F. Other enactments not affected	205
PART II—OFFENDERS	206
Division 1—Abettors, Accessories and Concealers of Offences	206
(1) <i>Abettors in Indictable Offences</i>	206
323. Abettors in indictable offences triable as principal offenders	206

<i>Section</i>	<i>Page</i>
(2) Abettors in Offences Punishable Summarily	206
324. Abettors in summary offences triable as principal offenders	206
(3) Accessories	207
325. Accessories	207
(4) Concealers of Offences	209
326. Concealing offences for benefit	209
327–333. <i>Repealed</i>	210
(5) Repealed	210
334. <i>Repealed</i>	210
Division 2—Repealed	210
335. <i>Repealed</i>	210
Division 3—Criminal Liability of Married Persons	211
336. Marital coercion	211
337. Misprision	212
338. Accessory after the fact	212
339. Conspiracy and incitement	213
PART IIA—EXTRA-TERRITORIAL OFFENCES	214
340. Definitions	214
341. Issue of search warrant	216
342. Authority conferred by and other incidents of a search warrant	216
343. Obstruction	218
344. Ministerial arrangements for transmission and return of seized objects	218
345. Regulations	219
346–350. <i>Repealed</i>	213
PART III—PROCEDURE AND PUNISHMENT	220
Division 1—Pleading Procedure, Proof &c.	220
(1) Mode of Prosecution	220
351. Mode of prosecution	220
352. <i>Repealed</i>	220
353. Presentments	220
354. Indictments	223
355, 356. <i>Repealed</i>	224
(2) Discharge without Prosecution	224
357. Discharge of persons under committal for indictable offence	225

<i>Section</i>	<i>Page</i>
(3) Repealed	225
358. <i>Repealed</i>	225
(4) Change of Time or Place of Trial	226
359. Order for change of time or place of trial	226
359AA. Supreme Court and County Court may determine summary offences	230
359A. Time limit on certain prosecutions	232
(5) Postponement of Trial	233
360. Order for postponement of trial	233
360A. Adjournment or stay of trial	235
(6) Removal of Accused Persons to and from Prison	237
361. Removal of accused persons to and from prison	237
(7) Repealed	239
362. <i>Repealed</i>	239
(8) Joinder of Defendants in Certain Cases	240
363. Separate abettors or accessories may be tried together	240
(9) What Presentments Indictments and Instruments Shall Suffice and Avail	240
364. Definition	240
365. Provisions relating to presentments to apply to indictments etc.	240
366. Rules as to presentments	241
367, 368. <i>Repealed</i>	241
369. General provisions as to presentments	241
370. No objections as to form	241
371. Joinder of charges in the same presentment	241
372. Orders for amendment of presentment, separate trial etc.	242
373. Other powers not affected	244
374. Savings	244
375. Omission of certain details not fatal to presentment etc.	245
376. Previous convictions may be added to presentment	245
377, 378. <i>Repealed</i>	246
379. Description of property of Her Majesty in theft cases	246
380. Property under management of body corporate to be property thereof	246
381. Money or securities etc. may be described simply as money	247
382. Presentment for stealing etc. documents of title	247
383–385. <i>Repealed</i>	247
386. Form of presentment or indictment for perjury etc.	248
387. Form of presentment or indictment etc. for subornation of perjury etc.	248

<i>Section</i>	<i>Page</i>
(10) Preliminary Objections Not to be Taken	249
388. No technical objections allowed	249
(11) No right to traverse or postpone	249
389. No person entitled to traverse or have time to plead	249
(12) Trial, Arraignment, Plea &c.	250
390. Police to be present at courts	250
390A. Entitlement to plead "Not Guilty"	250
391. Plea of "Not Guilty" puts the accused on trial by jury; procedure where no evidence led	251
391A. Judge may hear and determine question of law etc. before jury is impanelled	251
391B. Hearing of application for exclusion of evidence	252
392. Refusal to plead	252
393. <i>Repealed</i>	252
394. Form of plea of autrefois convict or autrefois acquit	252
395. Trial where accused has previous convictions	253
396. Not necessary to inquire into accused's lands etc.	256
(13) Defence	256
397. When and by whom prisoner's defence may be made	256
(14) Evidence. Depositions. Subpoenas and Warrants against Witnesses	256
398. Caution to be given to person charged	256
398A. Admissibility of propensity evidence	257
399. The accused, husbands and wives as witnesses for the defence; evidence of character of accused	258
399A. Alibi evidence	260
399B. Provision relating to witnesses to alibis	263
400. Wife or husband etc. of the accused to be competent and compellable witnesses	264
401. Provision for simplifying proof of previous offences	265
402. Previous convictions to be noted in new sentence	267
403. <i>Repealed</i>	268
404. Proof of marriage on trial for bigamy	268
405. Meaning of term "official record"	269
406–408A. <i>Repealed</i>	269
409. No need to prove specific intent to defraud in trials relating to instruments	269
410. <i>Repealed</i>	269
411. Determination of age	269
412. Prisoners entitled to inspect depositions on trial	270

<i>Section</i>	<i>Page</i>
413. Depositions taken on one charge may be read in prosecution of others	270
414. Subpoenas in criminal cases may be issued by sheriffs etc.	270
415. Issue of warrant when witness does not appear	271
(15) Amendments and Errors	272
416. Amendments in criminal proceedings	272
(16) Summing Up	273
417. Rights of prosecution on trials before juries	273
(17) Statements by Prisoners	273
418. Procedure for evidence by accused	273
(18) View	275
419. View	275
(19) Verdicts. Attempts, &c.	275
420. <i>Repealed</i>	275
420A. Where person charged with unlawful publication of defamatory matter	276
421. Alternative verdicts on charge of murder	276
422. Procedure where facts proved on trial disclose more serious offence	277
422A. Alternative verdict for certain charges relating to driving	278
423. Jury may acquit of indictable offence and convict of unlawfully wounding etc.	278
424. Alternative verdict on poisoning charge	279
425. Alternative verdicts for certain charges of sexual offences	279
426. <i>Repealed</i>	281
427. Alternative verdict for destroying property charges	281
428. Alternative verdict for charges of unauthorised modification of data to cause impairment	281
429. Alternative verdict for charges of unauthorised impairment of electronic communication	282
430–434. <i>Repealed</i>	282
435. Alternative verdict for charges relating to riots	282
(19A) Repealed	283
435A. <i>Repealed</i>	283
(20) Records after Amendment	283
436. Records to be drawn up in amended form	283

<i>Section</i>	<i>Page</i>
(21) Judgments	283
437. Judgment not to be reversed because juror not returned as a juror	283
438. <i>Repealed</i>	284
439. Payment of fine forwarded to Prothonotary	284
(22) Restitution of Property Stolen &c.	284
440–443. <i>Repealed</i>	284
443A. DPP may give directions for release of property tendered in evidence	285
(23) Procedure on Disagreement of Jury	286
444. Procedure on disagreement of jury	286
(24) Power to Commit for Perjury	286
445. Any court or judge may direct that a person be prosecuted for perjury	286
(25) Crown Cases Reserved	287
446. Questions of law may be reserved	287
447. Case to be stated	288
448. Case may be sent back for amendment	290
449. Refusal of Court to reserve a question of law	290
450. Court to state case upon being served with order absolute	290
450A. Director of Public Prosecutions may refer point of law to Court of Appeal	291
(26) Costs	292
451, 452. <i>Repealed</i>	292
453. Scale of charges	292
(27) Court Fees Not Payable by Defendants	292
454. Court fees not payable by defendants	292
(28) No Certiorari. Warrants Not Void for Defects	293
455. Presentments not to be removed by certiorari	293
(29) Actions	293
456. Provisions as to action against persons acting in pursuance of Act	293
(29A) Giving name and address on demand	294
456AA. Requirement to give name and address	294
(29B) Repealed	295
456A–456F. <i>Repealed</i>	295

<i>Section</i>	<i>Page</i>
(30) Apprehension of Offenders	296
457. No person to be arrested without warrant except under this Act etc.	296
458. Person found committing offences may be arrested without warrant by any person	296
459. Powers of member of police force to apprehend offenders	298
459A. Entry and search of premises	298
460. <i>Repealed</i>	299
461. Arrest on reasonable grounds not to be taken to be unlawful	299
462. Definition of "finds committing"	300
462A. Use of force to prevent the commission of an indictable offence	300
463. <i>Repealed</i>	300
463A. Arrest of offenders on board aircraft	300
463B. Prevention of suicide	301
(30A) Custody and Investigation	301
464. Definitions	301
464AA. Digital recordings	315
464A. Detention of person in custody	315
464B. Questioning or investigation of person already held for another matter	318
464C. Right to communicate with friend, relative and legal practitioner	326
464D. Right to an interpreter	327
464E. Persons under 18 years	327
464F. Right of foreign national to communicate with consular office	328
464G. Recording of information required to be given to person in custody	329
464H. Recording of confessions and admissions	330
464I. No power to detain person not under arrest	332
464J. Right to remain silent etc. not affected	332
Fingerprinting	333
464K. Fingerprinting of adults and children aged 15 or above	333
464L. Fingerprinting of children aged 14 or under	335
464M. Children's Court may order fingerprinting	338
464N. Taking of fingerprints	342
464NA. Fingerscanning for identification purposes	342
464O. Destruction of records	344
464P. Records of juvenile	346
464Q. Evidence of fingerprints	348

<i>Section</i>	<i>Page</i>
<i>Forensic procedures</i>	349
464R. Forensic procedure on adult	349
464S. Informed consent	350
464SA. Senior police officer may authorise non-intimate compulsory procedure for certain adults	352
464SB. Making or refusing authorisation	354
464T. Court may order compulsory procedure	356
464U. Forensic procedure on child	361
464V. Interim orders	366
464W. Application by telephone for interim order	368
464X. Warrants	371
464Y. Caution before forensic procedure	372
464Z. Procedure for taking samples etc.	373
464ZA. Execution of authorisation or order	377
464ZB. Analysis of samples	380
464ZC. Analysis of material found at scene of offence etc.	381
464ZD. Forensic reports to be made available	382
464ZE. Evidence relating to forensic procedures	383
464ZF. Forensic procedure following the commission of forensic sample offence	386
464ZFAA. Forensic procedure following finding of not guilty because of mental impairment	392
464ZFAA. Notice to attend for forensic procedure	396
464ZFA. Warrants issued for forensic procedures under section 464ZF or 464ZFAA	399
464ZFB. Retention of information following finding of guilt etc.	402
464ZFC. Destruction of information following finding of guilt etc.	405
464ZFD. Computerised databases	406
464ZFE. Report to Attorney-General	407
464ZG. Destruction of identifying information	407
464ZGA. Forensic information from juveniles	410
464ZGB. Samples given voluntarily	411
464ZGC. Withdrawal of consent prior to giving sample	414
464ZGD. Procedure to take sample	414
464ZGE. Safeguards after giving sample	415
464ZGF. Application to court where consent to retention of sample withdrawn	418
<i>DNA database system</i>	420
464ZGG. Supply of forensic material for purposes of DNA database	420
464ZGH. Use of information on DNA database system	422
464ZGI. Permissible matching of DNA profiles	423
464ZGJ. Recording, retention and removal of identifying information on DNA database system	425
464ZGK. Disclosure of information	426

<i>Section</i>	<i>Page</i>
<i>Inter-jurisdictional enforcement</i>	429
464ZGL. Registration of orders	429
464ZGM. Carrying out of registered orders	430
464ZGN. Database information	430
464ZGO. Taking, retention and use of forensic material authorised by laws of other jurisdictions	431
<i>General</i>	432
464ZH. Immunity of medical practitioners, nurses, dentists and other persons	432
464ZI. Supreme Court—limitation of jurisdiction	433
464ZJ. Regulations	433
464ZK. Operation of other Acts	435
464ZL. Validation of certain orders	435
<i>(31) Search Warrants for and Seizure of Things</i>	436
465. Issue of search warrant by magistrate	436
465A. Notice that seized thing is being held for purposes of Confiscation Act 1997	438
465B. Application for tainted property to be held or retained— return of warrant to court	438
465C. Court may make direction	439
465D. Notice of direction under section 465C	440
465E. Effect of directions under sections 465(1B) and 465C	440
466. Justice may issue warrant to search for gunpowder	440
467–469. <i>Repealed</i>	441
469AA. Seizure and destruction of documents containing libel	441
469A. Power of persons to search aircraft	442
<i>(32) Search Warrants for Women and Girls</i>	442
470. Power of search when female unlawfully detained for immoral purposes	442
<i>(33) Repealed</i>	444
471. <i>Repealed</i>	444
Division 2—Punishment	444
<i>(1) Sentences for Offences</i>	444
472–476A. <i>Repealed</i>	444
476B. Young person sentenced to life imprisonment	444
477–479. <i>Repealed</i>	445
479A. Rescuing of prisoner from lawful custody	445
479B. Aiding a prisoner in escaping	445
479C. Escape and related offences	446

<i>Section</i>	<i>Page</i>
(2) Repealed	448
480–484. <i>Repealed</i>	448
(3) Execution of Sentences	448
485–492. <i>Repealed</i>	448
493. Sentences of imprisonment etc. to be carried out according to law relating to prisons	448
494. <i>Repealed</i>	448
(4)–(6) Repealed	449
495–505. <i>Repealed</i>	449
Division 3—Regulations	450
505A. Regulations	450
PART IV—PROBATION AND PAROLE PROVISIONS	451
506. Definitions	451
Division 1—Probation	452
(1) Probation Officers	452
507. Probation officers	452
(2)–(5) Repealed	454
508–520. <i>Repealed</i>	454
Division 2—Repealed	455
521–541. <i>Repealed</i>	455
Division 3—Regulations	455
542. Regulations	455
PART V—PROPERTY OF PERSONS CONVICTED OF TREASON OR AN INDICTABLE OFFENCE. ORDERS AS TO COSTS	456
543, 544. <i>Repealed</i>	456
545. Persons convicted of treason or indictable offence may pay costs	456
546. <i>Repealed</i>	457
547. Definition of "forfeiture" and "convict"	457
548. When convict shall cease to be subject to operation of this Part	457
549–561. <i>Repealed</i>	457
562. Execution of judgments against convict provided for	458
563. Proceedings to recover property of convict from third person	458

<i>Section</i>	<i>Page</i>
564. Third person etc. accountable to convict when property reverts	459
565. Saving of general law as to indictable offence	459
PART VI—APPEALS IN CRIMINAL CASES. REFERENCES ON PETITIONS FOR MERCY	460
Division 1—Interpretation	460
566. Definitions	460
Division 2—Right of Appeal and Determination of Appeals	461
567. Right of appeal in criminal cases	461
567A. Appeal by Director of Public Prosecutions against sentence passed	462
568. Determination of appeals in ordinary cases	464
569. Powers of Court in special cases	466
570. Re-vesting and restitution of property on conviction	468
570A. Appeals in relation to mental impairment verdicts	469
570B. Provision applicable where appeals against mental impairment verdicts are allowed	470
570C. Appeals in relation to fitness to plead	471
570D. Definitions	472
571. Jurisdiction of Court of Appeal	472
Division 3—Procedure	472
572. Time and manner for appealing	472
573. Judge's notes and report to be furnished on appeal	473
574. Supplemental powers of Court	474
575. <i>Repealed</i>	475
576. Right of appellant to be present	475
577. Appearance for prosecution	476
578. Cost of appeals	476
579. Admission of appellant to bail and custody when attending Court	477
580. Duties of prothonotary with respect to notices of appeal etc.	478
581. Notes of evidence on trial	479
582. Powers which may be exercised by a judge of the Court	480
582A. Registrar may give leave etc.	480
583. Rules of Court	481
Division 4—References on Petitions for Mercy	481
584. References by Attorney-General	481

<i>Section</i>	<i>Page</i>
PART 7—GENERAL	483
585. Supreme Court—limitation of jurisdiction	483
585A. Transitional provisions—(Crimes (Sexual Offences) Act 1991)	483
585B. Transitional provisions—(Crimes (Amendment) Act 1993)	485
585C. Transitional provisions—(Miscellaneous Acts (Omnibus Amendments) Act 1996)	485
585D. Transitional provisions—(Sentencing and Other Acts (Amendment) Act 1997)	486
586. Transitional provisions (Sentencing (Amendment) Act 1997)	487
587. Transitional provisions (Crimes (Amendment) Act 1997—Part 2)	487
588. Transitional provisions (Crimes (Amendment) Act 1997—Part 3)	488
589. Transitional provisions (Crimes (Amendment) Act 1997—Part 4)	489
590. Transitional provision— Crimes, Confiscation and Evidence Acts (Amendment) Act 1998	490
591. Transitional provision— Crimes (Amendment) Act 1998	491
592. Transitional provisions— Magistrates' Court (Amendment) Act 1999	491
593. Transitional provisions— Crimes (Amendment) Act 2000	491
593A. Transitional provision— Crimes (Questioning of Suspects) Act 2000	493
594. Transitional provision— Magistrates' Court (Committal Proceedings) Act 2000	494
596. Transitional provisions— Crimes (DNA Database) Act 2002	494
597. Transitional provision— Crimes (Property Damage and Computer Offences) Act 2003	495
598. Transitional provision— Crimes (Stalking) Act 2003	495
599. Transitional provision— Crimes (Money Laundering) Act 2003	496
600. Transitional provisions— Crimes (Dangerous Driving) Act 2004	496
601. Transitional provision— Children and Young Persons (Age Jurisdiction) Act 2004	497
602. Transitional provision— Crimes (Contamination of Goods) Act 2005	498
603. Transitional provision— Crimes (Homicide) Act 2005	498
604. Transitional provision— Justice Legislation (Miscellaneous Amendments) Act 2006	499

<i>Section</i>	<i>Page</i>
605. Transitional provision— Justice Legislation (Further Miscellaneous Amendments) Act 2006	499
606. Transitional provision— Courts Legislation (Jurisdiction) Act 2006	499
<hr/>	
SCHEDULES	501
SCHEDULE 1—Repeals	501
SCHEDULE 2— <i>Repealed</i>	501
SCHEDULE 3	502
SCHEDULE 4—Certificate	502
SCHEDULE 5—Warrant	503
SCHEDULE 6—Rules	504
SCHEDULE 7—Summary Offences for which a Person may be Fingerprinted	515
SCHEDULE 7A— <i>Repealed</i>	515
SCHEDULE 8—Forensic Sample Offences	516
SCHEDULES 8A–11— <i>Repealed</i>	524
<hr/>	
ENDNOTES	525
1. General Information	525
2. Table of Amendments	526
3. Explanatory Details	549

Version No. 189
Crimes Act 1958
Act No. 6231/1958

Version incorporating amendments as at 1 September 2006

An Act to consolidate the Law Relating to Crimes and Criminal
Offenders.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1. Short title and commencement

This Act may be cited as the **Crimes Act 1958**
and shall come into operation on a day to be fixed
by proclamation of the Governor in Council
published in the Government Gazette.

S. 1
amended by
Nos 6731
s. 2(1), 6958
s. 8(4)(a), 7088
s. 2(g), 7703
s. 5, 7884
s. 2(1), 8280
s. 2, 8338 ss 2,
7(a), 8425
s. 2(1), 8493
s. 33(a)(i)(ii),
8679 s. 3(1)
(a)(i)(ii), 8870
s. 6(3), 9019
s. 2(1)(Sch.
item 34), 9073
s. 2(c), 9155
s. 4(c), 9228
s. 2(1)(a)(b),
9407 s. 2(c)
(i)(ii), 9509
s. 3(1)(2), 9549
s. 2(1)(Sch.
item 50), 9576
s. 11(1), 10026
s. 2(a)(b),
10079 s. 7(1)
(a)(b), 10084
s. 15(a)(i)(ii),
25/1989 s. 4.

Crimes Act 1958
Act No. 6231/1958

s. 2

2. Repeals and savings

- (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
 - (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation rule order application determination decision validation offence disqualification warrant instrument presentment direction appointment action prosecution proceeding liability or right made effected issued granted committed given presented passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

S. 2(3)
repealed by
No. 8493
s. 33(b).

* * * * *

Crimes Act 1958
Act No. 6231/1958

s. 2A

2A. Definitions

(1) In this Act unless inconsistent with the context or subject-matter—

"aircraft" means every type of machine or structure used or intended to be used for navigation of the air;

* * * * *

"drug of addiction" means a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**;

"incite" includes command, request, propose, advise, encourage or authorize;

"Juries Commissioner" has the same meaning as in the **Juries Act 2000**;

"legal practitioner" means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

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

S. 2A(1) def. of
"brothel"
inserted by
No. 9509
s. 4(b),
repealed by
No. 124/1986
s. 74(a).

S. 2A(1) def. of
"drug of
addiction"
inserted by
No. 9509
s. 4(b),
substituted by
No. 9719
s. 135.

S. 2A(1) def. of
"incite"
inserted by
No. 10079
s. 8(a).

S. 2A(1) def. of
"Juries
Commis-
sioner"
inserted by
No. 53/2000
s. 94(1).

S. 2A(1) def. of
"legal
practitioner"
inserted by
No. 18/2005
s. 18(Sch. 1
item 27.1).

Crimes Act 1958
Act No. 6231/1958

s. 2B

S. 2A(1) def. of
"motor car"
inserted by
No. 8338 s. 3,
repealed by
No. 127/1986
s. 102(Sch. 4
item 5.1).

* * * * *

S. 2A(1) def. of
"motor
vehicle"
inserted by
No. 127/1986
s. 102(Sch. 4
item 5.1).

"motor vehicle" has the same meaning as in the
Road Safety Act 1986;

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

* * * * *

S. 2A(1) def. of
"rape"
inserted by
No. 9509
s. 4(c),
repealed by
No. 8/1991
s. 6(a).

* * * * *

S. 2A(2)(3)
inserted by
No. 9509
s. 4(d),
repealed by
No. 8/1991
s. 6(b).

* * * * *

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

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

Offences under this Act are, unless the contrary
intention appears, deemed to be indictable
offences.

PART I—OFFENCES

Division 1—Offences against the Person

(1) *Homicide*

3. Punishment for murder

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

S. 3 substituted by Nos 8679 s. 2, 37/1986 s. 8, amended by No. 49/1991 s. 119(1) (Sch. 2 item 1(a)).

(a) level 1 imprisonment (life); or

S. 3(a) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 1(b)), amended by No. 48/1997 s. 60(1)(Sch. 1 item 1).

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

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

as the court determines.

3A. Unintentional killing in the course or furtherance of a crime of violence

S. 3A inserted by No. 9576 s. 3(1).

(1) A person who unintentionally causes the death of another person by an act of violence done in the course or furtherance of a crime the necessary elements of which include violence for which a person upon first conviction may, under or by virtue of any enactment, be sentenced to level 1 imprisonment (life) or to imprisonment for a term

S. 3A(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 2), 48/1997 s. 60(1)(Sch. 1 item 2(a)(b)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 3B

of 10 years or more shall be liable to be convicted of murder as though he had killed that person intentionally.

- (2) The rule of law known as the felony-murder rule (whereby a person who unintentionally causes the death of another by an act of violence done in the course or furtherance of a felony of violence is liable to be convicted of murder as though he had killed that person intentionally) is hereby abrogated.

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

3B. Provocation no longer a partial defence to murder

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

S. 4
amended by
No. 9576
s. 11(1),
repealed by
No. 10079
s. 8(b),
new s. 4
inserted by
No. 77/2005
s. 4.

4. Alternative verdict of defensive homicide on charge for murder

- (1) If on the trial of a person for murder the jury are not satisfied that he or she is guilty of murder but are satisfied that he or she is guilty of an offence against section 9AD (defensive homicide), the jury may acquit the accused of murder and find him or her guilty of defensive homicide and he or she is liable to punishment accordingly.
- (2) This section does not restrict the operation of section 6, 10(3) or 421.

Note: See section 9AC for "self-defence" exception to murder.

No. 6103 s. 5.
S. 5
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 3),
48/1997
s. 60(1)(Sch. 1
item 3).

5. Punishment of manslaughter

Whosoever is convicted of manslaughter shall be liable to level 3 imprisonment (20 years maximum) or to a fine in addition to or without any such other punishment as aforesaid.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 6

6. Infanticide

- (1) If a woman carries out conduct that causes the death of her child in circumstances that would constitute murder and, at the time of carrying out the conduct, the balance of her mind was disturbed because of—

- (a) her not having fully recovered from the effect of giving birth to that child within the preceding 2 years; or
- (b) a disorder consequent on her giving birth to that child within the preceding 2 years—

she is guilty of infanticide, and not of murder, and liable to level 6 imprisonment (5 years maximum).

- (2) On an indictment or presentment for murder, a woman found not guilty of murder may be found guilty of infanticide.

Note: See sections 10(3) and 421 for other alternative verdicts.

- (3) Nothing in this Act affects the power of the jury on a charge of murder of a child to return a verdict of not guilty because of mental impairment.

6A. Suicide no longer a crime

The rule of law whereby it is a crime for a person to commit or to attempt to commit suicide is hereby abrogated.

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

- (1) Where upon the trial of a person for the murder of another person the jury are satisfied that the accused caused or was a party to causing the death of that other person by a wilful act or omission but are satisfied on the balance of probabilities that the act was done or the omission made in pursuance of a suicide pact then the jury shall,

No. 6103 s. 6.
S. 6
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 4),
48/1997
s. 60(1)(Sch. 1
item 4),
substituted by
No. 77/2005
s. 5.

S. 6A
inserted by
No. 7546 s. 2.

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

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 6B

notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return a verdict of manslaughter in lieu thereof.

S. 6B(1A)
inserted by
No. 49/1991
s. 119(1)
(Sch. 2
item 5(a)),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 5).

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

S. 6B(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 5(b)),
48/1997
s. 60(1)(Sch. 1
item 6(a)(b)).

- (2) Any person who—

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

- (a) incites any other person to commit suicide and that other person commits or attempts to commit suicide in consequence thereof; or
- (b) aids or abets any other person in the commission of suicide or in an attempt to commit suicide—

shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum); but if the jury are satisfied on the balance of probabilities that the acts constituting the offence were done pursuant to a suicide pact the jury shall return a verdict of guilty of the indictable offence of being a party to a suicide pact and the convicted person shall be liable to level 6 imprisonment (5 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 8

- (3) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question of whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.
- (4) For the purposes of this section "**suicide pact**" means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

* * * * *

S. 7
repealed by
No. 9576
s. 11(1).

8. Petit treason

No. 6103 s. 8.

Every offence which before the twenty-seventh day of June in the year of our Lord One thousand eight hundred and twenty-eight would have amounted to petit treason shall be deemed to be murder only; and all persons guilty in respect thereof whether as principals or as accessories shall be dealt with indicted tried and punished as principals and accessories in murder.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9

No. 6103 s. 9.
S. 9
amended by
Nos. 9576
s. 11(1),
77/2005
s. 8(3)(a)(i)(ii).

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

Where any person being criminally stricken poisoned or otherwise hurt upon the sea or at any place out of Victoria dies of such stroke poisoning or hurt in Victoria, or being criminally stricken poisoned or otherwise hurt at any place in Victoria dies of such stroke poisoning or hurt upon the sea or at any place out of Victoria, every offence committed in respect of any such case, whether the same amounts to the offence of murder or of manslaughter or of defensive homicide or of being accessory to murder or manslaughter or defensive homicide, may be dealt with inquired of tried determined and punished in Victoria in the same manner in all respects as if such offence had been wholly committed in Victoria.

S. 9AA
inserted by
No. 65/1991
s. 3.

9AA. Abolition of year-and-a-day rule

- (1) The rule of law known as the year-and-a-day rule (under which an act or omission that in fact causes death is not regarded as the cause of death if the death occurs more than a year and a day after the act or omission) is abolished.
- (2) This section does not apply to acts or omissions alleged to have occurred—
 - (a) before the commencement of the **Crimes (Year and a Day Rule) Act 1991**; or
 - (b) between two dates, one before and one after that commencement.

(1AA) *Exceptions to Homicide Offences*

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

9AB. Definitions and application of Subdivision

S. 9AB
inserted by
No. 77/2005
s. 6.

(1) In this Subdivision—

"intoxication" means intoxication because of the influence of alcohol, a drug or any other substance;

"relevant offence" means murder, manslaughter or defensive homicide.

(2) Without taking away from the law relating to any other offences and except as otherwise expressly provided by this Subdivision, this Subdivision applies only to relevant offences.

9AC. Murder—"self-defence"

S. 9AC
inserted by
No. 77/2005
s. 6.

A person is not guilty of murder if he or she carries out the conduct that would otherwise constitute murder while believing the conduct to be necessary to defend himself or herself or another person from the infliction of death or really serious injury.

Note 1: See section 4 for alternative verdict of defensive homicide where the accused had no reasonable grounds for the belief.

Note 2: This section does not apply where the response is to lawful conduct—see section 9AF.

Note 3: See section 9AH as to belief in circumstances where family violence is alleged.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9AD

S. 9AD
inserted by
No. 77/2005
s. 6.

9AD. Defensive homicide

A person who, by his or her conduct, kills another person in circumstances that, but for section 9AC, would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.

Note: See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.

S. 9AE
inserted by
No. 77/2005
s. 6.

9AE. Manslaughter—"self-defence"

A person is not guilty of manslaughter if he or she carries out the conduct that would otherwise constitute manslaughter while believing the conduct to be necessary—

- (a) to defend himself or herself or another person; or
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—

and he or she had reasonable grounds for that belief.

Note 1: See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.

Note 2: This section does not apply where the response is to lawful conduct—see section 9AF.

S. 9AF
inserted by
No. 77/2005
s. 6.

9AF. Self-defence exceptions do not apply in the case of lawful conduct

Sections 9AC and 9AE do not apply if—

- (a) the person is responding to lawful conduct; and
- (b) at the time of his or her response, the person knows that the conduct is lawful.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9AG

9AG. Duress

**S. 9AG
inserted by
No. 77/2005
s. 6.**

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her under duress.
- (2) A person carries out conduct under duress if and only if the person reasonably believes that—
 - (a) subject to sub-section (3), a threat has been made that will be carried out unless an offence is committed; and
 - (b) carrying out the conduct is the only reasonable way that the threatened harm can be avoided; and
 - (c) the conduct is a reasonable response to the threat.
- (3) However, a person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating for the purpose of carrying out violent conduct.
- (4) This section only applies in the case of murder if the threat is to inflict death or really serious injury.

Note: See section 9AH for evidentiary provisions where family violence is alleged.

9AH. Family violence

**S. 9AH
inserted by
No. 77/2005
s. 6.**

- (1) Without limiting section 9AC, 9AD or 9AE, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary—
 - (a) to defend himself or herself or another person; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9AH

-
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—
- even if—
- (c) he or she is responding to a harm that is not immediate; or
- (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.
- (2) Without limiting the evidence that may be adduced, in circumstances where family violence is alleged evidence of a kind referred to in sub-section (3) may be relevant in determining whether—
- (a) a person has carried out conduct while believing it to be necessary for a purpose referred to in sub-section (1)(a) or (b); or
- (b) a person had reasonable grounds for a belief held by him or her that conduct is necessary for a purpose referred to in sub-section (1)(a) or (b); or
- (c) a person has carried out conduct under duress.
- (3) Evidence of—
- (a) the history of the relationship between the person and a family member, including violence by the family member towards the person or by the person towards the family member or by the family member or the person in relation to any other family member;
- (b) the cumulative effect, including psychological effect, on the person or a family member of that violence;
-

-
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
 - (d) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
 - (e) the psychological effect of violence on people who are or have been in a relationship affected by family violence;
 - (f) social or economic factors that impact on people who are or have been in a relationship affected by family violence.
- (4) In this section—
- "child"** means a person who is under the age of 18 years;
- "family member"**, in relation to a person, includes—
- (a) a person who is or has been married to the person; or
 - (b) a person who has or has had an intimate personal relationship with the person; or
 - (c) a person who is or has been the father, mother, step-father or step-mother of the person; or
 - (d) a child who normally or regularly resides with the person; or
 - (e) a guardian of the person; or
 - (f) another person who is or has been ordinarily a member of the household of the person;
-

"family violence", in relation to a person, means violence against that person by a family member;

"violence" means—

- (a) physical abuse;
 - (b) sexual abuse;
 - (c) psychological abuse (which need not involve actual or threatened physical or sexual abuse), including but not limited to—
 - (i) intimidation;
 - (ii) harassment;
 - (iii) damage to property;
 - (iv) threats of physical abuse, sexual abuse or psychological abuse;
 - (v) in relation to a child—
 - (A) causing or allowing the child to see or hear the physical, sexual or psychological abuse of a person by a family member; or
 - (B) putting the child, or allowing the child to be put, at real risk of seeing or hearing that abuse occurring.
- (5) Without limiting the definition of "violence" in sub-section (4)—
- (a) a single act may amount to abuse for the purposes of that definition;

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9AI

- (b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

9AI. Sudden or extraordinary emergency

S. 9AI
inserted by
No. 77/2005
s. 6.

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies if and only if the person carrying out the conduct reasonably believes that—
 - (a) circumstances of sudden or extraordinary emergency exist; and
 - (b) committing the offence is the only reasonable way to deal with the emergency; and
 - (c) the conduct is a reasonable response to the emergency.
- (3) This section only applies in the case of murder if the emergency involves a risk of death or really serious injury.

9AJ. Intoxication

S. 9AJ
inserted by
No. 77/2005
s. 6.

- (1) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.
- (2) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on a person having reasonable grounds for a belief, in determining whether those reasonable grounds

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9AJ

existed, regard must be had to the standard of a reasonable person who is not intoxicated.

- (3) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable response, in determining whether that response was reasonable, regard must be had to the standard of a reasonable person who is not intoxicated.
- (4) If a person's intoxication is not self-induced, in determining whether any part of an element of a relevant offence, or of a defence to a relevant offence, relying on reasonable belief, having reasonable grounds for a belief or reasonable response exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.
- (5) For the purposes of this section, intoxication is self-induced unless it came about—
 - (a) involuntarily; or
 - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
 - (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
 - (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.
- (6) Despite sub-section (5), intoxication is self-induced in the circumstances referred to in sub-section (5)(c) or (d) if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.

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

s. 9A

(1A) *Treasonable Offences*

Pt 1 Div. 1
Subdiv. (1A)
(Heading)
inserted by
No. 9407
s. 2(a).

(1351–2) 25
Edward III
St V., c. II
(1695–6) 7 and
8 William III
c. III (1708)
7 Anne c. 21
s. 14. (1795)
36 George III
c. VII (1817)
57 George III
c. VI ss 1, 4
and 5.

9A. Treason

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

- (1) A person who—
- (a) kills the Sovereign, does the Sovereign any bodily harm tending to the death or destruction of the Sovereign or maims, wounds, imprisons or restrains the Sovereign;
 - (b) kills the eldest son and heir apparent, or the Consort, of the Sovereign;
 - (c) levies war, or does any act preparatory to levying war, against the Commonwealth of Australia;
 - (d) assists by any means whatever, with intent to assist, an enemy at war with the Commonwealth of Australia, whether or not the existence of a state of war has been declared;

S. 9A(1)
amended by
Nos 37/1986
s. 9, 49/1991
s. 119(1)
(Sch. 2
item 6(a)(i)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 9A

- (e) instigates a foreigner to make an armed invasion of the Commonwealth or any Territory not forming part of the Commonwealth; or
- (f) forms an intention to do any act referred to in a preceding paragraph of this sub-section and manifests that intention by an overt act—

shall be guilty of an indictable offence, called treason, and liable to—

- (g) level 1 imprisonment (life); or

S. 9A(1)(a)
inserted by
No. 37/1986
s. 9,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 6(a)(ii)),
substituted as
s. 9A(1)(g) by
No. 48/1997
s. 60(1)(Sch. 1
item 7).

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

S. 9A(1)(b)
inserted by
No. 37/1986
s. 9,
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 6(a)(iii)),
re-numbered
as s. 9A(1)(h)
by No.
48/1997
s. 62(1).

as the court determines.

(2) A person who—

- (a) receives or assists another person who is to his knowledge guilty of treason in order to enable him to escape punishment; or
- (b) knowing that a person intends to commit treason, does not give information thereof with all reasonable despatch to a constable or

S. 9A(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 6(b)),
48/1997
s. 60(1)(Sch. 1
item 8).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 10

use other reasonable endeavours to prevent
the commission of the offence—

shall be guilty of an indictable offence.

Penalty: Level 3 imprisonment (20 years
maximum).

- (3) On the trial of a person charged with treason on the ground that he formed an intention to do an act referred to in paragraph (a), (b), (c), (d) or (e) of sub-section (1) of this section and manifested that intention by an overt act, evidence of the overt act shall not be admitted unless the overt act was alleged in the indictment.

(2) *Child Destruction*¹

10. Offence of child destruction

No. 6103 s. 10.

- (1) Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act unlawfully causes such child to die before it has an existence independent of its mother shall be guilty of the indictable offence of child destruction, and shall be liable on conviction thereof to level 4 imprisonment (15 years maximum).
- (2) For the purposes of this section evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.
- (3) Where upon the trial of any person for the murder or manslaughter of any child or for infanticide or for any offence under section sixty-five of this Act the jury are satisfied that the person charged is not guilty of murder manslaughter or infanticide or of any offence under the said section sixty-five (as the case may be) but are satisfied that he is guilty of the indictable offence of child destruction, the

S. 10(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 7),
48/1997
s. 60(1)(Sch. 1
item 9).

S. 10(3)
amended by
No. 9576
s. 11(1).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 15

jury may find him guilty of that indictable offence and he shall be liable to punishment accordingly.

S. 10(4)
amended by
No. 9576
s. 11(1).

- (4) Where upon the trial of any person for the indictable offence of child destruction the jury are satisfied that the person charged is not guilty of that indictable offence but are satisfied that he is guilty of an offence under section sixty-five of this Act the jury may find him guilty of that offence and he shall be liable to punishment accordingly.

S. 10(5)
repealed by
No. 9576
s. 11(1).

* * * * *

Pt 1 Div. 1
Subdiv. (3)
repealed.²

* * * * *

No. 6103 s. 15.
Pt 1 Div. 1
Subdiv. (4)
(Heading and
s. 15)
amended by
No. 9576
s. 11(1),
substituted as
Pt 1 Div. 1
Subdiv. (4)
(Heading and
ss 15–31) by
No. 10233
s. 8(2).

(4) *Offences against the person*

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

15. Definitions

In this sub-division—

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

"child" means any person under the age of
18 years;

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 15

"female genital mutilation" means all or any of the following—

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

- (a) infibulation;
- (b) the excision or mutilation of the whole or a part of the clitoris;
- (c) the excision or mutilation of the whole or a part of the labia minora or labia majora;
- (d) any procedure to narrow or close the vaginal opening;
- (e) the sealing or suturing together of the labia minora or labia majora;
- (f) the removal of the clitoral hood;

"injury" includes unconsciousness, hysteria, pain and any substantial impairment of bodily function;

"medical practitioner" means—

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

- (a) a registered medical practitioner; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a person who, in the place in which the female genital mutilation took place, holds an authority to practise medicine which is similar to that of a registered medical practitioner;

"midwife" means—

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

- (a) a registered midwife; or
- (b) in relation to the performance of female genital mutilation outside Victoria, a person who, in the place in which the female genital mutilation took place, holds an authority to practise midwifery

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 16

which is similar to that of registered midwife;

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

"prohibited female genital mutilation" means female genital mutilation the performance of which would be an offence under this Act if carried out in the State;

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

"registered medical practitioner" has the same meaning as in the **Medical Practice Act 1994**;

S. 15 def. of "registered midwife" inserted by No. 46/1996 s. 3.

"registered midwife" means a person who is registered under Part 2 of the **Nurses Act 1993** in Division 1 of the Register established under that Act and who has completed a course in midwifery approved by the Nurses Board of Victoria, established under that Act;

"serious injury" includes a combination of injuries.

S. 16 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 8), 48/1997 s. 60(1)(Sch. 1 item 10).

16. Causing serious injury intentionally

A person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 3 imprisonment (20 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 17

17. Causing serious injury recklessly

A person who, without lawful excuse, recklessly causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

S. 17 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 9), 48/1997 s. 60(1)(Sch. 1 item 11).

18. Causing injury intentionally or recklessly

A person who, without lawful excuse, intentionally or recklessly causes injury to another person is guilty of an indictable offence.

Penalty: If the injury was caused intentionally—level 5 imprisonment (10 years maximum);

If the injury was caused recklessly—level 6 imprisonment (5 years maximum).

S. 18 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 11), 48/1997 s. 60(1)(Sch. 1 item 12).

19. Offence to administer certain substances

S. 19 substituted by No. 10233 s. 8(2).

(1) A person who—

- (a) without lawful excuse, administers to or causes to be taken by another person any substance which is capable, and which the first-mentioned person knows is capable, in the circumstances, of interfering substantially with the bodily functions of the other person; and

S. 19(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 16).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 19A

- (b) knows that the other person has not consented to the administration or taking of the substance or is reckless as to whether or not the other person has so consented—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) For the purposes of sub-section (1)—

- (a) a person is not to be taken to have consented to the administration or taking of a substance if, had the person known the likely consequences, the person would not be likely to have consented to the administration or taking; and
- (b) a substance shall be taken to interfere substantially with bodily functions if the substance is capable of inducing unconsciousness or sleep.

S. 19A
inserted by
No. 19/1993
s. 3.

19A. Intentionally causing a very serious disease

S. 19A(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 13).

- (1) A person who, without lawful excuse, intentionally causes another person to be infected with a very serious disease is guilty of an indictable offence.

Penalty: Level 2 imprisonment (25 years maximum).

- (2) In sub-section (1) "**very serious disease**" means HIV within the meaning of the **Health Act 1958**.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 20

20. Threats to kill

A person who, without lawful excuse, makes to another person a threat to kill that other person or any other person—

- (a) intending that that other person would fear the threat would be carried out; or
- (b) being reckless as to whether or not that other person would fear the threat would be carried out—

is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 20 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 14).

21. Threats to inflict serious injury

A person who, without lawful excuse, makes to another person a threat to inflict serious injury on that other person or any other person—

- (a) intending that that other person would fear the threat would be carried out; or
- (b) being reckless as to whether or not that other person would fear the threat would be carried out—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

S. 21 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 13), 48/1997 s. 60(1)(Sch. 1 item 16).

21A. Stalking

- (1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

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

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

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 21A

S. 21A(2)
amended by
No. 105/2003
s. 4(1).

(2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following—

(a) following the victim or any other person;

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

(b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;

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

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

(i) relating to the victim or any other person; or

(ii) purporting to relate to, or to originate from, the victim or any other person;

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

(bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;

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

(bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;

(c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;

(d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);

(e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 21A

- (f) keeping the victim or any other person under surveillance;
- (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person—

with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

- (3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if—

S. 21A(3)
substituted by
No. 105/2003
s. 4(2).

- (a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or
 - (b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.
- (4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of—
 - (a) the enforcement of the criminal law; or
 - (b) the administration of any Act; or
 - (c) the enforcement of a law imposing a pecuniary penalty; or
 - (d) the execution of a warrant; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 21A

(e) the protection of the public revenue—
that, but for this sub-section, would constitute an offence against sub-section (1).

S. 21A(4A)
inserted by
No. 105/2003
s. 3(2).

- (4A) In a proceeding for an offence against sub-section (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—
- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
 - (b) for the purpose of an industrial dispute; or
 - (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.
- (5) Despite anything to the contrary in the **Crimes (Family Violence) Act 1987**, the Court within the meaning of that Act may make an intervention order under that Act in respect of a person (the defendant) if satisfied on the balance of probabilities that the defendant has stalked another person and is likely to continue to do so or to do so again and for this purpose that Act has effect as if the other person were a family member in relation to the defendant within the meaning of that Act if he or she would not otherwise be so.
- (6) It is immaterial that some or all of the course of conduct constituting an offence against sub-section (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.
- (7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against

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

S. 21A(7)
inserted by
No. 105/2003
s. 5.

sub-section (1) occurred, so long as that conduct occurred in Victoria.

22. Conduct endangering life

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of death is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 22 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 9), 48/1997 s. 60(1)(Sch. 1 item 14).

23. Conduct endangering persons

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of serious injury is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

S. 23 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 14), 48/1997 s. 60(1)(Sch. 1 item 16).

24. Negligently causing serious injury

A person who by negligently doing or omitting to do an act causes serious injury to another person is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

S. 24 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 12), 48/1997 s. 60(1)(Sch. 1 item 16).

25. Setting traps etc. to kill

A person who sets a trap or device with the intention of killing another person (whether a trespasser or not) or being reckless as to whether or not another person (whether a trespasser or not) is killed is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

S. 25 substituted by No. 10233 s. 8(2), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 8), 48/1997 s. 60(1)(Sch. 1 item 11).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 26

S. 26
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 9),
48/1997
s. 60(1)(Sch. 1
item 14).

26. Setting traps etc. to cause serious injury

A person who sets a trap or device with the intention of causing, or being reckless as to whether or not there is caused, serious injury to another person (whether a trespasser or not) is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

S. 27
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 14),
48/1997
s. 60(1)(Sch. 1
item 11).

27. Extortion with threat to kill

A person who makes a demand of another person—

- (a) with a threat to kill or inflict injury on a person (other than the offender or an accomplice of the offender); or
- (b) with a threat in circumstances where, if the threat were carried out, the life of a person (other than the offender or an accomplice of the offender) would be endangered—

is guilty of an indictable offence.

Penalty: Level 4 imprisonment (15 years maximum).

S. 28
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 12),
48/1997
s. 60(1)(Sch. 1
item 14).

28. Extortion with threat to destroy property etc.

A person who makes a demand of another person with a threat to destroy, or endanger the safety of, a building, structure in the nature of a building, bridge, mine, aircraft, vessel, motor vehicle, railway engine or railway carriage is guilty of an indictable offence.

Penalty: Level 5 imprisonment (10 years maximum).

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

s. 29

29. Using firearm to resist arrest etc.

S. 29
substituted by
No. 10233
s. 8(2).

- (1) A person who makes or attempts to make any use of a firearm or imitation firearm with intent to resist or prevent the lawful apprehension or detention of himself or herself or any other person is guilty of an indictable offence.

S. 29(1)
amended by
Nos 40/1988
s. 22, 49/1991
s. 119(1)
(Sch. 2
item 10),
48/1997
s. 60(1)(Sch. 1
item 15),
69/1997
s. 22(1).

Penalty: Level 5 imprisonment (10 years maximum) or level 5 fine (1200 penalty units maximum).

- (2) A person who commits an offence against sub-section (1) in respect of the lawful apprehension or detention of himself or herself for any other offence committed by him or her is liable to the penalty provided by that sub-section in addition to any penalty to which he or she may be liable for that other offence.

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

- (3) In this section—

- (a) "**firearm**" has the same meaning as in the **Firearms Act 1996**; and

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

- (b) "**imitation firearm**" means anything which has the appearance of being a firearm whether or not it is capable of discharging any shot or other missile.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 30

S. 30
substituted by
No. 10233
s. 8(2),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 12),
48/1997
s. 60(1)(Sch. 1
item 16).

30. Threatening injury to prevent arrest

A person who threatens injury to any other person or to any property with intent—

- (a) to prevent or hinder the lawful apprehension or detention of himself or herself or any other person; or
- (b) to prevent or hinder a member of the police force from investigating in a lawful manner any act or circumstance which reasonably calls for investigation by a member of the police force—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

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

31. Assaults

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

(1) A person who—

- (a) assaults or threatens to assault another person with intent to commit an indictable offence; or
- (b) assaults or threatens to assault, resists or intentionally obstructs—
 - (i) a member of the police force in the due execution of duty; or
 - (ii) a person acting in aid of a member of the police force—

knowing that the member or person is such a member or person; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 31A

- (c) assaults or threatens to assault a person with intent to resist or prevent the lawful apprehension or detention of a person—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) In sub-section (1), "**assault**" means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is—

- (a) without lawful excuse; and
(b) with intent to inflict or being reckless as to the infliction of bodily injury, pain, discomfort, damage, insult or deprivation of liberty—

and results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

- (3) In sub-section (2)—

"application of force" includes—

- (a) application of heat, light, electric current or any other form of energy; and
(b) application of matter in solid, liquid or gaseous form.

31A. Use of firearms in the commission of offences

- (1) A person who is found guilty of an indictable offence and who carried a firearm (within the meaning of the **Firearms Act 1996**) when committing the offence is guilty of a further offence and liable to level 6 imprisonment (5 years maximum).

S. 31A
inserted by
No. 66/1996
s. 202 (as
amended by
Nos 26/1997
s. 35(2),
48/1997
s. 60(2) (as
amended by
No. 74/2000
s. 3(Sch. 1
item 114)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 31B

- (2) Despite anything to the contrary in the **Sentencing Act 1991** or in any other law, a court, in imposing a penalty under sub-section (1)—
- (a) must direct that the sentence not be served concurrently with any other sentence; and
 - (b) must not make an order suspending the whole or any part of the sentence.

S. 31B
inserted by
No. 56/2005
s. 6.

31B. Being armed with criminal intent

- (1) In this section—
- "controlled weapon"** has the same meaning as in the **Control of Weapons Act 1990**;
- "firearm"** has the same meaning as in the **Firearms Act 1996**;
- "imitation firearm"** has the same meaning as in section 29;
- "prohibited weapon"** has the same meaning as in the **Control of Weapons Act 1990**.
- (2) A person who, with criminal intent, is armed with a firearm, an imitation firearm, a prohibited weapon or a controlled weapon is guilty of an indictable offence.
- Penalty: Level 6 imprisonment (5 years maximum).

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

32. Offence to perform female genital mutilation

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

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

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 33

- (2) A person must not perform on a person other than a child any type of female genital mutilation referred to in paragraphs (a) to (e) of the definition of female genital mutilation.

S. 32(2)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 18).

Penalty: Level 4 imprisonment (15 years maximum).

33. Offence to take a person from the State with the intention of having prohibited female genital mutilation performed

New s. 33
inserted by
No. 46/1996
s. 4.

- (1) A person must not take another person from the State, or arrange for another person to be taken from the State, with the intention of having prohibited female genital mutilation performed on the other person.

S. 33(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 18).

Penalty: Level 4 imprisonment (15 years maximum).

- (2) In proceedings for an offence under subsection (1), proof that—
- (a) the defendant took the person, or arranged for the person to be taken from the State; and
 - (b) the person was subjected, while outside the State, to prohibited female genital mutilation—

is, in the absence of proof to the contrary, proof that the defendant took the person or arranged for the person to be taken from the State with the intention of having prohibited female genital mutilation performed on the person.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 34

New s. 34
inserted by
No. 46/1996
s. 4.

34. Consent not a defence to a charge under sections 32 or 33

It is not a defence to a charge brought under section 32 or 33 to prove that the person on whom the act which is the subject of the charge was performed, or the parents or guardian of that person, consented to the performance of that act.

S. 34A
inserted by
No. 46/1996
s. 4.

34A. Exceptions to offences under section 32

- (1) It is not an offence against section 32 if the performance of the female genital mutilation is by a surgical operation which is—
 - (a) necessary for the health of the person on whom it is performed and which is performed by a medical practitioner; or
 - (b) is performed on a person in labour or who has just given birth, and for medical purposes or the relief of physical symptoms connected with that labour or birth, and which is performed by a medical practitioner or a midwife; or
 - (c) is a sexual reassignment procedure which is performed by a medical practitioner.
- (2) For the purposes of sub-section (1)(a), in determining whether an operation is necessary for the health of a person, the only matters to be taken into account are those relevant to the medical welfare or the relief of physical symptoms of the person.
- (3) The burden of proving that the performance of the female genital mutilation did not occur in any of the circumstances set out in sub-section (1) lies with the prosecution.

(5) *Corpses*

Pt 1 Div. 1
Subdiv. (5)
(Heading and
ss 16–35)
amended by
Nos 7088
s. 2(b), 7645
s. 2, 8280 s. 4,
9155 s. 2, 9576
s. 11(1),
repealed by
No. 10233
s. 8(2), new
Pt 1 Div. 1
Subdiv. (5)
(Heading and
s. 34B)
inserted by
No. 80/2003
s. 185.

34B. Offence to interfere with corpse of a human being

S. 34B
inserted by
No. 80/2003
s. 185.

- (1) A person must not intentionally—
- (a) interfere sexually or commit an indecent act with a corpse of a human being; or
 - (b) unlawfully remove body parts from a corpse of a human being—

whether that corpse is in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.

Penalty: Level 6 (5 years maximum).

- (2) Sub-section (1) does not apply to—
- (a) any person who is engaged in the preparation of a corpse of a human being for the purposes of interment or cremation within the meaning of the **Cemeteries and Crematoria Act 2003**; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 34B

(b) any other lawful interference with a corpse
of a human being, including a lawful
interference for the purposes of a medical,
scientific or hygienic procedure.

Pt 1 Div. 1
Subdiv. (6)
(Heading and
s. 36)
amended by
Nos 9155 s. 3,
9576 s. 11(1),
repealed by
No. 10233
s. 8(2).

* * * *

Pt 1 Div. 1
Subdiv. (7)
(Heading and
ss 37–43)
amended by
Nos 6958
s. 8(4)(b), 7546
s. 4, 7876
s. 2(3), 8280
s. 5, 9576
s. 11(1),
repealed by
No. 10233
s. 8(2).

* * * *

(8) *Sexual Offences (General Provisions)*

Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 44–62)
amended by
Nos 6761
s. 2, 7332
s. 2(Sch. 1
item 18), 7577
s. 2, 8280 s. 6,
substituted as
Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 44–46) by
No. 9509 s. 5,
substituted as
Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 36–39) by
No. 8/1991
s. 3,
substituted as
Pt 1 Div. 1
Subdiv. (8)
(Heading and
ss 35–37) by
No. 81/1991
s. 3.

35. Definitions

New s. 35
inserted by
No. 81/1991
s. 3.

(1) In Subdivisions (8A) to (8G)—

"de facto spouse" means a person who is living
with a person of the opposite sex as if they
were married although they are not;

"sexual penetration" means—

- (a) the introduction (to any extent) by a
person of his penis into the vagina, anus
or mouth of another person, whether or
not there is emission of semen; or
- (b) the introduction (to any extent) by a
person of an object or a part of his or
her body (other than the penis) into the
vagina or anus of another person, other
than in the course of a procedure

carried out in good faith for medical or
hygienic purposes;

"vagina" includes—

- (a) the external genitalia; and
 - (b) a surgically constructed vagina.
- (2) For the purposes of Subdivisions (8B) to (8E)
both the person who sexually penetrates another
person and the other person are taking part in an
act of sexual penetration.

S. 36
substituted by
No. 81/1991
s. 3.

36. Meaning of consent³

For the purposes of Subdivisions (8A) to (8D)
"consent" means free agreement. Circumstances
in which a person does not freely agree to an act
include the following—

- (a) the person submits because of force or the
fear of force to that person or someone else;
- (b) the person submits because of the fear of
harm of any type to that person or someone
else;
- (c) the person submits because she or he is
unlawfully detained;
- (d) the person is asleep, unconscious, or so
affected by alcohol or another drug as to be
incapable of freely agreeing;
- (e) the person is incapable of understanding the
sexual nature of the act;
- (f) the person is mistaken about the sexual
nature of the act or the identity of the person;
- (g) the person mistakenly believes that the act is
for medical or hygienic purposes.

37. Jury directions on consent⁴

- (1) If relevant to the facts in issue in a proceeding the judge must direct the jury that—
- (a) the fact that a person did not say or do anything to indicate free agreement to a sexual act is normally enough to show that the act took place without that person's free agreement;
 - (b) a person is not to be regarded as having freely agreed to a sexual act just because—
 - (i) she or he did not protest or physically resist; or
 - (ii) she or he did not sustain physical injury; or
 - (iii) on that or an earlier occasion, she or he freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person;
 - (c) in considering the accused's alleged belief that the complainant was consenting to the sexual act, it must take into account whether that belief was reasonable in all the relevant circumstances—

and relate any direction given to the facts in issue in the proceeding so as to aid the jury's comprehension of the direction.

- (2) A judge must not give to a jury a direction of a kind referred to in sub-section (1) if the direction is not relevant to the facts in issue in the proceeding.

S. 37
substituted by
No. 81/1991
s. 3,
amended by
No. 81/1997
s. 4(1)(a)(b)(2)
(ILA s. 39B(1)).

S. 37(2)
inserted by
No. 81/1997
s. 4(2).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 38

(8A) *Rape and Indecent Assault*⁵

Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 47–50)
inserted by
No. 9509 s. 5
amended by
No. 10079
s. 8(1),
substituted as
Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 40–43) by
No. 8/1991
s. 3,
substituted as
Pt 1 Div. 1
Subdiv. (8A)
(Heading and
ss 38, 39) by
No. 81/1991
s. 3.

S. 38
substituted by
No. 81/1991
s. 3.

38. Rape

S. 38(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 19).

(1) A person must not commit rape.

Penalty: Level 2 imprisonment (25 years
maximum).

(2) A person commits rape if—

- (a) he or she intentionally sexually penetrates another person without that person's consent while being aware that the person is not consenting or might not be consenting; or
- (b) after sexual penetration he or she does not withdraw from a person who is not consenting on becoming aware that the person is not consenting or might not be consenting.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 39

(3) A person (the offender) also commits rape if he or she compels a male person—

S. 38(3)
inserted by
No. 67/2000
s. 4.

(a) to sexually penetrate the offender or another person with his penis, irrespective of whether the person being sexually penetrated consents to the act; or

(b) who has sexually penetrated the offender or another person with his penis, not to withdraw his penis from the offender or that other person, irrespective of whether the person who has been sexually penetrated consents to the act.

(4) For the purposes of sub-section (3), a person compels a male person (the victim) to engage in a sexual act if the person compels the victim (by force or otherwise) to engage in that act—

S. 38(4)
inserted by
No. 67/2000
s. 4.

(a) without the victim's consent; and

(b) while being aware that the victim is not consenting or might not be consenting.

39. Indecent assault

S. 39
substituted by
No. 81/1991
s. 3,
amended by
No. 49/1991
s. 119(3)
(Sch. 3
item 1) (as
amended by
No. 81/1991
s. 10(Sch.
item 3.1)).

(1) A person must not commit indecent assault.

Penalty: Level 5 imprisonment (10 years maximum).

S. 39(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 20).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 40

- (2) A person commits indecent assault if he or she assaults another person in indecent circumstances while being aware that the person is not consenting or might not be consenting.

New s. 40
inserted by
No. 41/1993
s. 20.

40. Assault with intent to rape

S. 40(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 20).

- (1) A person must not assault or threaten to assault another person with intent to commit rape.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) In sub-section (1), "**assault**" has the same meaning as in section 31(1).

Pt 1 Div. 1
Subdiv. (8B)
(Heading and
s. 51)
inserted by
No. 9509 s. 5,
amended by
No. 102/1986
s. 9(a)–(c),
substituted as
Pt 1 Div. 1
Subdiv. (8B)
(Heading and
s. 44) by
No. 8/1991
s. 3.

(8B) Incest

S. 44
substituted by
No. 8/1991
s. 3.

44. Incest

S. 44(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 3A),
48/1997
s. 60(1)(Sch. 1
item 21(a)).

- (1) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child.

Penalty: Level 2 imprisonment (25 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 44

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|---|--|
| <p>(2) A person must not take part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant or the step-child of his or her de facto spouse.</p> <p>Penalty: Level 2 imprisonment (25 years maximum).</p> | <p>S. 44(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 3A),
48/1997
s. 60(1)(Sch. 1
item 21(a)).</p> |
| <p>(3) A person who is aged 18 or older must not take part in an act of sexual penetration with a person whom he or she knows to be his or her father or mother or other lineal ancestor or his or her step-father or step-mother.</p> <p>Penalty: Level 6 imprisonment (5 years maximum).</p> | <p>S. 44(3)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 4),
48/1997
s. 60(1)(Sch. 1
item 21(b)).</p> |
| <p>(4) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her sister, half-sister, brother or half-brother.</p> <p>Penalty: Level 6 imprisonment (5 years maximum).</p> | <p>S. 44(4)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 4),
48/1997
s. 60(1)(Sch. 1
item 21(b)).</p> |
| <p>(5) Consent is not a defence to a charge under this section.</p> | |
| <p>(6) It is a defence to a charge under this section for the person charged to prove that he or she took part under the coercion of the other person.</p> | |
| <p>(7) In all proceedings for offences under this section (except under sub-section (2)) it shall be presumed in the absence of evidence to the contrary—</p> <p style="margin-left: 40px;">(a) that the accused knew that he or she was related to the other person in the way alleged; and</p> <p style="margin-left: 40px;">(b) that people who are reputed to be related to each other in a particular way are in fact related in that way.</p> | |
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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 45

Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 52, 53)
inserted by
No. 9509 s. 5,
amended by
No. 9848
s. 18(1),
substituted as
Pt 1 Div. 1
Subdiv. (8C)
(Heading and
ss 45–49) by
No. 8/1991
s. 3.

(8C) *Sexual Offences against Children*

S. 45
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 4A),
48/1997
s. 60(1)(Sch. 1
item 22),
substituted by
No. 67/2000
s. 5.

45. Sexual penetration of child under the age of 16

- (1) A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence.
- (2) A person who is guilty of an offence against sub-section (1) is liable—
 - (a) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 10, to level 2 imprisonment (25 years maximum); or
 - (b) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 10 and 16 and under the care, supervision or authority of the accused, to level 4 imprisonment (15 years maximum); or
 - (c) in any other case, to level 5 imprisonment (10 years maximum).
- (3) Sub-section (1) does not apply to an act of sexual penetration if—
 - (a) the child is aged between 10 and 16; and
 - (b) the persons taking part in the act are married to each other.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 45

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- (4) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence the child was aged 10 or older and—
 - (a) the accused believed on reasonable grounds that the child was aged 16 or older; or
 - (b) the accused was not more than 2 years older than the child; or
 - (c) the accused believed on reasonable grounds that he or she was married to the child.
 - (5) A circumstance of aggravation described in sub-section (2) is not an element of an offence against sub-section (1) but must be stated in the presentment.
 - (6) An accused who takes issue with a circumstance of aggravation described in sub-section (2) and who wishes to have the matter determined on the trial may do so by pleading not guilty to the offence with which he or she is charged even if he or she does not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt.
 - (7) A circumstance of aggravation described in sub-section (2)—
 - (a) is to be determined by the jury if the accused pleads not guilty to the offence; and
 - (b) is to be determined by the trial judge if the accused pleads guilty to the offence.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 45

- (8) An offender who pleads not guilty to an offence against sub-section (1) is to be taken to have pleaded guilty to the offence for the purposes of section 5(2)(e) of the **Sentencing Act 1991** if—
- (a) he or she—
 - (i) took issue with a circumstance of aggravation described in sub-section (2); and
 - (ii) did not take issue with any acts, facts, matters or circumstances relied upon by the prosecution to support a finding of guilt; and
 - (b) the circumstance of aggravation is not proved.
- (9) For the avoidance of doubt it is declared that it is the intention of the Parliament that an offence against sub-section (1) is not an offence to which section 53(1) of the **Magistrates' Court Act 1989** applies (indictable offences triable summarily) even though the offence is punishable by level 5 imprisonment where a circumstance of aggravation described in sub-section (2) is not present.

S. 46
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 5),
48/1997
s. 60(1)(Sch. 1
item 23),
repealed by
No. 67/2000
s. 5.

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47. Indecent act with child under the age of 16

S. 47
substituted by
No. 8/1991
s. 3.

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married.

S. 47(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 6),
48/1997
s. 60(1)(Sch. 1
item 24).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) Consent is not a defence to a charge under sub-section (1) unless at the time of the alleged offence—
- (a) the accused believed on reasonable grounds that the child was aged 16 or older; or
 - (b) the accused was not more than 2 years older than the child; or
 - (c) the accused believed on reasonable grounds that he or she was married to the child.

47A. Sexual relationship with child under the age of 16

S. 47A
inserted by
No. 8/1991
s. 3.

- (1) A person who maintains a sexual relationship with a child under the age of 16 to whom he or she is not married is guilty of an indictable offence.
- (2) To prove an offence under sub-section (1) it is necessary to prove—
- (a) that the accused during a particular period (while the child was under the age of 16) did an act in relation to the child which would constitute an offence under a provision of this Subdivision or Subdivision (8A) or (8B); and

S. 47A(1)
amended by
No. 81/1997
s. 5(1)(a).

S. 47A(2)(a)
amended by
No. 81/1997
s. 5(1)(b)(2).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 47A

S. 47A(2)(b)
amended by
No. 81/1997
s. 5(3).

(b) that an act which would constitute an offence under a provision of this Subdivision or Subdivision (8A) or (8B) took place between the accused and the child on at least two other occasions during that period.

S. 47A(2A)
inserted by
No. 81/1997
s. 5(4).

(2A) It is not necessary that the alleged acts be of a similar nature or constitute an offence under the same provision.

S. 47A(3)
substituted by
No. 81/1997
s. 5(5).

(3) It is not necessary to prove an act referred to in sub-section (2)(a) or (b) with the same degree of specificity as to date, time, place, circumstances or occasion as would be required if the accused were charged with an offence constituted by that act instead of an offence against sub-section (1).

S. 47A(4)
substituted by
No. 48/1997
s. 60(1)(Sch. 1
item 25).

(4) A person who is guilty of an offence under sub-section (1) is liable to level 2 imprisonment (25 years maximum).

(5) If on the trial of a person charged with an offence against sub-section (1) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that the accused did an act during that period which constitutes an offence against Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I, the jury must acquit the accused of the offence charged but may find him or her guilty of that other offence and he or she is liable to punishment accordingly.

(6) Sub-section (5) does not restrict the operation of section 421 or 422.

(7) A prosecution for an offence under sub-section (1) must not be commenced without the consent of the Director of Public Prosecutions.

48. Sexual penetration of 16 year old child

S. 48
substituted by
No. 8/1991
s. 3.

- (1) A person must not take part in an act of sexual penetration with a 16 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

S. 48(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 7),
48/1997
s. 60(1)(Sch. 1
item 24).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) Consent is not a defence to a charge under subsection (1) unless at the time of the alleged offence the accused believed on reasonable grounds—
- (a) that the child was aged 18 or older; or
- (b) that he or she was married to the child.

49. Indecent act with 16 year old child

S. 49
substituted by
No. 8/1991
s. 3.

- (1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a 16 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

S. 49(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 8),
48/1997
s. 60(1)(Sch. 1
item 26).

Penalty: Level 6 imprisonment (5 years maximum).

- (2) Consent is not a defence to a charge under subsection (1) unless at the time of the alleged offence the accused believed on reasonable grounds—
- (a) that the child was aged 17 or older; or
- (b) that he or she was married to the child.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 49A

S. 49A
inserted by
No. 102/1994
s. 93.

49A. Facilitating sexual offences against children

S. 49A(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 27).

- (1) Subject to this section, a person who in Victoria makes travel arrangements for another person or does or omits to do any other act that aids, facilitates or contributes to in any way whatever the commission by another person of an offence against this Subdivision (other than this section) or against Division 2 of Part IIIA of the Crimes Act 1914 of the Commonwealth or against a law in force only in a place outside Victoria the necessary elements of which consist of or include elements which, if present or occurring in Victoria, would constitute an offence against this Subdivision (other than this section) is guilty of an indictable offence and liable to level 3 imprisonment (20 years maximum).
- (2) For a person to be guilty of an offence against sub-section (1) the person—
 - (a) must make the travel arrangements or do or omit to do the other act with a view to personal gain or gain for another person; and
 - (b) must—
 - (i) intend that the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person; or
 - (ii) be reckless as to whether or not the conduct would aid, facilitate or contribute to the commission of an offence of the type committed by the other person.

(8D) *Sexual Offences against People with Impaired Mental Functioning*

Pt 1 Div. 1
Subdiv. (8D)
(Heading and
ss 54–57)
inserted by
No. 9509 s. 5,
substituted as
Pt 1 Div. 1
Subdiv. (8D)
(Heading and
ss 50–52) by
No. 8/1991
s. 3.

50. Definitions

S. 50
substituted by
No. 8/1991
s. 3.

(1) In this Subdivision—

"impaired" includes impaired because of mental illness, intellectual disability, dementia or brain injury;

"indecent act" does not include an act done in the course of an appropriate and generally accepted medical, therapeutic or hygienic procedure;

"intellectual disability" has the same meaning as in the **Intellectually Disabled Persons' Services Act 1986**;

"resident", in relation to a residential facility, means a person who resides there for the purpose of receiving services for impaired mental functioning;

"residential facility" means—

S. 50(1) def. of
"residential
facility"
amended by
No. 98/1995
s. 65(Sch. 1
item 3).

- (a) an approved mental health service as defined in section 3 of the **Mental Health Act 1986**; or
- (b) premises operated by any person or body (government or non-government) wholly or substantially for the purpose of providing residential services to intellectually disabled people;

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 51

"worker" means a person who provides services to residents at a residential facility (whether as an employee or as a voluntary worker or in any other capacity) but does not include a person who also receives services for impaired mental functioning.

- (2) For the purposes of this Subdivision a person in respect of whom a declaration of eligibility has been issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986** must be taken to be intellectually disabled.

S. 51
substituted by
No. 8/1991
s. 3.

51. Sexual offences against people with impaired mental functioning

S. 51(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 28).

- (1) A person who provides medical or therapeutic services to a person with impaired mental functioning who is not his or her spouse or de facto spouse must not take part in an act of sexual penetration with that person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 51(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 8),
48/1997
s. 60(1)(Sch. 1
item 29).

- (2) A person who provides medical or therapeutic services to a person with impaired mental functioning who is not his or her spouse or de facto spouse must not commit, or be in any way a party to the commission of, an indecent act with that person.

Penalty: Level 6 imprisonment (5 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 52

- (3) Consent is not a defence to a charge under this section unless at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or de facto spouse of the other person.
- (4) This section only applies if the services are related to the impaired mental functioning.

52. Sexual offences against residents of residential facilities

S. 52
substituted by
No. 8/1991
s. 3.

- (1) A worker at a residential facility must not take part in an act of sexual penetration with a resident of the facility who is not his or her spouse or de facto spouse.

S. 52(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 28).

Penalty: Level 5 imprisonment (10 years maximum).

- (2) A worker at a residential facility must not commit, or be in any way a party to the commission of, an indecent act with a resident of the facility who is not his or her spouse or de facto spouse.

S. 52(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 8),
48/1997
s. 60(1)(Sch. 1
item 29).

Penalty: Level 6 imprisonment (5 years maximum).

- (3) Consent is not a defence to a charge under this section unless at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or de facto spouse of the resident.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 53

(8E) *Other Sexual Offences*

Pt 1 Div. 1
Subdiv. (8E)
(Heading and
s. 58)
inserted by
No. 9509 s. 5,
substituted as
Pt 1 Div. 1
Subdiv. (8E)
(Heading and
ss 53–60) by
No. 8/1991
s. 3.

S. 53
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 10),
48/1997
s. 60(1)(Sch. 1
item 30).

53. Administration of drugs etc.

A person must not—

- (a) administer a drug, matter or thing to a person; or
- (b) cause a drug, matter or thing to be taken by a person—

with the intention of rendering that person incapable of resistance and thereby enabling himself or herself or another person to take part in an act of sexual penetration with that person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 54
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 13),
48/1997
s. 60(1)(Sch. 1
item 31).

54. Occupier etc. permitting unlawful sexual penetration

The owner or occupier of, or a person managing or assisting in the management of, any premises must not induce or knowingly allow a child under the age of 17 to enter or remain on the premises for the purpose of taking part in an unlawful act of sexual penetration.

Penalty: Level 4 imprisonment (15 years maximum) if the child is under the age of 13;

Level 5 imprisonment (10 years maximum) if the child is aged between 13 and 17.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 55

55. Abduction or detention

A person must not take away a person by force or detain a person against his or her will—

- (a) with the intention of getting married to, or taking part in an act of sexual penetration with, that person; or
- (b) with the intention that that person should marry, or take part in an act of sexual penetration with, another person.

Penalty: Level 5 imprisonment (10 years maximum).

S. 55
substituted by
No. 8/1991
s. 3,
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 10),
48/1997
s. 60(1)(Sch. 1
item 32).

56. Abduction of child under the age of 16

S. 56
substituted by
No. 8/1991
s. 3.

- (1) A person must not take away a child under the age of 16 against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Level 6 imprisonment (5 years maximum).

S. 56(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 11),
48/1997
s. 60(1)(Sch. 1
item 33).

- (2) A person must not cause a child under the age of 16 to be taken away against the will of a person who has lawful charge of the child with the intention that the child should take part in an act of sexual penetration outside marriage with him or her or any other person.

Penalty: Level 6 imprisonment (5 years maximum).

S. 56(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 11),
69/1997
s. 22(2).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 57

S. 57
substituted by
No. 8/1991
s. 3.

57. Procuring sexual penetration by threats or fraud

S. 57(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 11),
48/1997
s. 60(1)(Sch. 1
item 34(a)).

- (1) A person must not by threats or intimidation procure a person to take part in an act of sexual penetration.

Penalty: Level 5 imprisonment (10 years maximum).

S. 57(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 34(b)).

- (2) A person must not by any fraudulent means procure a person to take part in an act of sexual penetration.

Penalty: Level 6 imprisonment (5 years maximum).

S. 58
substituted by
No. 8/1991
s. 3.

58. Procuring sexual penetration of child under the age of 16

S. 58(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 35).

- (1) A person must not procure a child under the age of 16 to take part in an act of sexual penetration outside marriage with another person.

Penalty: Level 6 imprisonment (5 years maximum).

S. 58(2)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 9),
48/1997
s. 60(1)(Sch. 1
item 35).

- (2) A person must not procure another person to take part in an act of sexual penetration outside marriage with a child under the age of 16.

Penalty: Level 6 imprisonment (5 years maximum).

59. Bestiality

S. 59
substituted by
No. 8/1991
s. 3.

- (1) A person must not commit an act of bestiality.

Penalty: Level 6 imprisonment (5 years maximum).

S. 59(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 12),
48/1997
s. 60(1)(Sch. 1
item 35).

- (2) An act of bestiality is any of the following—

- (a) buggery committed by a man on an animal of either sex;
- (b) buggery committed by an animal on a man or woman;
- (c) penetration of the vagina of an animal by the penis of a man;
- (d) penetration of the vagina of a woman by the penis of an animal.

- (3) The law relating to buggery is as set out in this Act and no prosecution shall be instituted for an offence of buggery unless it is for an offence under this section.

60. Soliciting acts of sexual penetration or indecent acts

S. 60
substituted by
No. 8/1991
s. 3.

- (1) A person must not solicit or otherwise actively encourage a child under the age of 18 to whom he or she is not married and who is under his or her care, supervision or authority to take part in an act of sexual penetration or an indecent act with him or her or another person or generally.

Penalty: Level 8 imprisonment (1 year maximum) or level 8 fine (120 penalty units maximum).

S. 60(1)
amended by
Nos 49/1991
s. 119(3)
(Sch. 3
item 14),
48/1997
s. 60(1)(Sch. 1
item 36),
69/1997
s. 22(3).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 60A

- (2) An offence under sub-section (1) is a summary offence.

S. 60A
inserted by
No. 41/1993
s. 21.

60A. Sexual offence while armed with an offensive weapon

S. 60A(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 37).

- (1) A person who is found guilty of an offence under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) and who carried an offensive weapon when committing the offence is guilty of a summary offence and liable to level 7 imprisonment (2 years maximum).
- (2) Despite anything to the contrary in the **Sentencing Act 1991** or in any other law, a court imposing a sentence under sub-section (1)—
- (a) must direct that the sentence be served cumulatively on any other sentence; and
 - (b) must not make an order suspending the whole or any part of the sentence.
- (3) Despite anything to the contrary in this or any other Act or in any rule of law, the court by which the person has been found guilty of an offence under this Subdivision or under Subdivision (8A), (8B), (8C) or (8D) may hear and determine the summary offence under this section without a jury and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences shall apply so far as is appropriate to the hearing and determination of the offence under this section.
- (4) Sub-section (3) is in addition to, and does not limit the operation of, section 359AA.

(8EAA) Sexual Servitude

Pt 1 Div. 1
Subdiv.
(8EAA)
(Heading and
ss 60AB–
60AE)
inserted by
No. 20/2004
s. 3.

60AB. Sexual servitude

S. 60AB
inserted by
No. 20/2004
s. 3.

(1) In this section—

"commercial sexual services" means services for commercial benefit involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others;

"threat" means—

- (a) threat of force; or
 - (b) threat to cause a person's deportation; or
 - (c) threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of commercial sexual services.
- (2) A person who, by the use of—
- (a) force; or
 - (b) a threat; or
 - (c) unlawful detention; or
 - (d) fraud or misrepresentation, including by omission; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 60AB

(e) a manifestly excessive debt—

causes another person to provide, or to continue providing, commercial sexual services is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

(3) A person who—

(a) causes or induces another person to provide commercial sexual services; and

(b) knows that, or is reckless as to whether, the other person providing those services will not be free to stop providing those services because of the use of—

(i) force; or

(ii) a threat; or

(iii) unlawful detention; or

(iv) fraud or misrepresentation, including by omission; or

(v) a manifestly excessive debt—

is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

(4) A person who—

(a) conducts a business that involves the provision of commercial sexual services; and

(b) knows that, or is reckless as to whether, the persons providing those services are not free to stop providing those services because of the use of—

(i) force; or

(ii) a threat; or

(iii) unlawful detention; or

(iv) fraud or misrepresentation, including by omission; or

(v) a manifestly excessive debt—

is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

(5) For the purposes of sub-section (4), conducting a business includes—

(a) taking any part in the management of the business; or

(b) exercising control or direction over the business; or

(c) providing finance for the business.

60AC. Aggravated sexual servitude

S. 60AC
inserted by
No. 20/2004
s. 3.

(1) A person is guilty of aggravated sexual servitude if—

(a) the person commits an offence against section 60AB(2), (3) or (4); and

(b) the offence was committed against a person under the age of 18 years; and

(c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.

(2) A person guilty of aggravated sexual servitude is guilty of an offence and liable to level 3 imprisonment (20 years maximum).

60AD. Deceptive recruiting for commercial sexual services

S. 60AD
inserted by
No. 20/2004
s. 3.

(1) A person who, intending to induce another person to enter into an engagement to provide commercial sexual services, deceives that other person about the fact that the engagement will involve the provision of commercial sexual services is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 60AE

- (2) In sub-section (1), "**commercial sexual services**" has the same meaning as in section 60AB.

S. 60AE
inserted by
No. 20/2004
s. 3.

60AE. Aggravated deceptive recruiting for commercial sexual services

- (1) A person is guilty of aggravated deceptive recruiting for commercial sexual services if—
- (a) the person commits an offence against section 60AD; and
 - (b) the offence was committed against a person under the age of 18 years; and
 - (c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.
- (2) A person guilty of aggravated deceptive recruiting for sexual services is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

Pt 1 Div. 1
Subdiv. (8EA)
(Heading and
s. 60B)
inserted by
No. 129/1993
s. 10.

(8EA) *Loitering by sexual offender*

S. 60B
inserted by
No. 129/1993
s. 10.

60B. Loitering near schools etc.

S. 60B(1)
substituted by
No. 65/1998
s. 3(1).

- (1) In this section, "**sexual offence**" means—

S. 60B(1)(a)
amended by
No. 67/2000
s. 7(1).

- (a) an offence against section 38, 39, 40, 44(1), 44(2), 44(4), 45, 47, 47A, 48, 49, 55 or 56;
or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 60B

(b) any offence specified in clause 7A, 7B, 8, 9, 10 or 12 of Schedule 8; or

S. 60B(1)(b)
amended by
No. 67/2000
s. 7(2).

(c) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraph (a) or (b).

(2) A person who—

S. 60B(2)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 38),
69/1997
s. 22(4),
65/1998
s. 3(2)(b).

(a) has been found guilty of—

(i) a sexual offence; or

(ia) an offence against—

S. 60B(2)(a)(ia)
inserted by
No. 65/1998
s. 3(2)(a).

(A) section 5, 6, 7 or 11 of the
Prostitution Control Act 1994;
or

(B) section 6, 7, 8 or 9 of the
Prostitution Regulation Act
1986; or

(C) section 59(1)(a) or (b) or 60
inserted in this Act on 1 March
1981 by section 5 of the **Crimes**
(Sexual Offences) Act 1980 and
repealed on 5 August 1991 by
section 3 of the **Crimes (Sexual**
Offences) Act 1991; or

(ii) murder where there are reasonable grounds to believe that a sexual offence was also committed on the victim; or

(iii) an offence against section 19 of the
Summary Offences Act 1966; or

S. 60B(2)(a)(iii)
substituted by
No. 55/2005
s. 7(a).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 60B

S. 60B(2)(a)(iv)
amended by
No. 90/1995
s. 86,
substituted by
No. 22/1996
s. 7.

- (iv) an offence against section 68, 69 or 70
or an offence of attempting to commit
an offence against section 69; or

S. 60B(2)(a)(v)
inserted by
No. 22/1996
s. 7.

- (v) an offence against—
(A) section 60A of the **Classification
of Films and Publications Act
1990**; or
(B) section 168A, 168B or 168C of
the **Police Offences Act 1958**—
as in force at any time before its repeal;
and

- (b) is found loitering without reasonable excuse
in or near—
(i) a school, kindergarten or child care
centre; or

S. 60B(2)(b)(ii)
amended by
No. 56/2005
s. 7(b).

- (ii) a public place within the meaning of
the **Summary Offences Act 1966**
regularly frequented by children and in
which children are present at the time
of the loitering—

is guilty of an offence.

S. 60B(2A)
inserted by
No. 65/1998
s. 3(3).

- (2A) An offence against sub-section (2) is—
(a) an indictable offence for which the offender
is liable to level 6 imprisonment (5 years
maximum) or a level 6 fine (600 penalty
units maximum) if at the time of the
commission of the offence the offender had
previously been sentenced as a serious
sexual offender (within the meaning of
Part 2A of the **Sentencing Act 1991**) for a
sexual offence (within the meaning of that

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 61

- Part) or a violent offence (within the meaning of that Part); or
- (b) a summary offence for which the offender is liable to level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) in any other case.
- (3) If a person has at any time been convicted of an offence against a law of another State or a Territory of the Commonwealth which creates an offence substantially similar to a sexual offence the conviction for the offence against that law must be taken for the purposes of this section to be a conviction of a sexual offence.

(8F) *Jury Warnings*

Pt 1 Div. 1
Subdiv. (8F)
(Heading and
ss 59–61)
inserted by
No. 9509 s. 5,
amended by
Nos 10094
s. 14, 124/1986
ss 74(b)–(d),
80,
substituted as
Pt 1 Div. 1
Subdiv. (8F)
(Heading and
s. 61) by
No. 8/1991
s. 3.

61. Jury warnings

S. 61
substituted by
No. 8/1991
s. 3.

- (1) On the trial of a person for an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) or under any corresponding previous enactment or for an attempt to commit any such offence or an assault with intent to commit any such offence—
- (a) the judge must not warn, or suggest in any way to, the jury that the law regards complainants in sexual cases as an unreliable class of witness; and

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 62

S. 61(1)(b)
amended by
No. 81/1997
s. 6(1).

(b) if evidence is given or a question is asked of a witness or a statement is made in the course of an address on evidence which tends to suggest that there was delay in making a complaint about the alleged offence by the person against whom the offence is alleged to have been committed, the judge must inform the jury that there may be good reasons why a victim of a sexual assault may delay or hesitate in complaining about it.

(2) Nothing in sub-section (1) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice.

S. 61(3)
inserted by
No. 81/1997
s. 6(2).

(3) Despite sub-section (2), a judge must not make any comment on the reliability of evidence given by the complainant in a proceeding to which sub-section (1) applies if there is no reason to do so in the particular proceeding in order to ensure a fair trial.

Pt 1 Div. 1
Subdiv. (8G)
(Heading and
s. 62)
inserted by
No. 9509 s. 5.

(8G) *Abrogation of Obsolete Rules of Law*

S. 62
inserted by
No. 9509 s. 5.

62. Abrogation of obsolete rules of law

(1) The rule of law whereby a male person under the age of fourteen years is conclusively presumed to be impotent is hereby abrogated.

S. 62(2)
substituted by
No. 10233
s. 10.

(2) The existence of a marriage does not constitute, or raise any presumption of, consent by a person to an act of sexual penetration with another person or to an indecent assault (with or without aggravating circumstances) by another person.

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

s. 63

* * * * *

S. 62(3)
repealed by
No. 8/1991
s. 6(c).

(9) *Child Stealing*

63. Child stealing

No. 6103 s. 63.

- (1) Whosoever unlawfully either by force or fraud leads or takes away or decoys or entices away or detains any child under the age of sixteen years, with intent to deprive any parent or guardian or any other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child; and whosoever with any such intent receives or harbors any such child knowing the same to have been by force or fraud led taken decoyed enticed away or detained, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 63(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30(a)),
48/1997
s. 60(1)(Sch. 1
item 39(a)).

No person who has claimed any right to the possession of such child, or is the mother or has claimed to be the father of an illegitimate child, shall be liable to be prosecuted under this or the next succeeding sub-section on account of the getting possession of such child or taking such child out of the possession of any person having the lawful care or charge thereof.

- (2) Whosoever unlawfully takes decoys or entices away any child under the age of sixteen years⁶ out of the possession and against the will of the child's parent or guardian or of any other person having the lawful care or charge of the child shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 63(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30(b)),
48/1997
s. 60(1)(Sch. 1
item 39(b)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 63A

Pt 1 Div. 1
Subdiv. (9A)
(Heading and
s. 63A)
inserted by
No. 6731
s. 2(2).

(9A) *Kidnapping*

S. 63A
inserted by
No. 6731
s. 2(2),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 30A),
48/1997
s. 60(1)(Sch. 1
item 40).

63A. Kidnapping

Whosoever leads takes or entices away or detains any person with intent to demand from that person or any other person any payment by way of ransom for the return or release of that person or with intent to gain for himself or any other person any advantage (however arising) from the detention of that person shall, whether or not any demand or threat is in fact made, be guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

(10) *Bigamy*

No. 6103 s. 64.
S. 64
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 32),
48/1997
s. 60(1)(Sch. 1
item 41).

64. Bigamy

Whosoever being married goes through the form or ceremony of marriage with any other person during the life of her or his husband or wife, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum). Nothing in this section contained shall extend to any person going through the form or ceremony of marriage as aforesaid whose husband or wife has been continually absent from such person for the space of seven years then last past and has not been known by such person to be living within that time; or shall extend to any person who at the time of her or his going through such form or ceremony of marriage has been divorced from the bond of the marriage; or to any person whose marriage at such time has been

declared void by the sentence of any court of competent jurisdiction.

(11) *Attempts to Procure Abortion*⁷

65. Abortion

Whosoever being a woman with child with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing or unlawfully uses any instrument or other means, and whosoever with intent to procure the miscarriage of any woman whether she is or is not with child unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with the like intent, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

No. 6103 s. 65.
S. 65
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 42).

66. Supplying or procuring anything to be employed in abortion

Whosoever unlawfully supplies or procures any poison or other noxious thing or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether with child or not, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No. 6103 s. 66.
S. 66
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 34),
48/1997
s. 60(1)(Sch. 1
item 43).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 67

(12) *Concealing the Birth of a Child*⁸

No. 6103 s. 67.

S. 67
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 35),
48/1997
s. 60(1)(Sch. 1
item 44(a)(b)).

67. Concealing birth of a child

If any woman has been delivered of a child, every person who by any secret disposition of the dead body of the said child whether such child died before at or after its birth endeavours to conceal the birth thereof, shall be guilty of a summary offence, and shall be liable to level 9 imprisonment (6 months maximum).

(13) *Child Pornography*

Pt 1 Div. 1
Subdiv. (13)
(Heading and
ss 68, 69)
amended by
No. 7577
s. 3(a)(b),
repealed by
No. 9509 s. 6,
new Pt 1
Div. 1
Subdiv. (13)
(Heading and
ss 67A–70)
inserted by
No. 90/1995
s. 88.

67A. Definitions

In this Subdivision—

S. 67A
inserted by
No. 90/1995
s. 88.

S. 67A def. of
"child
pornography"
amended by
Nos 20/2004
s. 4, 6/2005
s. 12(1).

"child pornography" means a film, photograph, publication or computer game that describes or depicts a person who is, or appears to be, a minor engaging in sexual activity or depicted in an indecent sexual manner or context;

"classified" means classified under the Commonwealth Act;

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

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 67A

"computer game" has the same meaning as in the Commonwealth Act;

"film" has the same meaning as in the Commonwealth Act;

"law enforcement agency" means—

- (a) the police force of Victoria or of any other State or of the Northern Territory of Australia; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth; or
- (d) any other authority or person responsible for the enforcement of the laws of—
 - (i) Victoria or any other State; or
 - (ii) the Commonwealth; or
 - (iii) the Northern Territory of Australia;

S. 67A def. of "law enforcement agency" amended by No. 52/2003 s. 52(Sch. 1 item 1).

"minor" means a person under the age of 18 years;

"photograph" includes a photocopy or other reproduction of a photograph;

"publication" has the same meaning as in the Commonwealth Act.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 68

New s. 68
inserted by
No. 90/1995
s. 88,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 45(a)(b)),
69/2001
s. 20(1) (ILA
s. 39B(1)).

S. 68(1A)
inserted by
No. 6/2005
s. 12(2),
amended by
No. 6/2005
s. 13(1).

S. 68(2)
inserted by
No. 69/2001
s. 20(1).

68. Production of child pornography

- (1) A person who prints or otherwise makes or produces child pornography is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

- (1A) It is a defence to a prosecution for an offence against sub-section (1) to prove, in the case of—
- (a) a film; or
 - (b) a photograph contained in a publication; or
 - (c) a computer game—

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+.

- (2) Nothing in sub-section (1) makes it an offence for—
- (a) any member or officer of a law enforcement agency; or
 - (b) a person authorised in writing by the Chief Commissioner of Police assisting a member or officer; or
 - (c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting a member or officer—

to print or otherwise make or produce child pornography in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

69. Procurement etc. of minor for child pornography

(1) A person who—

(a) invites a minor to be in any way concerned in the making or production of child pornography; or

S. 69
(Heading)
inserted by
No. 20/2004
s. 5(2).
New s. 69
inserted by
No. 90/1995
s. 88,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 46),
6/2005 s. 12(3)
(ILA s. 39B(1)).

(b) procures a minor for the purpose of making or producing child pornography; or

S. 69(1)(b)
amended by
No. 20/2004
s. 5(1).

(c) causes a minor to be in any way concerned in the making or production of child pornography; or

S. 69(1)(c)
inserted by
No. 20/2004
s. 5(1).

(d) offers a minor to be in any way concerned in the making or production of child pornography—

S. 69(1)(d)
inserted by
No. 20/2004
s. 5(1).

is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

(2) It is a defence to a prosecution for an offence against sub-section (1) to prove, in the case of—

(a) a film; or

(b) a photograph contained in a publication; or

(c) a computer game—

S. 69(2)
inserted by
No. 6/2005
s. 12(3),
amended by
No. 6/2005
s. 13(2).

that at the time of the alleged offence the film, publication or computer game would, if classified, be classified other than RC or X or X 18+.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70

New s. 70
inserted by
No. 90/1995
s. 88.

70. Possession of child pornography

S. 70(1)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 47),
substituted by
No. 67/2000
s. 6.

- (1) A person who knowingly possesses child pornography is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

- (2) It is a defence to a prosecution for an offence against sub-section (1) to prove—

S. 70(2)(a)
amended by
No. 6/2005
ss 12(4), 13(3).

- (a) in the case of—

- (i) a film; or
- (ii) a photograph contained in a publication; or
- (iii) a computer game—

that at the time of the alleged offence the film, publication or computer game was classified other than RC or X or X 18+ or would, if classified, be classified other than RC or X or X 18+; or

- (b) that the film, photograph, publication or computer game possesses artistic merit or is for a genuine medical, legal, scientific or educational purpose; or

S. 70(2)(c)
amended by
No. 20/2004
s. 6(1).

- (c) that the defendant believed on reasonable grounds that the minor was aged 18 years or older or that he or she was married to the minor; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70AA

- (d) that the defendant made the film or took the photograph or was given the film or photograph by the minor and that, at the time of making, taking or being given the film or photograph, the defendant was not more than 2 years older than the minor was or appeared to be; or
- (e) that the minor or one of the minors depicted in the film or photograph is the defendant.
- (3) Despite sub-section (2)(b), the defence of artistic merit cannot be relied on in a case where the prosecution proves that the minor was actually under the age of 18 years.
- (4) Nothing in this section makes it an offence for—
 - (a) any member or officer of a law enforcement agency; or
 - (b) a person authorised in writing by the Chief Commissioner of Police assisting such a member or officer; or
 - (c) a person belonging to a class of persons authorised in writing by the Chief Commissioner of Police assisting such a member or officer—

S. 70(3)
amended by
No. 20/2004
s. 6(2).

S. 70(4)
substituted by
No. 69/2001
s. 20(2).

to have child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under this or any other Act or at common law.

70AA. Forfeiture

- (1) If a person is charged with an offence against section 68, 69 or 70 and the court is satisfied that the person committed the offence, the court may order that the child pornography in respect of which the offence was committed is forfeited to the Crown.

S. 70AA
inserted by
No. 22/1996
s. 8.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70AA

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- (2) If, despite the acquittal of a person charged with an offence against section 68, 69 or 70, the court is satisfied that an offence has been committed in respect of the child pornography, the court may order that the child pornography is forfeited to the Crown.
 - (3) If a film, photograph, publication or computer game has been lawfully seized under this Subdivision by a member of the police force but at the expiration of 6 months after the seizure no person has been charged with an offence in relation to the seized item, a member of the police force may apply to the Magistrates' Court for an order that the film, photograph, publication or computer game is child pornography and is forfeited to the Crown.
 - (4) The owner of a film, photograph, publication or computer game that has been lawfully seized by a member of the police force may apply within 28 days after the seizure to the Magistrates' Court for the return of the film, photograph, publication or computer game.
 - (5) An application under sub-section (4) may be made after 28 days after the seizure if the Magistrates' Court is satisfied that the applicant has a reasonable excuse for failing to make the application within the period referred to in sub-section (4).
 - (6) On an application under sub-section (4), if the Magistrates' Court is satisfied that—
 - (a) the applicant is the owner of the film, photograph, publication or computer game;
and
-

- (b) the film, photograph, publication or computer game is not child pornography—
the Court must order that, at the expiration of 6 months, after the seizure, the film, photograph, publication or computer game be returned to the applicant unless the applicant or another person has been charged with an offence in relation to the film, photograph, publication or computer game.
- (7) Subject to sub-section (8), child pornography which is forfeited under this section may be destroyed or otherwise dealt with as directed by the Minister.
- (8) The Minister must not direct the destruction of child pornography before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.
- (9) Nothing in this section limits the right of the Director of Public Prosecutions or any other person to apply for an order under the **Confiscation Act 1997**.

S. 70AA(9)
amended by
No. 108/1997
s. 151.

(14) Sexual Performances involving a Minor

Pt 1 Div. 1
Subdiv. (14)
(Heading and
ss 70AB,
70AC)
inserted by
No. 20/2004
s. 7.

70AB. Definitions

In this Subdivision—

"minor" means person under the age of 18 years;

"sexual performance" means live performance that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

S. 70AB
inserted by
No. 20/2004
s. 7.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70AC

S. 70AC
inserted by
No. 20/2004
s. 7.

70AC. Sexual performance involving a minor

A person must not—

- (a) invite a minor to be in any way concerned in a sexual performance; or
- (b) procure a minor for the purpose of being in any way concerned in a sexual performance; or
- (c) cause a minor to be in any way concerned in a sexual performance; or
- (d) offer a minor to be in any way concerned in a sexual performance—

in circumstances where there is payment or reward to the minor or to any other person in respect of the performance.

Penalty: Level 5 imprisonment (10 years maximum).

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Pt 1 Div. 1
Subdiv. (14)
(Heading and
s. 70)
repealed by
No. 9509 s. 6.

Pt 1 Div. 1A
(Heading and
ss 70A–70D)
inserted by
No. 9407
s. 2(b).

Division 1A—Piracy

(1837) 7
William IV and
1 Vict.
c. LXXXVIII
s. 2.
S. 70A
inserted by
No. 9407
s. 2(b),
amended by
Nos 37/1986
s. 10, 49/1991
s. 119(1)
(Sch. 2
item 36(a)).

70A. Piracy with violence

Any person who with intent to commit or at the time of or immediately before or immediately after committing the offence of piracy in respect of any vessel—

- (a) assaults with intent to murder any person on board or belonging to the vessel; or
- (b) wounds any such person; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70B

(c) unlawfully does any act by which the life of any such person may be endangered—

shall be liable to—

(d) level 3 imprisonment (20 years maximum);
or

S. 70A(a) (where secondly occurring) inserted by No. 37/1986 s. 10, amended by No. 49/1991 s. 119(1) (Sch. 2 item 36(b)), substituted as s. 70A(d) by No. 48/1997 s. 60(1)(Sch. 1 item 48).

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

S. 70A(b) (where secondly occurring) inserted by No. 37/1986 s. 10, amended by No. 49/1991 s. 119(1) (Sch. 2 item 36(c)), re-numbered as s. 70A(e) by No. 48/1997 s. 62(2).

as the court determines.

70B. Piratical acts

(1) A person commits a piratical act if—

(a) being an Australian citizen, he commits any piracy or robbery or any act of hostility or robbery against other Australian citizens on the sea under colour of any commission from any foreign ruler or under pretence of authority from any person whatever; or

(1698) 11 William III, c. VII ss 7, 8.
S. 70B inserted by No. 9407 s. 2(b).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 70B

- (b) being on board any Australian ship he—
- (i) turns pirate, enemy or rebel, and piratically runs away with the ship, or any boat, munitions or goods;
 - (ii) voluntarily yields up the ship, or any boat, munitions or goods to any pirate;
 - (iii) brings any seducing message from any pirate, enemy or rebel;
 - (iv) assaults the master of the ship in order to prevent him from fighting in defence of his ship and goods;
 - (v) confines the master of the ship; or
 - (vi) makes or endeavours to make a revolt in the ship.

- (2) Any person who commits a piratical act shall be guilty of an offence and shall be liable on conviction upon indictment to—

S. 70B(2)
amended by
Nos 37/1986
s. 11, 49/1991
s. 119(1)
(Sch. 2
item 37(a)).

- (a) level 3 imprisonment (20 years maximum);
or

S. 70B(2)(a)
inserted by
No. 37/1986
s. 11,
substituted by
Nos 49/1991
s. 119(1)
(Sch. 2
item 37(b)),
48/1997
s. 60(1)(Sch. 1
item 49).

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

s. 70C

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

S. 70B(2)(b) inserted by No. 37/1986 s. 11, amended by No. 49/1991 s. 119(1) (Sch. 2 item 37(c)).

as the court determines.

70C. Trading etc. with pirates

(1721) 8 George I, c. XXIV s. 1. S. 70C inserted by No. 9407 s. 2(b), amended by Nos 49/1991 s. 119(1) (Sch. 2 item 38), 48/1997 s. 60(1)(Sch. 1 item 50).

Any person who knowingly—

- (a) trades with any pirate;
- (b) furnishes any pirate with any munitions or stores of any kind;
- (c) fits out any vessel with a design to trade with, supply or correspond with any pirate; or

- (d) conspires or corresponds with any pirate—

shall be guilty of an offence and shall be liable on conviction upon indictment to level 5 imprisonment (10 years maximum).

70D. Being found on board piratical vessel and unable to prove non-complicity

S. 70D inserted by No. 9407 s. 2(b).

- (1) Any person who is found in Victoria on board any vessel equipped for the purposes of piracy shall be guilty of an offence and shall be liable on conviction upon indictment to level 6 imprisonment (5 years maximum).

S. 70D(1) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 39), 48/1997 s. 60(1)(Sch. 1 item 51).

- (2) It shall be a defence to a charge under subsection (1) if the person charged proves—

- (a) that he was not on board the vessel willingly; or

- (b) that he did not know that the vessel was equipped for the purposes of piracy.

Pt 1 Div. 2
(Heading)
substituted by
No. 8425
s. 2(1)(a).

Division 2—Theft and Similar or Associated Offences⁹

S. 71
amended by
No. 8280 s. 7,
substituted by
No. 8425
s. 2(1)(b).

71. Definitions

- (1) In this Division—

"gain" and **"loss"** are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—

- (a) **"gain"** includes a gain by keeping what one has, as well as a gain by getting what one has not; and
- (b) **"loss"** includes a loss by not getting what one might get, as well as a loss by parting with what one has;

"goods" except in so far as the context otherwise requires, includes money and every other description of property except land and includes things severed from the land by stealing;

"property" includes money and all other property real or personal including things in action and other intangible property.

- (2) In this Division property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 72

72. Basic definition of theft

- (1) A person steals if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.
- (2) A person who steals is guilty of theft; and "thief" shall be construed accordingly.

S. 72
substituted by
No. 8425
s. 2(1)(b).

73. Further explanation of theft

- (1) This section has effect as regards the interpretation and operation of section 72 and, except as otherwise provided in this Division, shall apply only for the purposes of that section and not otherwise.
- (2) A person's appropriation of property belonging to another is not to be regarded as dishonest—
 - (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or
 - (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or
 - (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (3) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.
- (4) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later

S. 73
substituted by
No. 8425
s. 2(1)(b).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 73

assumption of a right to it by keeping or dealing with it as owner.

- (5) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.
- (6) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—
 - (a) when he is a trustee or personal representative, or is authorized by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or
 - (b) when he is not in possession of the land and appropriates any thing forming part of the land by severing it or causing it to be severed, or after it has been severed; or
 - (c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For purposes of this sub-section "**land**" does not include incorporeal hereditaments; "**tenancy**" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and "let" shall be construed accordingly.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 73

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- (7) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.
 - (8) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.
 - (9) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.
 - (10) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.
 - (11) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.
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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 73

- (12) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (13) Without prejudice to the generality of sub-section (12) where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.
- (14) Notwithstanding anything contained in sub-section (12) in any proceedings—

S. 73(14)(a)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.2).

- (a) for stealing a motor vehicle or an aircraft proof that the person charged took or in any manner used the motor vehicle or aircraft without the consent of the owner or person in lawful possession thereof shall be conclusive evidence that the person charged intended to permanently deprive the owner of it; and

S. 73(14)(b)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.2).

- (b) for attempting to steal a motor vehicle or an aircraft proof that the person charged attempted to take or in any manner use the motor vehicle or aircraft without the consent of the owner or person in lawful possession thereof shall be conclusive evidence that the person charged intended to permanently deprive the owner of it.

Theft, robbery, burglary, &c.

74. Theft

Heading
preceding
s. 74
inserted by
No. 8425
s. 2(1)(b).
S. 74
amended by
No. 8280 s. 8,
substituted by
No. 8425
s. 2(1)(b),
amended by
Nos 9576
s. 11(1),
36/1988
s. 4(a).

- (1) A person guilty of theft is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 74(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 52).

- (2) Section 80A applies as if the reference in that section to sections 81–87 (both inclusive) were a reference to this section.

S. 74(2)
inserted by
No. 36/1988
s. 4(b).

75. Robbery

S. 75
substituted by
No. 8425
s. 2(1)(b).

- (1) A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear that he or another person will be then and there subjected to force.

S. 75(1)
amended by
No. 9323
s. 2(a).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 75A

S. 75(2)
amended by
Nos 9048 s. 3,
9576 s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 53).

- (2) A person guilty of robbery, or of an assault with intent to rob, is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 75A
inserted by
No. 9048 s. 2.

75A. Armed robbery

- (1) A person is guilty of armed robbery if he commits any robbery and at the time has with him a firearm, imitation firearm, offensive weapon, explosive or imitation explosive within the meaning assigned to those terms for the purposes of section 77(1).
- (2) A person guilty of armed robbery is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 75A(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41A),
48/1997
s. 60(1)(Sch. 1
item 54).

S. 76
substituted by
No. 8425
s. 2(1)(b).

76. Burglary

- (1) A person is guilty of burglary if he enters any building or part of a building as a trespasser with intent—
- (a) to steal anything in the building or part in question; or
- (b) to commit an offence—
- (i) involving an assault to a person in the building or part in question; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 77

- (ii) involving any damage to the building or to property in the building or part in question—

which is punishable with imprisonment for a term of five years or more.

- (2) References in sub-section (1) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.
- (3) A person guilty of burglary is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 76(3)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 42),
48/1997
s. 60(1)(Sch. 1
item 55).

77. Aggravated burglary

S. 77
substituted by
No. 8425
s. 2(1)(b).

- (1) A person is guilty of aggravated burglary if he or she commits a burglary and—
- (a) at the time has with him or her any firearm or imitation firearm, any offensive weapon or any explosive or imitation explosive; or
- (b) at the time of entering the building or the part of the building a person was then present in the building or part of the building and he or she knew that a person was then so present or was reckless as to whether or not a person was then so present.

S. 77(1)
amended by
Nos 9008
s. 2(1)
(Sch.
item 2(a)),
9048 s. 4(a)(b),
9323 s. 2(b),
66/1996
s. 201(2),
substituted by
No. 48/1997
s. 54.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 78

S. 77(1A)
inserted by
No. 48/1997
s. 54.

(1A) For the purposes of sub-section (1)—

"explosive" means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him or her for that purpose;

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

"imitation explosive" means any article which might reasonably be taken to be or to contain an explosive;

"imitation firearm" means anything which has the appearance of being a firearm, whether capable of being discharged or not;

"offensive weapon" means any article made or adapted for use for causing injury to or incapacitating a person, or which the person having it with him or her intends or threatens to use for such a purpose.

S. 77(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 31),
48/1997
s. 60(1)(Sch. 1
item 56).

(2) A person guilty of aggravated burglary is guilty of an indictable offence and liable to level 2 imprisonment (25 years maximum).

S. 78
substituted by
No. 8425
s. 2(1)(b).

78. Removal of articles from places open to the public

(1) Subject to sub-sections (2) and (3), where the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 78

that part of it or in its grounds shall be guilty of an offence.

For this purpose "**collection**" includes a collection got together for a temporary purpose, but references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

- (2) It is immaterial for purposes of sub-section (1) that the public's access to a building is limited to a particular period or particular occasion; but where anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in sub-section (1).
- (3) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.
- (4) A person guilty of an offence under this section is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 78(4)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 43),
48/1997
s. 60(1)(Sch. 1
item 57).

* * * * *

S. 79
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 9576
s. 11(1),
repealed by
No. 10084 s. 4.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 80

80. Unlawfully taking control of an aircraft

S. 80
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 9576
s. 11(1).

S. 80(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 58(a)).

- (1) A person who without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft while another person not being an accomplice to the first-mentioned person is on board the aircraft shall be guilty of an indictable offence and shall be liable to level 4 imprisonment (15 years maximum).

S. 80(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 31),
48/1997
s. 60(1)(Sch. 1
item 58(b)).

- (2) A person who without lawful excuse, by force or violence or threat of force or violence or by any trick of false pretence, takes or exercises control, whether direct or through another person, of an aircraft while another person not being an accomplice of the first-mentioned person is on board the aircraft shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum).

Heading
preceding
s. 80A
inserted by
No. 8425
s. 2(1)(b).

Fraud and blackmail

S. 80A
inserted by
No. 36/1988
s. 5.

80A. Extra-territorial offences

- (1) If—
- (a) a person does, or omits to do, an act or thing referred to in sections 81–87 (both inclusive) outside, or partly outside, Victoria; and

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 81

- (b) there is a real and substantial link within the meaning of sub-section (2) between doing, or omitting to do, the act or thing and Victoria—

those sections apply to the act or thing or the omission as if it had been done, or omitted to be done, wholly within Victoria.

- (2) For the purposes of sub-section (1), there is a real and substantial link with Victoria—
- (a) if a significant part of the conduct relating to, or constituting the doing of the act or thing, or the omission, occurred in Victoria; or
- (b) where the act or thing was done, or the omission occurred, wholly outside Victoria, if the act or thing was done, or omitted to be done, with the intention that substantial harmful effects arise in Victoria and such effects did arise.

81. Obtaining property by deception

S. 81
amended by
Nos 6561 s. 2,
7263 s. 2(a),
8247 s. 3,
substituted by
Nos 8280
s. 10, 8425
s. 2(1)(b).

- (1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 81(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 59).

- (2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 82

"obtain" includes obtaining for another or enabling another to obtain or to retain.

- (3) Sub-sections (12) and (13) of section 73 shall apply for purposes of this section, with the necessary adaptation of the reference to appropriating, as it applies for purposes of section 72.

S. 81(4)
substituted by
No. 36/1988
s. 6.

- (4) For the purposes of this section, **"deception"**—

- (a) means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person; and
- (b) includes an act or thing done or omitted to be done with the intention of causing—
 - (i) a computer system; or
 - (ii) a machine that is designed to operate by means of payment or identification—

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

S. 82
amended by
No. 7876
s. 2(3),
substituted by
Nos 8280
s. 10, 8425
s. 2(1)(b).

82. Obtaining financial advantage by deception

S. 82(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 59).

- (1) A person who by any deception dishonestly obtains for himself or another any financial advantage is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 83

- (2) For purposes of this section "**deception**" has the same meaning as in section 81.

83. False accounting

S. 83
amended by
Nos 7184 s. 2,
7705 s. 10,
7876 s. 2(3),
7994 s. 5, 8280
s. 11(1)–(3),
substituted by
No. 8425
s. 2(1)(b).

- (1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another—
- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
 - (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular—

S. 83(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 60).

he is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

- (2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 83A

83A. Falsification of documents

S. 83A
inserted by
No. 36/1988
s. 7.

S. 83A(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (1) A person must not make a false document with the intention that he or she, or another person, shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (2) A person must not use a document which is, and which he or she knows to be, false, with the intention of inducing another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(3)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (3) A person must not make a copy of a document which is, and which he or she knows to be, a false document, with the intention that he or she, or another person, shall use it to induce another person to accept it as a copy of a genuine document and by reason of so accepting it to do or not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

S. 83A(4)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 44),
48/1997
s. 60(1)(Sch. 1
item 61).

- (4) A person must not use a copy of a document which is, and which he or she knows to be, a false document, with the intention of inducing another person to accept it as a copy of a genuine document and by reason of so accepting it to do or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 83A

not to do some act to that other person's, or to another person's prejudice.

Penalty: Level 5 imprisonment (10 years maximum).

- (5) A person must not have in his or her custody, or under his or her control, a document which is, and which he or she knows to be, false, with the intention that the person or another shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

S. 83A(5) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 44), 48/1997 s. 60(1)(Sch. 1 item 61).

Penalty: Level 5 imprisonment (10 years maximum).

- (5A) A person must not, with the intention that he or she may commit an offence against sub-section (1), make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is, and which he or she knows to be, specially designed or adapted for the making of a document which, if made by him or her, would be false.

S. 83A(5A) inserted by No. 25/1989 s. 5, amended by Nos 49/1991 s. 119(1) (Sch. 2 item 44), 48/1997 s. 60(1)(Sch. 1 item 61).

Penalty: Level 5 imprisonment (10 years maximum).

- (5B) A person must not, with the intention that another person may commit an offence against sub-section (1), make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is, and which he or she knows to be, specially designed or adapted for the making of a document which, if made by that other person, would be false.

S. 83A(5B) inserted by No. 25/1989 s. 5, amended by Nos 49/1991 s. 119(1) (Sch. 2 item 44), 48/1997 s. 60(1)(Sch. 1 item 61).

Penalty: Level 5 imprisonment (10 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 83A

S. 83A(5C)
inserted by
No. 25/1989
s. 5,
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 45),
48/1997
s. 60(1)(Sch. 1
item 62).

- (5C) A person must not, without lawful excuse, make or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is and which the person knows to be specially designed or adapted for the making of a document which, if made by him or her, would be false.

Penalty: Level 6 imprisonment (5 years maximum).

- (6) For the purpose of this section, a document is false if it purports—
- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form; or
 - (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or
 - (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or
 - (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or
 - (e) to have been altered in any respect by a person who did not in fact alter it in that respect; or
 - (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or
 - (g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or

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- (h) to have been made or altered by an existing person who did not in fact exist.
- (7) For the purposes of this section, a person is to be treated as making a false document if the person alters a document so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).
- (8) For the purposes of this section, an act or omission is to a person's prejudice if, and only if, it is one that, if it occurs—
- (a) will result—
 - (i) in the person's temporary or permanent loss of property; or
 - (ii) in the person's being deprived of an opportunity to earn remuneration or greater remuneration; or
 - (iii) in the person's being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration; or
 - (b) will result in any person being given an opportunity—
 - (i) to earn remuneration or greater remuneration from the first-mentioned person; or
 - (ii) to obtain a financial advantage from the first-mentioned person otherwise than by way of remuneration; or
 - (c) will be the result of the person's having accepted a false document as genuine, or a copy of a false document as a copy of a genuine one, in connection with the person's performance of a duty.
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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 83B

(9) In this section—

(a) a reference to inducing a person to accept a false document as genuine, or a copy of a false document as a copy of a genuine document, shall be read as including a reference to causing a machine to respond to the document or copy as if it were a genuine document or a copy of a genuine document, as the case may be; and

(b) if—

(i) a machine so responds to a document or copy; and

(ii) the act or omission intended to be caused by the machine's so responding is an act or omission that, if it were an act or omission of a person, would be to a person's prejudice within the meaning of sub-section (1)—

the act or omission intended to be caused by the machine's so responding shall be deemed to be an act or omission to a person's prejudice.

(10) In proceedings for an offence against this section, if it is necessary to allege an intent to induce a person to accept a false document as genuine, or a copy of a false document as a copy of a genuine one, it is not necessary to allege that the accused intended so to induce a particular person.

S. 83B
inserted by
No. 25/1989
s. 6.

83B. Abolition of common law offences of forgery and uttering

The offences at common law of forgery and uttering are abolished except as regards offences alleged to have been committed before the commencement of section 6 of the **Crimes Legislation (Miscellaneous Amendments) Act 1989**.

84. Liability of company officers for certain offences by company

S. 84
substituted by
No. 8425
s. 2(1)(b).

- (1) Where an offence committed by a body corporate under section 81, 82 or 83 is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.

85. False statements by company directors etc.

S. 85
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b).

- (1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) For purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

S. 85(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 63).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 86

- (3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connexion with his functions of management as if he were an officer of the body corporate or association.

S. 86
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b).

86. Suppression etc. of documents

S. 86(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 33),
48/1997
s. 60(1)(Sch. 1
item 64).

- (1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

S. 86(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 46),
48/1997
s. 60(1)(Sch. 1
item 64).

- (2) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum) and this sub-section shall apply in relation to the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

- (3) For purposes of this section "**deception**" has the same meaning as in section 81, and "**valuable security**" means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorizing the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

87. Blackmail

S. 87
substituted by
No. 8425
s. 2(1)(b).

- (1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—
- (a) that he has reasonable grounds for making the demand; and
 - (b) that the use of the menaces is proper means of reinforcing the demand.
- (2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.
- (3) A person guilty of blackmail is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 87(3)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 41),
48/1997
s. 60(1)(Sch. 1
item 65).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 88

Offences relating to goods stolen, &c.

Heading
preceding
s. 88
inserted by
No. 8425
s. 2(1)(b).

88. Handling stolen goods

S. 88
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 70/1987
s. 5(a)(b).

S. 88(1)
amended by
No. 59/2004
s. 3.

- (1) A person handles stolen goods if knowing or believing them to be stolen goods he dishonestly receives the goods or brings them into Victoria, or dishonestly undertakes or assists in bringing them into Victoria or in their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.
- (2) A person guilty of handling stolen goods is guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 88(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 40),
48/1997
s. 60(1)(Sch. 1
item 66).

S. 88(3)
inserted by
No. 9073
s. 2(a).

- (3) Where a married woman handles stolen goods, the fact that the person from whom she receives the goods is her husband shall not of itself constitute a defence to a charge under this section.

88A. Alternative counts of theft and handling stolen goods

S. 88A
inserted by
No. 59/2004
s. 4.

If—

- (a) a charge for an offence of theft under section 74 and a charge for an offence of handling stolen goods under section 88 are joined in the same presentment as alternative counts and tried together; and
- (b) the jury are satisfied beyond reasonable doubt that the accused is either guilty of theft or guilty of handling stolen goods but are unable to agree on which offence the accused should be found guilty of—

the jury must acquit the accused of handling stolen goods and find the accused guilty of theft and the accused is liable to punishment accordingly.

89. Advertising rewards for return of goods stolen or lost

S. 89
amended by
No. 8181
s. 2(1)(Sch.
item 33),
substituted by
No. 8425
s. 2(1)(b),
amended by
Nos 9554
s. 2(2)(Sch. 2
item 52),
49/1991
s. 119(1)
(Sch. 2
item 47),
69/1997
s. 22(5).

Where any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that no questions will be asked, or that the person producing the goods will be safe from apprehension or inquiry, or that any money paid for the purchase of the goods or advanced by way of loan on them will be repaid, the person advertising the reward and any person who prints or publishes the advertisement shall on summary conviction be liable to a level 11 fine (5 penalty units maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 90

S. 90
amended by
No. 8181
s. 2(1)
(Sch. item 33),
substituted by
No. 8425
s. 2(1)(b).

90. Scope of offences relating to stolen goods

- (1) The provisions of this Act relating to goods which have been stolen shall apply whether the stealing occurred in Victoria or elsewhere, and whether it occurred before or after the commencement of this Act, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly.
- (2) For purposes of those provisions references to stolen goods shall include, in addition to the goods originally stolen and parts of them (whether in their original state or not)—
 - (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realization of the whole or part of the goods stolen or of goods so representing the stolen goods; and
 - (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realization of the whole or part of the stolen goods handled by him or of goods so representing them.
- (3) But no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 91

- (4) For purposes of the provisions of this Act relating to goods which have been stolen (including sub-sections (1)(2) and (3)) goods obtained in Victoria or elsewhere either by blackmail or in the circumstances described in sub-section (1) of section 81 shall be regarded as stolen; and "steal", "theft" and "thief" shall be construed accordingly.

Possession of housebreaking implements, &c.

Heading preceding s. 91 inserted by No. 8425 s. 2(1)(b).

91. Going equipped for stealing etc.

S. 91 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b).

- (1) A person shall be guilty of a summary offence if, when not at his place of abode, he has with him any article for use in the course of or in connexion with any burglary, theft or cheat.

S. 91(1) amended by No. 48/1997 s. 60(1)(Sch. 1 item 67(a)).

- (2) A person guilty of an offence under this section shall be liable to level 7 imprisonment (2 years maximum).

S. 91(2) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 34), 48/1997 s. 60(1)(Sch. 1 item 67(b)).

- (3) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

- (4) On the conviction of a person for an offence under this section, the court may order the article to be forfeited to the Crown and disposed of in the manner set out in the order.

S. 91(4) substituted by No. 10249 s. 13.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 92

S. 92
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b),
amended by
No. 64/1990
s. 20(Sch.
item 3(a)(b)).

92. Search for stolen goods

- (1) If a magistrate is satisfied by evidence on oath or by affidavit that there is reasonable cause to believe that any person has in his custody or possession or on his premises any stolen goods, the magistrate may grant a warrant to search for and seize the same; but no warrant to search for stolen goods shall be addressed to a person other than a constable except under the authority of an enactment expressly so providing.
- (2) An officer of police not below the rank of inspector may give a constable written authority to search any premises for stolen goods—
 - (a) if the person in occupation of the premises has been convicted within the preceding five years of handling stolen goods or of any offence involving dishonesty and punishable with imprisonment; or
 - (b) if a person who has been convicted within the preceding five years of handling stolen goods has within the preceding twelve months been in occupation of the premises.
- (3) Where under this section a person is authorized to search premises for stolen goods, he may enter and search the premises accordingly, and may seize any goods he believes to be stolen goods.
- (4) This section is to be construed in accordance with section 90 and in sub-section (2) the references to handling stolen goods shall include any corresponding offence committed before the commencement of the **Crimes (Theft) Act 1973**.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 93

93. Procedure and evidence

S. 93
substituted by
No. 8425
s. 2(1)(b).

- (1) Any number of persons may be charged in one indictment or presentment with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.
- (2) On the trial of two or more persons for jointly handling any stolen goods the jury may find any of the accused guilty if the jury are satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them.
- (3) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were or was in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions—
 - (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
 - (b) a statutory declaration shall only be admissible if at least seven days before the hearing or trial a copy of it has been given to the person charged, and he has not, at least three days before the hearing or trial or within such further time as the court may in special circumstances allow, given to the informant or the Director of Public Prosecutions as the case requires, written notice requiring the attendance at the hearing or trial of the person making the declaration.

S. 93(3)(b)
amended by
No. 9848
s. 18(1).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 95

- (4) This section is to be construed in accordance with section 90.

S. 94
amended by
No. 7876
s. 2(3),
substituted by
No. 8425
s. 2(1)(b),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * * *

Heading
preceding
s. 95
inserted by
No. 8425
s. 2(1)(b).

General and consequential provisions

S. 95
amended by
No. 8181
s. 2(1)
(Sch. item 33),
substituted by
No. 8425
s. 2(1)(b).

95. Husband and wife

- (1) This Act shall apply in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.
- (2) A person shall have the same right to bring proceedings against that person's wife or husband for any offence (whether under this Act or otherwise) as if they were not married, and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

S. 95(3)
amended by
No. 9848
s. 18(1),
repealed by
No. 19/1987
s. 27(b).

* * * * *

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 175

Provided that this sub-section shall not apply to proceedings against a person for an offence—

- (a) if that person is charged with committing the offence jointly with the wife or husband; or
- (b) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit—

and provided further that this sub-section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, where the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by a person other than the wife or husband.

* * * * * Ss 96–174 repealed.¹⁰

Secret Commissions Prohibition

Heading preceding s. 175 amended by No. 8425 s. 2(1)(d).

175. Definitions¹¹

No. 6103 s. 175.

- (1) For the purposes of this subdivision—

"advice given" and words to the like effect include every report certificate statement and suggestion intended to influence the person to whom the same may be made or given and every influence exercised by one person over another;

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 175

S. 175(1)
def. of "agent"
amended by
Nos 74/2000
s. 3(Sch. 1
item 30.1),
18/2005
s. 18(Sch. 1
item 27.2).

"agent" includes any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person whether as agent partner co-owner clerk servant employee banker broker auctioneer architect clerk of works engineer legal practitioner surveyor buyer salesman foreman trustee executor administrator liquidator trustee within the meaning of any Act relating to bankruptcy receiver director manager or other officer or member of committee or governing body of any corporation club partnership or association or in any other capacity either alone or jointly with any other person and whether in his own name or in the name of his principal or otherwise and a person serving under the Crown;

"contract" includes contract of sale or of employment or any other contract whatever;

"in relation to his principal's affairs or business" implies the additional words "whether within the scope of his authority or course of his employment as agent or not";

"person having business relations with the principal" includes every corporation or other person whether as principal or agent carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal and also includes any agent of such corporation or other person;

"principal" includes a corporation or other person for or on behalf of whom the agent acts has acted or is desirous or intending to act;

"solicit any valuable consideration" and **"valuable consideration solicited"** and words to the like effect shall be construed with the following directions, namely:—
That every agent who diverts obstructs or interferes with the proper course of business or manufacture or impedes or obstructs or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent;

"trustee" includes trustee executor administrator liquidator trustee within the meaning of any Act relating to bankruptcy receiver director administrator or guardian under the **Guardianship and Administration Act 1986** or person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person;

S. 175(1)
def. of
"trustee"
amended by
Nos 25/1989
s. 20(c),
52/1998
s. 311(Sch. 1
item 17).

"valuable consideration" includes any money loan office place employment agreement to give employment benefit or advantage whatsoever and any commission or rebate deduction or percentage bonus or discount or any forbearance to demand any money or money's worth or valuable thing and the acceptance of any of the said things shall be

deemed the receipt of a valuable consideration;

"valuable consideration" when used in connexion with the offer thereof includes any offer of any agreement or promise to give and every holding out of any expectation of valuable consideration;

"valuable consideration" when used in connexion with the receipt thereof includes any acceptance of any agreement promise or offer to give and of any holding out of any expectation of valuable consideration.

- (2) Any act or thing prohibited by this subdivision is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

No. 6103
s. 176.

176. Receipt or solicitation of secret commission by an agent an indictable offence¹²

- (1) Whosoever being an agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or
 - (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 177

(2) Whosoever corruptly gives or offers to any agent any valuable consideration—

(a) as an inducement or reward for or otherwise on account of doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or

(b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business—

shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 176(2)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 53), 9576
s. 11(1),
36/1988
s. 8(a)(i)–(iii),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

177. Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent¹³

No. 6103
s. 177.

(1) Any valuable consideration given or offered to any parent husband wife or child of any agent or to his partner clerk or employee or at the agent's request to any person by any person having business relations with the principal of such agent shall be deemed to have been given or offered to the agent.

S. 177(1)
amended by
No. 48/1997
s. 62(3).

(2) Any valuable consideration received or solicited by any parent husband wife or child of any agent or by his partner clerk or employee from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it is proved that the valuable consideration was so received or solicited without the consent knowledge or privity of the agent.

S. 177(2)
amended by
No. 74/2000
s. 3(Sch. 1
item 30.2).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 178

No. 6103
s. 178.

S. 178
amended by
Nos 9554
s. 2(2)(Sch. 2
item 53), 9576
s. 11(1),
36/1988
s. 8(b)(i)–(iii),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

178. Giving or receiving false or misleading receipt or account an indictable offence¹⁴

If with intent to deceive or defraud the principal any person gives to any agent or any agent receives or uses or gives to the principal any receipt invoice account or document in respect of which or in relation to a dealing transaction or matter in which the principal is interested and which—

- (a) contains any statement which he knows is false or erroneous or defective in any important particular or is in any way likely to mislead the principal; or
- (b) omits to state explicitly and fully the fact of any commission percentage bonus discount rebate repayment gratuity or deduction having been made given or allowed or agreed to be made given or allowed—

he shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

No. 6103
s. 179.

S. 179(1)
amended by
No. 9576
s. 11(1).

179. Gift or receipt of secret commission in return for advice given¹⁵

- (1) Whenever any advice is given by one person to another and such advice is in any way intended to induce or influence the person advised—

- (a) to enter into a contract with any third person;
or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 179

- (b) to appoint or join with another in appointing or to vote for or to aid in obtaining the election or appointment or to authorize or join with another in authorizing the appointment of any third person as trustee—

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised the gift or receipt of the valuable consideration shall be an indictable offence, but this sub-section shall not apply when the person giving the advice was to the knowledge of the person advised the agent of such third person, or when the valuable consideration was not given in respect of such advice.

- (2) Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised—

S. 179(2)
amended by
No. 9576
s. 11(1).

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing or to vote for or to aid in obtaining the election or appointment or to authorize or join with another in authorizing the appointment of the person offering or solicited as trustee—

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised shall be an indictable offence, but this sub-section shall not apply when such first-mentioned person is the agent of the person offering or solicited.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 180

S. 179(3)
amended by
No. 9576
s. 11(1).

- (3) Any person on conviction of an indictable offence under any of the provisions of this section shall—

S. 179(3)(a)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 54),
36/1988
s. 8(c)(i)(ii),
25/1989
s. 20(d),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 179(3)(b)
repealed by
No. 36/1988
s. 8(c)(iii).

* * * * *

No. 6103
s. 180.
S. 180
amended by
Nos 9576
s. 11(1),
57/1989
s. 3(Sch.
item 42.5).

180. Secret commission to trustee in return for substituted appointment¹⁶

Every person who offers or gives any valuable consideration to a trustee and every trustee who receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of the Supreme Court as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing or for authorizing or having authorized or for joining or having joined with another in authorizing any person to be appointed in his stead or instead of him and any other person as trustee shall be guilty of an indictable offence, and shall—

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 181

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 180(a) amended by Nos 9554 s. 2(2)(Sch. 2 item 54), 36/1988 s. 8(d)(i)(ii), 25/1989 s. 20(e), 49/1991 s. 119(1) (Sch. 2 item 48), 48/1997 s. 60(1)(Sch. 1 item 68).

* * * * *

S. 180(b) repealed by No. 36/1988 s. 8(d)(iii).

181. Aiding and abetting offences within or outside Victoria¹⁷

Every person who being within Victoria knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to—

- (a) doing any act or thing in contravention of this subdivision;
- (b) doing any act or thing outside Victoria, or partly within and partly outside Victoria, which if done within Victoria would be in contravention of this subdivision—

No. 6103 s. 181.
S. 181 amended by Nos 9554 s. 2(2)(Sch. 2 item 53), 9576 s. 11(1), 36/1988 s. 8(e)(i)–(iii), 49/1991 s. 119(1) (Sch. 2 item 48), 48/1997 s. 60(1)(Sch. 1 item 68).

shall be guilty of an indictable offence, and shall—

be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 182

No. 6103
s. 182.
S. 182
amended by
No. 9576
s. 11(1).

182. Liability of directors etc. acting without authority¹⁸

Every director manager or officer of a company and every person acting for another who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which if authorized would be in contravention of any of the provisions of this subdivision shall be guilty of an indictable offence, and shall—

S. 182(a)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 54),
36/1988
s. 8(f)(i)(ii),
25/1989
s. 20(f),
49/1991
s. 119(1)
(Sch. 2
item 48),
48/1997
s. 60(1)(Sch. 1
item 68).

- (a) be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

S. 182(b)
repealed by
No. 36/1988
s. 8(f)(iii).

* * * *

S. 183
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * *

No. 6103
s. 184.

184. Protection of witness giving answers criminating himself¹⁹

A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this subdivision on the ground that the answer thereto may criminate or tend to criminate him:

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 185

Provided that—

- (a) a witness who in the judgment of the court answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered; and
- (b) an answer by a person to a question put by or before the court in any proceeding under this subdivision shall not except in the said proceeding or in the case of any criminal proceedings for perjury in respect of such evidence be in any proceeding civil or criminal admissible in evidence against him.

S. 184(a)
amended by
No. 57/1989
s. 3(Sch.
item 42.6).

S. 184(b)
amended by
No. 57/1989
s. 3(Sch.
item 42.6).

185. Stay of proceedings against such witness²⁰

When a person has received a certificate as aforesaid and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness the court having cognizance of the case shall on proof of the certificate and of the identity of the offence in question in the two cases stay the proceedings.

No. 6103
s. 185.
S. 185
amended by
No. 57/1989
s. 3(Sch.
item 42.7).

186. Custom of itself no defence²¹

- (1) In any prosecution under this subdivision it shall not amount to a defence to show that any such valuable consideration as is mentioned in this subdivision is customary in any trade or calling.
- (2) For the purposes of this subdivision where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal without the assent of the principal the burden of proving that such valuable consideration was not received solicited

No. 6103
s. 186.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 191

given or offered in contravention of any of the provisions of this subdivision shall be on the accused.

S. 186(3)
repealed by
No. 7546 s. 5.

* * * *

S. 186(4)
repealed by
No. 9848
s. 18(1).

* * * *

S. 186(5)
amended by
No. 57/1989
s. 3(Sch.
item 42.8).

(5) Every charge for any offence under this subdivision shall be upon oath.

Heading
preceding
s. 187
substituted by
No. 8425
s. 2(1)(e) (as
amended by
No. 9019
s. 2(1)(Sch.
item 257)).

Fraudulently inducing persons to invest

Ss 187–190
repealed by
No. 8425
s. 2(1)(f).

* * * *

No. 6103
s. 191.

191. Fraudulently inducing persons to invest money

S. 191(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 69).

(1) Any person who, by any statement promise or forecast which he knows to be misleading false or deceptive or by any dishonest concealment of material facts or by the reckless making of any statement promise or forecast which is misleading false or deceptive, induces or attempts to induce another person—

-
- (a) to enter into or offer to enter into—
- (i) any agreement for or with a view to acquiring disposing of subscribing in or underwriting securities or lending or depositing money to or with any corporation; or
 - (ii) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (b) to acquire or offer to acquire any right or interest under any arrangement the purpose or effect or pretended purpose or effect of which is to provide facilities for the participation by persons in profits or income alleged to arise or to be likely to arise from the acquisition holding management or disposal of any property other than securities; or
- (c) to enter into or offer to enter into an agreement the purpose or pretended purpose of which is to secure a profit to any of the parties by reference to fluctuations in the value of any property other than securities—

shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

- (2) Any person guilty of conspiracy to commit any offence against the last preceding sub-section shall be punishable as if he had committed such an offence.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 191

S. 191(3)
amended by
No. 6716
s. 2(Sch. 1).

- (3) In this section unless inconsistent with the context or subject-matter—

"corporation" means any body corporate whether incorporated in Victoria or elsewhere;

"debentures" means any debentures debenture stock or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

"securities" means—

- (a) shares or debentures or rights or interests (whether described as units or otherwise) in any shares or debentures; or
- (b) securities of the Government of any part of Her Majesty's dominions or the Government of any foreign state; or
- (c) rights (whether actual or contingent) in respect of money lent to or deposited with any corporation—

and includes rights or interests (whether described as units or otherwise) which may be acquired under any trust scheme under which all property for the time being subject to any trust created in pursuance of the scheme consists of such securities as are mentioned in paragraph (a)(b) or (c) of this interpretation;

"shares" means shares in the share capital of a corporation or stock of a corporation.

192. Evidence of financial position of company

No. 6103
s. 192.

Upon the trial of a charge for any offence against section one hundred and ninety or one hundred and ninety-one of this Act the opinion of any properly qualified auditor or accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognized audit practice shall be admissible either for the prosecution or for the defence as evidence of the financial position of the company at that time or during that period notwithstanding that the opinion is based in whole or in part on book-entries documents or vouchers or on written or verbal statements by other persons.

Division 2A—Money Laundering etc.

Pt 1 Div. 2A
(Heading and
ss 193–195A)
inserted by
No. 104/2003
s. 3.

193. Definitions

S. 193
repealed by
No. 9848
s. 18(1), new
s. 193
inserted by
No. 104/2003
s. 3.

(1) In this Division—

"deal with" includes receive, possess, conceal or dispose of;

"instrument of crime" means property that is used in the commission of, or used to facilitate the commission of—

- (a) an offence referred to in Schedule 1 to the **Confiscation Act 1997**; or
- (b) an offence against a law of the Commonwealth that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or

- (c) an offence against a law of another State, a Territory or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Victoria;

"proceeds of crime" means property that is derived or realised, directly or indirectly, by any person from the commission of—

- (a) an offence referred to in Schedule 1 to the **Confiscation Act 1997**; or
- (b) an offence against a law of the Commonwealth that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence); or
- (c) an offence against a law of another State, a Territory or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Victoria;

"property" includes money and all other property real or personal including things in action and other intangible property.

- (2) For the purposes of the definitions of "instrument of crime" and "proceeds of crime", it is necessary to prove facts that constitute one or more offences referred to in paragraph (a), (b) or (c) of those definitions but the particulars of an offence need not be proven.

194. Dealing with proceeds of crime

New s. 194
inserted by
No. 104/2003
s. 3.

- (1) A person must not deal with proceeds of crime—
- (a) knowing that it is proceeds of crime; and
 - (b) intending to conceal that it is proceeds of crime.

Penalty: Level 3 imprisonment (20 years maximum).

- (2) A person must not deal with proceeds of crime knowing that it is proceeds of crime.

Penalty: Level 4 imprisonment (15 years maximum).

- (3) A person must not deal with proceeds of crime being reckless as to whether or not it is proceeds of crime.

Penalty: Level 5 imprisonment (10 years maximum).

- (4) A person must not deal with proceeds of crime being negligent as to whether or not it is proceeds of crime.

Penalty: Level 6 imprisonment (5 years maximum).

- (5) It is a defence to a prosecution for an offence under this section if the accused satisfies the court that the accused dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

195. Dealing with property suspected of being proceeds of crime

New s. 195
inserted by
No. 104/2003
s. 3.

A person who deals with property if there are reasonable grounds to suspect that the property is proceeds of crime is guilty of a summary offence and liable to level 7 imprisonment (2 years maximum).

s. 195A

S. 195A
inserted by
No. 104/2003
s. 3.

195A. Dealing with property which subsequently becomes an instrument of crime

- (1) A person is guilty of an offence and liable to level 4 imprisonment (15 years maximum) if—
 - (a) the person deals with property intending that the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.
- (2) A person is guilty of an offence and liable to level 5 imprisonment (10 years maximum) if—
 - (a) the person deals with property being reckless as to whether or not the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.
- (3) A person is guilty of an offence and liable to level 6 imprisonment (5 years maximum) if—
 - (a) the person deals with property being negligent as to whether or not the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime.
- (4) A prosecution for an offence under this section must not be commenced without the consent of the Director of Public Prosecutions.
- (5) It is a defence to a prosecution for an offence under this section if the accused satisfies the court that the accused dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

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

s. 196

* * * * *

Pt 1 Div. 2
Subdiv. (21)
(Heading and
ss 194, 195)
repealed by
No. 8425
s. 2(1)(f).

Division 3—Criminal Damage to Property²²

Pt 1 Div. 3
(Heading)
repealed by
No. 9228
s. 2(1)(c),
new Pt 1
Div. 3
(Heading)
inserted by
No. 9228
s. 2(1)(d).

(1) *General Offences and Procedural Provisions*

Pt 1 Div. 3
Subdiv. (1)
(Heading)
repealed by
No. 9228
s. 2(1)(c),
new Pt 1 Div 3
Subdiv. (1)
(Heading)
inserted by
No. 9228
s. 2(1)(d).

196. Definition

(1) In this subdivision—

"property" means property of a tangible nature,
whether real or personal, including money
and including wild creatures which have
been tamed or are ordinarily kept in captivity
and any other wild creatures or their
carcasses if, but only if, they have been
reduced into possession which has not been
lost or abandoned or are in the course of
being reduced into possession.

S. 196
repealed by
No. 9228
s. 2(1)(c),
new s. 196
inserted by
No. 9228
s. 2(1)(d).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 197

- (2) For the purposes of this subdivision property shall be treated as belonging to any person—
 - (a) having the custody or control of it;
 - (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
 - (c) having a charge on it.
- (3) For the purposes of this subdivision property which is subject to a trust shall be treated as belonging to the trustee or trustees and the person or persons who have a right to enforce the trust.
- (4) For the purposes of this subdivision property of a corporation sole shall be treated as belonging to the corporation notwithstanding a vacancy in the corporation.

197. Destroying or damaging property

S. 197
repealed by
No. 9228
s. 2(1)(c),
new s. 197
inserted by
No. 9228
s. 2(1)(d).

S. 197(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 50(a)),
48/1997
s. 60(1)(Sch. 1
item 70(a)).

S. 197(2)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 50(b)),
48/1997
s. 60(1)(Sch. 1
item 70(b)).

- (1) A person who intentionally and without lawful excuse destroys or damages any property belonging to another or to himself and another shall be guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (2) A person who intentionally and without lawful excuse destroys or damages any property, intending by the destruction or damage to endanger the life of another, shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 197

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- (3) A person who dishonestly, with a view to gain for himself or another, destroys or damages any property shall be guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).
- (4) For the purposes of sub-sections (1) and (2) a person who destroys or damages property shall be taken as doing so intentionally if, but only if—
- (a) his purpose or one of his purposes is to destroy or damage property; or
 - (b) he knows or believes that his conduct is more likely than not to result in destruction of or damage to property.
- (5) For the purposes of sub-section (2), a person who destroys or damages property shall be treated as intending thereby to endanger the life of another if, but only if—
- (a) his purpose or one of his purposes is to endanger the life of another by the destruction or damage; or
 - (b) he knows or believes that the life of another is more likely than not to be endangered by the destruction or damage.
- (6) An offence against this section committed by destroying or damaging property by fire shall be charged as arson.
- (7) A person guilty of arson is liable to level 4 imprisonment (15 years maximum) despite anything to the contrary in this section.

S. 197(3)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 70(c)).

S. 197(7)
inserted by
No. 95/1994
s. 4,
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 70(b)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 197A

S. 197A
inserted by
No. 48/1997
s. 55.

197A. Arson causing death

A person who commits arson as defined in section 197 and thereby causes the death of another person is guilty of an indictable offence.

Penalty: Level 2 imprisonment (25 years maximum).

S. 198
repealed by
No. 9228
s. 2(1)(c),
new s. 198
inserted by
No. 9228
s. 2(1)(d),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 51),
48/1997
s. 60(1)(Sch. 1
item 71).

198. Threats to destroy or damage property

A person who without lawful excuse makes to another a threat—

- (a) to destroy or damage any property belonging to that other or a third person or to himself and that other or a third person; or
- (b) to destroy or damage his own property in a way which he knows or believes is more likely than not to endanger the life of that other or a third person—

shall, if he made the threat with the purpose of causing the other to fear that it would be carried out, be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

S. 199
repealed by
No. 9228
s. 2(1)(c),
new s. 199
inserted by
No. 9228
s. 2(1)(d),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 72).

199. Possessing anything with intent to destroy or damage property

A person who has anything in his custody or under his control—

- (a) with the purpose of using it, or causing or permitting another to use it, without lawful excuse—
 - (i) to destroy or damage any property belonging to some other person or to himself, the user or both of them and some other person; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 201

(ii) to destroy or damage any property in a way which he knows or believes is more likely than not to endanger the life of some other person; or

(b) with the purpose of using it, or causing or permitting another to use it, dishonestly and with a view to gain for himself or another, to destroy or damage property—

shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

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S. 200
repealed by
No. 9228
s. 2(1)(c),
new s. 200
inserted by
No. 9228
s. 2(1)(d),
repealed by
No. 9576
s. 11(1).

201. Lawful excuse

- (1) This section applies to any offence under section 197(1), 198(a) or 199(a)(i).
- (2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this subdivision as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

(a) if at the time of the conduct alleged to constitute the offence he believed—

(i) that the property in question belonged solely to himself;

(ii) that he held a right or interest in the property in question which authorized him to engage in the conduct; or

S. 201
repealed by
No. 9228
s. 2(1)(c),
new s. 201
inserted by
No. 9228
s. 2(1)(d).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 201

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- (iii) that the person or persons whom he believed to be entitled to consent to the destruction or damage in question had so consented or would have so consented if he or they had known the circumstances of the destruction or damage; or
 - (b) if he engaged in the conduct alleged to constitute the offence in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of such conduct he believed—
 - (i) that the property, right or interest which he sought to protect was in immediate need of protection; and
 - (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.
 - (3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.
 - (4) For the purposes of sub-section (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.
 - (5) This section shall not be construed as taking away or otherwise affecting any other defence recognized by law as a defence to criminal charges.
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201A. Intentionally or recklessly causing a bushfire

S. 201A
inserted by
No. 10/2003
s. 4.

- (1) A person who—
- (a) intentionally or recklessly causes a fire; and
 - (b) is reckless as to the spread of the fire to vegetation on property belonging to another—
- is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (2) For the purposes of sub-section (1)(b), circumstances in which a person is not to be taken to be reckless as to the spread of a fire include the following—
- (a) the person caused the fire in the course of carrying out a fire prevention, fire suppression or other land management activity; and
 - (b) at the time the activity was carried out—
 - (i) there was in force a provision made by or under an Act or by a Code of Practice approved under an Act, that regulated or otherwise applied to the carrying out of the activity and the person in carrying out that activity acted in accordance with the provision; and
 - (ii) the person believed that his or her conduct in carrying out the activity was justified having regard to all of the circumstances.
- (3) For the purposes of sub-section (2)(b)(ii) it is sufficient that a person honestly believed that the conduct was justified.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 202

(4) In this section—

(a) a reference to causing a fire includes—

- (i) lighting a fire;
- (ii) maintaining a fire;
- (iii) failing to contain a fire, except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire;

(b) **"spread of the fire"** means spread of the fire beyond the capacity of the person who caused the fire to extinguish it.

S. 202
repealed by
No. 9228
s. 2(1)(c),
new s. 202
inserted by
No. 9228
s. 2(1)(d),
amended by
No. 57/1989
s. 3(Sch. item
42.9(a)–(c)).

202. Jurisdiction of magistrates' courts

No rule of law ousting the jurisdiction of the Magistrates' Court to try offences where a dispute of title to property is involved shall preclude the Magistrates' Court from trying offences mentioned in this subdivision or from trying any other offences of destroying or damaging property.

S. 203
repealed by
No. 9228
s. 2(1)(c).

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S. 203A
inserted by
No. 8280 s. 12,
amended by
No. 9019
s. 2(1)(Sch.
item 35),
repealed by
No. 9228
s. 2(1)(c).

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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 206

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Pt 1 Div. 3
Subdiv. (2)
(Heading and
ss 204, 205)
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (3)
(Heading)
repealed by
No. 9228
s. 2(1)(c).

***(2) Injuries to Buildings &c. by Rioters and Forcible Entries
and Detainers***

New Pt 1
Div. 3
Subdiv. (2)
(Heading)
inserted by
No. 9228
s. 2(1)(e).

206. Rioters demolishing buildings²³

No. 6103
s. 206.

- (1) Whosoever is one of any persons riotously and tumultuously assembled together to the disturbance of the public peace who unlawfully and with force demolish or pull down or destroy or begin to demolish pull down or destroy any church chapel meeting-house or other place of divine worship, or any house stable coach-house outhouse warehouse office shop mill malthouse hop-oast barn granary shed hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned belonging to the Queen or the Government of Victoria or to any municipal council or belonging to any university, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery (whether fixed or

S. 206(1)
amended by
Nos 9576
s. 11(1),
12/1989
s. 4(1)(Sch. 2
item 20.1) (as
amended by
No. 13/1990
s. 38(1)(h)),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 73(a)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 207

movable) prepared for or employed in any manufacture or any steam-engine or other engine for sinking working ventilating or draining any mine, or any staith building or erection used in conducting the business of any mine or any bridge waggon-way tramway trunk or shoot for conveying minerals from any mine, shall be guilty of an indictable offence, and shall be liable to level 4 imprisonment (15 years maximum).

S. 206(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch 2
item 51),
48/1997
s. 60(1)(Sch. 1
item 73(b)).

- (2) Whosoever is one of any persons riotously and tumultuously assembled together to the disturbance of the public peace who unlawfully and with force injure or damage any such place building or erection or thing as is in the last subsection mentioned, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No. 6103
s. 207.

207. Forcible entry

S. 207(1)
repealed by
No. 44/1997
s. 3.

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- (2) No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 207

(3) Every person who is guilty of a contravention of this section shall be guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 10 fine or both.

S. 207(3) amended by Nos 9554 s. 2(2)(Sch. 2 item 55), 9576 s. 11(1), 49/1991 s. 119(1) (Sch. 2 item 54), 48/1997 s. 60(1)(Sch. 1 item 74(a)(b)).

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Pt 1 Div. 3 Subdivs (4)(5) (Headings and ss 208–210) repealed by No. 9228 s. 2(1)(c).

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Pt 1 Div. 3 Subdivs (6)(7) (Headings and ss 211–222) amended by No. 7876 s. 2(3), repealed by No. 9228 s. 2(1)(c).

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Pt 1 Div. 3 Subdiv. (8) (Heading and ss 223, 224) repealed by No. 9228 s. 2(1)(c).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 225

(3) *Interference with Mines, Sea Banks &c., Railways and Navigation Aids*

New Pt 1
Div. 3
Subdiv. (3)
(Heading)
inserted by
No. 9228
s. 2(1)(f).

No. 6103
s. 225.

S. 225
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 55),
48/1997
s. 60(1)(Sch. 1
item 75).

225. Conveying water into a mine

Whosoever unlawfully and maliciously causes any water to be conveyed or run into any mine or into any subterraneous passage communicating therewith with intent thereby to destroy or damage such mine or to hinder or delay the working thereof, or with the like intent unlawfully and maliciously pulls down fills up or obstructs or damages with intent to destroy obstruct or render useless any airway waterway drain pit level shaft or drive of or belonging to any mine, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).
This provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same or by any person duly employed in such working.

S. 226
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (9)
(Heading and
s. 227)
repealed by
No. 9228
s. 2(1)(c).

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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 228

228. Removing etc. piles of sea banks

Whosoever unlawfully and maliciously cuts off draws up or removes any piles chalk or other materials fixed in the ground and used for securing any sea bank or sea wall or the bank dam or wall of any river canal drain aqueduct marsh reservoir pool port harbor dock quay wharf jetty or lock, or unlawfully and maliciously opens or draws up any floodgate or sluice or does any other injury or mischief to any navigable river or canal with intent to obstruct or prevent the carrying on completing or maintaining the navigation thereof, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

No. 6103
s. 228.
S. 228
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 75).

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Pt 1 Div. 3
Subdivs
(10)(11)
(Headings
and
ss 229–231)
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (12)
(Heading)
repealed by
No. 9228
s. 2(1)(c).

232. Placing things on railways to obstruct or overturn engine etc.²⁴

Whosoever unlawfully and maliciously puts places casts or throws upon or across any railway any wood stone or other matter or thing, or unlawfully and maliciously takes up removes or displaces any rail sleeper or other thing belonging to any railway, or unlawfully and maliciously turns moves or diverts any points or other machinery belonging to any railway, or

No. 6103
s. 232.
S. 232
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 76).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 233

unlawfully and maliciously makes or shows hides or removes any signal or light upon or near to any railway, or unlawfully and maliciously does or causes to be done any other matter or thing with intent in any such case to obstruct upset overthrow injure or destroy any engine tender carriage or truck on such railway, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

No. 6103
s. 233.
S. 233
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 56),
48/1997
s. 60(1)(Sch. 1
item 77(a)(b)).

233. Obstructing engine, carriage etc. on railway²⁵

Whosoever by any unlawful act or by any wilful omission or neglect obstructs or causes to be obstructed any engine or carriage on any railway, or aids or assists therein, shall be guilty of a summary offence, and shall be liable to level 7 imprisonment (2 years maximum).

S. 234
repealed by
No. 9228
s. 2(1)(c).

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S. 235
amended by
Nos 7876
s. 2(3), 8247
s. 4,
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (13)
(Heading and
s. 236)
repealed by
No. 9228
s. 2(1)(c).

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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 244

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Pt 1 Div. 3
Subdiv. (14)
(Heading and
ss 237, 238)
amended by
Nos 8181
s. 2(1)
(Sch. item 33),
8870 s. 2(1)(2),
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (15)
(Heading and
ss 239–243)
repealed by
No. 9228
s. 2(1)(c).

244. Altering signals or exhibiting false ones

No. 6103
s. 244.

Whosoever unlawfully masks alters or removes any light or signal or exhibits any false light or signal with intent to bring any ship vessel or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship vessel or boat and for which no punishment is hereinbefore provided, shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

S. 244
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 76).

245. Removing buoy etc.

No. 6103
s. 245.

Whosoever unlawfully and maliciously cuts away casts adrift removes alters defaces sinks or destroys or in any other manner injures or conceals, or unlawfully and maliciously does any act with intent to cut away cast adrift remove alter deface sink destroy, or in any other manner injure or conceal, any boat buoy rope perch or mark used or intended for the guidance of seamen or the purpose of navigation, shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 245
amended by
Nos 8181
s. 2(1)
(Sch. item 36),
9576 s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 78).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 246A

S. 246
repealed by
No. 9228
s. 2(1)(c).

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Pt 1 Div. 3
Subdiv. (15A)
(Heading)
inserted by
No. 7088
s. 2(d),
repealed by
No. 9228
s. 2(1)(c).

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New Pt 1
Div. 3
Subdiv. (4)
(Heading)
inserted by
No. 9228
s. 2(1)(g).

(4) *Injuries to Aircraft*

S. 246A
inserted by
No. 7088
s. 2(d),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 79).

246A. Endangering safe operation of an aircraft

Any person who does any act or thing with intent to prejudice the safe operation of an aircraft shall be guilty of an indictable offence and liable to level 4 imprisonment (15 years maximum).

S. 246B
inserted by
No. 7088
s. 2(d),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 53),
48/1997
s. 60(1)(Sch. 1
item 80).

246B. Setting fire etc. to aircraft

Any person who unlawfully and maliciously sets fire to or in any way destroys any aircraft whether complete or incomplete shall be guilty of an indictable offence and shall be liable to level 4 imprisonment (15 years maximum).

246C. Endangering safety of aircraft

Any person who while on board an aircraft does any act or thing that is likely to endanger the safety of the aircraft shall be guilty of an indictable offence and shall be liable to level 5 imprisonment (10 years maximum).

S. 246C
inserted by
No. 7088
s. 2(d),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 81).

246D. Dangerous goods on aircraft

S. 246D
inserted by
No. 7088
s. 2(d).

(1) Subject to this section any person who—

- (a) carries or places dangerous goods on board an aircraft;
- (b) delivers dangerous goods to a person for the purpose of their being placed on board an aircraft; or
- (c) has dangerous goods in his possession on board an aircraft—

shall be guilty of an indictable offence and shall be liable to level 6 imprisonment (5 years maximum).

(2) This section does not apply—

- (a) to or in relation to any act done with the consent of the owner or operator of the aircraft given with a knowledge of the nature of the goods concerned; or
- (b) to or in relation to the carrying or placing of firearms or ammunition for firearms on board an aircraft with permission granted under the Air Navigation Regulations of the Commonwealth.

S. 246D(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 82).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 246E

(3) In this section "**dangerous goods**" means—

- (a) firearms, ammunition, weapons and explosive substances; and
- (b) substances or things that, by reason of their nature or condition, may endanger the safety of an aircraft or of persons on board an aircraft.

S. 246E
inserted by
No. 7088
s. 2(d),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 82).

246E. Threats to safety of aircraft

Any person who threatens, states that it is his intention, or makes a statement from which it could reasonably be inferred that it is his intention to destroy damage or endanger the safety of an aircraft or to kill or injure all or any of the persons on board an aircraft shall be guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).

Pt 1 Div. 3
Subdiv. (15B)
(Heading)
inserted by
No. 9155
s. 4(a),
repealed by
No. 9228
s. 2(1)(c).

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S. 246F
inserted by
No. 7088
s. 2(d),
substituted by
No. 9155
s. 4(b),
repealed by
No. 9228
s. 2(1)(c).

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(5) False Statements

Pt 1 Div. 3
Subdiv. (5)
(Heading)
inserted by
No. 9228
s. 2(1)(h) (as
amended by
No. 9427
s. 6(1)).

247. False statements

Any person who makes a statement or conveys information, being a statement or information that he knows to be false, to the effect or from which it could reasonably be inferred that there has been or is to be a plan, proposal, attempt, conspiracy or threat to—

- (a) take or exercise control by force or violence of any building (including any structure in the nature of a building or any bridge or mine) aircraft, vessel, motor vehicle or engine or carriage used upon a railway;
- (b) destroy, damage or endanger the safety thereof; or
- (c) kill or injure all or any of the persons therein or thereon—

shall be guilty of an indictable offence and shall be liable to level 6 imprisonment (5 years maximum).

S. 247
repealed by
No. 9228
s. 2(1)(c),
new s. 247
inserted by
No. 9228
s. 2(1)(h) (as
amended by
No. 9427
s. 6(1)),
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 56),
48/1997
s. 60(1)(Sch. 1
item 83).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 247A

Pt 1 Div. 3
Subdiv. (6)
(Heading and
ss 247A–247I)
inserted by
No. 10/2003
s. 5.

(6) *Computer Offences*

S. 247A
inserted by
No. 10/2003
s. 5.

247A. Interpretation

(1) In this Subdivision—

"access", in relation to data held in a computer,
means—

- (a) the display of the data by the computer
or any other output of the data from the
computer; or
- (b) the copying or moving of the data to
any other place in the computer or to a
data storage device; or
- (c) in the case of a program, the execution
of the program;

"data" includes—

- (a) information in any form; and
- (b) any program or part of a program;

"data held in a computer" includes—

- (a) data entered or copied into the
computer; and
- (b) data held in any removable data storage
device for the time being in the
computer; and
- (c) data held in a data storage device on a
computer network of which the
computer forms part;

"data storage device" means any thing (for example, a disk or file server) containing or designed to contain data for use by a computer;

"electronic communication" means a communication of information in any form by means of guided or unguided electromagnetic energy;

"impairment", in relation to electronic communication to or from a computer, includes—

- (a) the prevention of any such communication; and
- (b) the impairment of any such communication on an electronic link or network used by the computer—

but does not include a mere interception of any such communication;

"modification", in relation to data held in a computer, means—

- (a) the alteration or removal of the data; or
- (b) an addition to the data;

"serious computer offence" means—

- (a) an offence against section 247B, 247C or 247D; or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against section 247B, 247C or 247D if the conduct occurred in Victoria;

"unauthorised computer function" means any of the following—

- (a) any unauthorised access to data held in a computer; or
 - (b) any unauthorised modification of data held in a computer; or
 - (c) any unauthorised impairment of electronic communication to or from a computer.
- (2) In this Subdivision, a reference to access to data, modification of data or impairment of electronic communication is limited to access, modification or impairment caused (whether directly or indirectly) by the execution of a function of a computer.
- (3) For the purposes of this Subdivision, access to data, modification of data or impairment of electronic communication by a person—
- (a) is unauthorised if the person is not entitled to cause that access, modification or impairment;
 - (b) is not unauthorised merely because the person has an ulterior purpose for that action.
- (4) For the purposes of an offence against this Subdivision, a person causes an unauthorised computer function if the person's conduct substantially contributes to the unauthorised computer function.

**247B. Unauthorised access, modification or impairment
with intent to commit serious offence**

S. 247B
inserted by
No. 10/2003
s. 5.

- (1) A person who causes any unauthorised computer function—
- (a) knowing it is unauthorised; and
 - (b) with the intention of committing a serious offence or facilitating the commission of a serious offence (whether by the person or by another person)—
- is guilty of an offence and liable to the same maximum penalty as applies to the commission of the serious offence in Victoria.
- (2) In this section "**serious offence**" means—
- (a) an offence in Victoria punishable on conviction for a first offence with imprisonment for a term of 5 years or more; or
 - (b) an offence in any other jurisdiction that would be punishable on conviction for a first offence with imprisonment for a term of 5 years or more if committed in Victoria.
- (3) A person may be found guilty of an offence against this section—
- (a) even if committing the serious offence is impossible; or
 - (b) whether the serious offence is to be committed at the time of the unauthorised conduct or at a later time.
- (4) It is not an offence to attempt to commit an offence against this section.

s. 247C

S. 247C
inserted by
No. 10/2003
s. 5.

247C. Unauthorised modification of data to cause impairment

A person who—

- (a) causes any unauthorised modification of data held in a computer; and
- (b) knows that the modification is unauthorised; and
- (c) intends by the modification to impair access to, or to impair the reliability, security or operation of, any data held in a computer or is reckless as to any such impairment—

is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

S. 247D
inserted by
No. 10/2003
s. 5.

247D. Unauthorised impairment of electronic communication

A person who—

- (a) causes any unauthorised impairment of electronic communication to or from a computer; and
- (b) knows that the impairment is unauthorised; and
- (c) intends to impair electronic communication to or from the computer or is reckless as to any such impairment—

is guilty of an offence and liable to level 5 imprisonment (10 years maximum).

247E. Possession of data with intent to commit serious computer offence

S. 247E
inserted by
No. 10/2003
s. 5.

- (1) A person who is in possession or control of data—
- (a) with the intention of committing a serious computer offence; or
 - (b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person)—
- is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.
- (2) In this section, a reference to a person having possession or control of data includes a reference to a person—
- (a) having possession of a computer or data storage device that holds or contains the data; and
 - (b) having possession of a document in which the data is recorded; and
 - (c) having control of data held in a computer that is in the possession of another person (whether the computer is in Victoria or outside Victoria).
- (3) A person may be found guilty of an offence against this section even if committing the serious computer offence is impossible.
- (4) It is not an offence to attempt to commit an offence against this section.

s. 247F

S. 247F
inserted by
No. 10/2003
s. 5.

247F. Producing, supplying or obtaining data with intent to commit serious computer offence

- (1) A person who produces, supplies or obtains data—
 - (a) with the intention of committing a serious computer offence; or
 - (b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person)—is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.
- (2) In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person—
 - (a) producing, supplying or obtaining data held in a computer or contained in a data storage device; and
 - (b) producing, supplying or obtaining a document in which the data is recorded.
- (3) A person may be found guilty of an offence against this section even if committing the serious computer offence is impossible.

S. 247G
inserted by
No. 10/2003
s. 5.

247G. Unauthorised access to or modification of restricted data

- (1) A person who—
 - (a) causes any unauthorised access to or modification of restricted data held in a computer; and
 - (b) knows that the access or modification is unauthorised; and

-
- (c) intends to cause the access or modification—
is guilty of an offence and liable to level 7
imprisonment (2 years maximum).
- (2) An offence against this section is a summary
offence.
- (3) In this section "**restricted data**" means data held
in a computer to which access is restricted by an
access control system associated with a function
of the computer.

**247H. Unauthorised impairment of data held in computer
disk, credit card or other device**

S. 247H
inserted by
No. 10/2003
s. 5.

- (1) A person who—
- (a) causes any unauthorised impairment of the
reliability, security or operation of data held
on a computer disk, credit card or other
device used to store data by electronic
means; and
- (b) knows that the impairment is unauthorised;
and
- (c) intends to cause the impairment—
is guilty of an offence and liable to level 7
imprisonment (2 years maximum).
- (2) An offence against this section is a summary
offence.
- (3) For the purposes of this section, impairment of
reliability, security or operation of data is
unauthorised if the person is not entitled to cause
the impairment.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 247I

S. 247I
inserted by
No. 10/2003
s. 5.

247I. Extra-territorial operation of offences

- (1) It is immaterial that some or all of the conduct constituting an offence against this Subdivision occurred outside Victoria, so long as the computer or device used to store data by electronic means affected by the conduct was in Victoria at the time at which the conduct occurred.
- (2) It is immaterial that the computer or device used to store data by electronic means affected by some or all of the conduct constituting an offence against this Subdivision was outside Victoria at the time the conduct occurred, so long as that conduct occurred in Victoria.

Pt 1 Div. 3
Subdiv. (7)
(Heading and
ss 247J–247L)
inserted by
No. 10/2003
s. 6.

(7) *Sabotage*

S. 247J
inserted by
No. 10/2003
s. 6.

247J. Interpretation

- (1) In this Subdivision—
 "property offence" means—
 - (a) an offence against Subdivision (1) of this Division or Division 4; or
 - (b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against Subdivision (1) of this Division or Division 4 if the conduct occurred in Victoria;

"public facility" means any of the following
(whether publicly or privately owned)—

- (a) a government facility, including premises used by government employees in connection with official duties;
- (b) a public infrastructure facility, including a facility providing or distributing water, sewerage, energy, fuel, communication or other services to, or for the benefit of, the public;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;
- (d) a public transport facility, including a conveyance used to transport people or goods;
- (e) a public place, including any premises, land or water open to the public;

"unauthorised computer function" has the same meaning as in Subdivision (6).

- (2) In this Subdivision **"damage"**, in relation to a public facility, means—
 - (a) cause damage to the facility or any part of the facility; or
 - (b) cause disruption to the use or operation of the facility.
- (3) For the purposes of an offence against this Subdivision, a person causes any damage or disruption if the person's conduct substantially contributes to the damage or disruption.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 247K

S. 247K
inserted by
No. 10/2003
s. 6.

247K. Sabotage

A person who—

- (a) damages a public facility by committing a property offence or by causing an unauthorised computer function; and
- (b) intends to cause—
 - (i) major disruption to government functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss—

is guilty of an offence and liable to level 2 imprisonment (25 years maximum).

S. 247L
inserted by
No. 10/2003
s. 6.

247L. Threats to sabotage

(1) A person who—

- (a) makes to another person a threat to damage a public facility by committing a property offence or by causing an unauthorised computer function; and
- (b) intends that person to fear that the threat will be carried out and will cause—
 - (i) major disruption to government functions; or
 - (ii) major disruption to the use of services by the public; or
 - (iii) major economic loss—

is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 247L

-
- (2) In the prosecution of an offence against this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (3) For the purposes of this section—
- (a) a threat may be made by any conduct and may be explicit or implicit, conditional or unconditional; and
 - (b) a threat to a person includes a threat to a group of persons; and
 - (c) fear that a threat will be carried out includes apprehension that it will be carried out.

*	*	*	*	*	Pt 1 Div. 3 Subdiv. (16) (Heading and s. 247) repealed by No. 9228 s. 2(1)(c).
*	*	*	*	*	Pt 1 Div. 3 Subdiv. (17) (Heading and s. 248) amended by No. 8870 s. 3, repealed by No. 9228 s. 2(1)(c).
*	*	*	*	*	Pt 1 Div. 3 Subdivs (18)(19) (Headings and ss 249–251) repealed by No. 9228 s. 2(1)(c).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 248

Pt 1 Div. 4
(Heading and
ss 252–289)
amended by
Nos 7705
s. 10, 7876
s. 2(3), 8181
s. 2(1)
(Sch. item 34),
8750 s. 96,
9019 s. 2(1)
(Sch. items
36, 37), 9576
s. 11(1), 10087
s. 3(1)(Sch. 1
item 25),
10244 s. 10,
repealed by
No. 25/1989
s. 8(1), new
Pt 1 Div. 4
(Heading and
s. 248)
inserted by
No. 95/1994
s. 5.

Division 4—Contamination of Goods

New s. 248
inserted by
No. 95/1994
s. 5,
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 84),
69/1997
s. 22(6),
substituted by
No. 65/1998
s. 5.

248. Interpretation

(1) In this Division—

"contaminate", in relation to goods, includes—

- (a) interfere with the goods; or
- (b) making it appear that the goods have
been contaminated or interfered with;

"goods" includes any substance—

- (a) whether or not for human consumption;
and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed
with other goods.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 249

(2) In this Division, a reference to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through—

- (a) members of the public not purchasing or using those goods or similar goods; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

249. Contaminating goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

A person must not contaminate goods with the intention of causing, or being reckless as to whether or not the contamination would cause—

(a) public alarm or anxiety; or

(b) economic loss through public awareness of the contamination.

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

Note: Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section

S. 249
(Heading)
inserted by
No. 66/2005
s. 3(1).

New s. 249
inserted by
No. 65/1998
s. 5,
amended by
No. 66/2005
s. 3(2)(a).

S. 249(a)
amended by
No. 66/2005
s. 3(2)(b).

S. 249(b)
amended by
No. 66/2005
s. 3(2)(b).

Note to s. 249
inserted by
No. 80/2001
s. 7(1).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 250

S. 250
(Heading)
inserted by
No. 66/2005
s. 4(1).
New s. 250
inserted by
No. 65/1998
s. 5.

250. Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

S. 250(1)
amended by
No. 66/2005
s. 4(2)(a).

- (1) A person must not make a threat that goods will be contaminated with the intention of causing, or being reckless as to whether or not the threat would cause—

S. 250(1)(a)
amended by
No. 66/2005
s. 4(2)(b).

- (a) public alarm or anxiety; or

S. 250(1)(b)
amended by
No. 66/2005
s. 4(2)(a)(b).

- (b) economic loss through public awareness of the threat.

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

- (2) For the purposes of this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

Note to s. 250
inserted by
No. 80/2001
s. 7(2).

Note: Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 251

251. Making false statements concerning contamination of goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

S. 251
(Heading)
inserted by
No. 66/2005
s. 5(1).

New s. 251
inserted by
No. 65/1998
s. 5.

- (1) A person must not make a statement that the person believes to be false—
- (a) with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
 - (b) with the intention of thereby causing, or being reckless as to whether or not the statement would cause—
 - (i) public alarm or anxiety; or
 - (ii) economic loss through public awareness of the statement.

S. 251(1)(b)
amended by
No. 66/2005
s. 5(2)(a).

S. 251(1)(b)(i)
amended by
No. 66/2005
s. 5(2)(b).

S. 251(1)(b)(ii)
amended by
No. 66/2005
s. 5(2)(b)(c).

Penalty: Level 5 imprisonment (10 years maximum) or a level 5 fine (1200 penalty units maximum) or both.

- (2) For the purposes of this section, making a statement includes conveying information by any means.

Note: Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

Note to s. 251
inserted by
No. 80/2001
s. 7(3).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 252

New s. 252
inserted by
No. 65/1998
s. 5,
amended by
No. 66/2005
s. 6(a).

252. Territorial nexus for offences

It is immaterial that the conduct of a person constituting an offence under this Division occurred outside Victoria, so long as the person intended by that conduct to cause, or was reckless as to whether or not that conduct would cause—

S. 252(a)
amended by
No. 66/2005
s. 6(b).

(a) public alarm or anxiety in Victoria; or

S. 252(b)
amended by
No. 66/2005
s. 6(b).

(b) economic loss in Victoria through public awareness of the contamination.

Pt 1 Div. 5
(Heading and
ss 290–313)
amended by
Nos 7876 s. 2,
8181 s. 2(Sch.
item 33), 9554
s. 2(2)(Sch. 2
items 56, 57),
9576 s. 11(1),
9848 s. 18(1),
repealed by
No. 25/1989
s. 8(1),
new Pt 1
Div. 5
(Heading and
ss 253–255)
inserted by
No. 6/2006
s. 3.

Division 5—Destruction of Evidence

New s. 253
inserted by
No. 6/2006
s. 3.

253. Definitions

In this Division—

"associate", in relation to a body corporate,
means—

- (a) an employee or agent of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or

within his or her actual or apparent authority; or

(b) an officer of the body corporate;

"board of directors" means the body (by whatever name called) exercising the executive authority of the body corporate;

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant conduct is carried out or the relevant intention formed;

"legal proceeding" has the same meaning as in the **Evidence Act 1958**;

"officer", in relation to a body corporate, means an officer (as defined by section 9 of the Corporations Act) of the body corporate to the extent that he or she is acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority;

"relevant conduct" means the destruction, concealment, or rendering illegible, undecipherable or incapable of identification, of a document or other thing of any kind;

"relevant intention" means the intention of preventing a document or other thing of any kind from being used in evidence in a legal proceeding.

254. Destruction of evidence

(1) A person who—

(a) knows that a document or other thing of any kind is, or is reasonably likely to be, required in evidence in a legal proceeding; and

New s. 254
inserted by
No. 6/2006
s. 3.

(b) either—

- (i) destroys or conceals it or renders it illegible, undecipherable or incapable of identification; or
 - (ii) expressly, tacitly or impliedly authorises or permits another person to destroy or conceal it or render it illegible, undecipherable or incapable of identification and that other person does so; and
- (c) acts as described in paragraph (b) with the intention of preventing it from being used in evidence in a legal proceeding—

is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum) or a level 6 fine or both.

Note 1: "Document" is defined in section 38 of the **Interpretation of Legislation Act 1984**.

Note 2: The maximum fine that may be imposed on a body corporate found guilty of an offence against this section is 3000 penalty units: see **Sentencing Act 1991** s. 113D.

- (2) This section applies with respect to a legal proceeding, whether the proceeding is one that is in progress or is to be, or may be, commenced in the future.

New s. 255
inserted by
No. 6/2006
s. 3.

255. Corporate criminal responsibility for offence against section 254

- (1) For the purposes of a proceeding against a body corporate for an offence against section 254—
- (a) relevant conduct engaged in by an associate of the body corporate must also be attributed to the body corporate; and

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- (b) knowledge of an associate of the body corporate must also be attributed to the body corporate; and
 - (c) intention—
 - (i) of the body corporate's board of directors; or
 - (ii) of an officer of the body corporate; or
 - (iii) of any other associate of the body corporate if a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the formation of that intention—must also be attributed to the body corporate.
- (2) If an officer of a body corporate contravenes section 254, the body corporate must be taken to have also contravened that section and may be proceeded against and found guilty of an offence against that section whether or not the officer has been proceeded against or found guilty of that offence.
- (3) In a proceeding against a body corporate for an offence against section 254, brought in reliance on sub-section (2), it is a defence to the charge for the body corporate to prove that it exercised due diligence to prevent the contravention of that section by the officer.
- (4) The means by which authorisation or permission as required by section 254(1)(b)(ii) may be established include—
- (a) proving that an officer of the body corporate gave that authorisation or permission; or
 - (b) proving that the body corporate's board of directors gave that authorisation or permission; or
-

-
- (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the relevant conduct being carried out.
- (5) Sub-section (4)(a) does not apply if the body corporate proves that it exercised due diligence to prevent the authorisation or permission being given.
- (6) Factors relevant to the application of sub-section (1)(c)(iii) or (4)(c) include—
- (a) whether authority to commit an offence against section 254 or an offence of a similar character had been given by an officer of the body corporate; and
 - (b) whether the associate of the body corporate who carried out the relevant conduct or formed the relevant intention believed on reasonable grounds, or entertained a reasonable expectation, that an officer of the body corporate would have authorised or permitted the relevant conduct being carried out with the relevant intention.
- (7) Subject to sub-section (8), it is not necessary that each element of an offence against section 254 that is attributed to a body corporate by force of sub-section (1) be supplied by the same associate of the body corporate.
- (8) It is necessary that the elements referred to in section 254(1)(b)(i) and (c) be supplied by the same associate of the body corporate.
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Division 6—Perjury

314. Perjury

No. 6103
s. 314.

- (1) Whosoever commits wilful and corrupt perjury or subornation of perjury shall be liable to level 4 imprisonment (15 years maximum).
- (2) Where in any Act it is provided that any person shall be liable to the penalties of perjury or shall be guilty of perjury or shall be deemed to have committed perjury or any similar expression is used such person shall be deemed to have committed an offence against sub-section (1) and may be proceeded against tried and punished accordingly.
- (3) Where by or under any Act it is required or authorized that facts matters or things be verified or otherwise assured or ascertained by or upon the oath affirmation declaration or affidavit of some or any person, any person who in any such case takes or makes any oath affirmation or declaration so required or authorized and who knowingly wilfully and corruptly upon such oath affirmation or declaration deposes swears to or makes any false statement as to any such fact matter or thing, and any person who knowingly wilfully and corruptly upon oath deposes to the truth of any statement for so verifying assuring or ascertaining any such fact matter or thing or purporting so to do, or who knowingly wilfully and corruptly takes makes signs or subscribes any such affirmation declaration or affidavit as to any such fact matter or thing, such statement affirmation declaration or

S. 314(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 59),
48/1997
s. 60(1)(Sch. 1
item 85).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 315

affidavit being untrue wholly or in part, or who knowingly wilfully and corruptly omits from any such affirmation declaration or affidavit made or sworn under the provisions of any law any matter which by the provisions of such law is required to be stated in such affirmation declaration or affidavit, shall be deemed guilty of wilful and corrupt perjury. Nothing herein contained shall affect any case amounting to perjury at the common law or the case of any offence in respect of which other provision is made by any Act.

No. 6103
s. 315.

315. All evidence material with respect to perjury

All evidence and proof whatsoever, whether given or made orally or by or in any affidavit examination declaration or deposition, shall be deemed and taken to be material with respect to the liability of any person to be proceeded against and punished for perjury or subornation of perjury.

Division 7—Unlawful Oaths

No. 6103
s. 316.

316. Unlawful oaths to commit treason, murder etc.

S. 316(1)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 86(a)).

(1) Every person who—

S. 316(1)(a)
amended by
No. 9019
s. 2(1)(Sch.
item 38).

(a) administers or is present at and consents to the administering of any oath or engagement in the nature of an oath purporting to bind the person who takes it to commit treason or murder; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 316

- (b) takes any such oath or engagement not being compelled to do so; or
- (c) induces or attempts to induce any person to take any such oath or engagement—

shall be guilty of an indictable offence, and shall be liable to level 5 imprisonment (10 years maximum).

(2) Every person who—

- (a) administers or is present at and consents to the administering of any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following (that is to say):—

S. 316(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 52),
48/1997
s. 60(1)(Sch. 1
item 86(b)).

- (i) to engage in any mutinous or seditious enterprise;
 - (ii) to commit any indictable offence other than treason or murder;

S. 316(2)(a)(ii)
amended by
No. 9019
s. 2(1)(Sch.
item 39).

- (iii) to disturb the public peace;
 - (iv) to be of any association society or confederacy formed for the purpose of doing any such act as aforesaid;
 - (v) to obey the order or commands of any committee or body of men not lawfully constituted or of any leader or commander or other person not having authority by law for that purpose;
 - (vi) not to inform or give evidence against any associate confederate or other person;
 - (vii) not to reveal or discover any unlawful association society or confederacy or any illegal act done or to be done or any illegal oath or engagement that may

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 316

have been administered or tendered to or taken by himself or any other person or the import of any such oath or engagement; or

- (b) takes any such oath or engagement not being compelled to do so; or
- (c) induces or attempts to induce any person to take any such oath or engagement—

shall be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 316(3)
amended by
No. 57/1989
s. 3(Sch.
item 42.14).

- (3) A person who takes any such oath or engagement as is mentioned in the last two preceding subsections cannot set up as a defence that he was compelled to do so unless within fourteen days after taking it or if he is prevented by actual force or sickness within fourteen days after the termination of such prevention he declares by information on oath before some member of the Executive Council or a magistrate or if he is on actual service in Her Majesty's forces by sea or land either by such information or by information to his commanding officer the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence and the place where and the time when the oath or engagement was administered or taken.

S. 316(4)
amended by
No. 57/1989
s. 3(Sch.
item 42.15).

- (4) A person who has been tried and convicted or acquitted on a charge of any of the offences mentioned in this section shall not be afterwards prosecuted upon the same facts for treason or for failing when he knows that any person intends to commit treason to give information thereof with all reasonable despatch to a magistrate or use other reasonable endeavours to prevent the commission of the crime.

Division 8—Offences Connected with Explosive Substances²⁶

317. Offences connected with explosive substances

No. 6103
s. 317.

- (1) In this Division unless inconsistent with the context or subject-matter—

"explosive substance" includes—

- (a) any material for making any explosive substance;
 - (b) any apparatus machine implement or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; and
 - (c) any part of any such apparatus machine or implement.
- (2) Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of an indictable offence, and shall be liable to level 4 imprisonment (15 years maximum).
- (3) Any person who unlawfully and maliciously—
- (a) does any act with intent to cause by an explosive substance or conspires to cause by an explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property; or
 - (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause

S. 317(2)
amended by
Nos 9576
s. 11(1),
49/1991
s. 119(1)
(Sch. 2
item 59),
48/1997
s. 60(1)(Sch. 1
item 87(a)).

S. 317(3)
amended by
Nos 9576
s. 11(1),
101/1986 s. 56,
49/1991
s. 119(1)
(Sch. 2
item 60(a)),
48/1997
s. 60(1)(Sch. 1
item 87(b)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 317

serious injury to property or to enable any
other person by means thereof to endanger
life or cause serious injury to property—

shall, whether any explosion does or does not take
place and whether any injury to person or property
has been actually caused or not, be guilty of an
indictable offence, and shall be liable to level 5
imprisonment (10 years maximum).

S. 317(4)
amended by
Nos 9576
s. 11(1),
101/1986 s. 56,
49/1991
s. 119(1)
(Sch. 2
item 60(b)),
48/1997
s. 60(1)(Sch. 1
item 87(c)).

- (4) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of an indictable offence, and shall be liable to level 6 imprisonment (5 years maximum).

S. 317(5)
amended by
No. 9576
s. 11(1).

- (5) Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever knowingly procures counsels aids abets or is accessory to the commission of any crime under this Division shall be guilty of an indictable offence, and shall be liable to be tried and punished for that crime as if he had been guilty as a principal.

S. 317(6)
repealed by
No. 9848
s. 18(1).

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S. 317(7)
amended by
Nos 25/1989
s. 19(a),
35/1996
s. 453(Sch. 1
item 16.1
(a)–(c)).

- (7) In any presentment the same criminal act may be charged in different counts as constituting different crimes under this Division, and upon the trial of any such presentment the prosecution shall not be put to its election as to the count on which it must proceed.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 317

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- (8) This Division shall not exempt any person from any indictment presentment or proceeding for a crime or offence which is punishable at common law or by any enactment other than this Division but no person shall be punished twice for the same criminal act.
- (9) (a) If a magistrate is satisfied by the evidence on oath or by affidavit of any member of the police force above the rank of senior sergeant authorized in writing by the Chief Commissioner of Police (whether generally or in any particular case) in that behalf that there is reasonable ground for suspecting that an offence under this Division has been, is being, or is about to be committed he may grant a search warrant authorizing any member of the police force named therein to enter at any time any premises or place mentioned in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize and detain any explosive substance which he finds on the premises or place, or on any such person, in respect of which or in connexion with which he has reasonable grounds for suspecting that an offence under this Division has been, is being, or is about to be committed.
- (b) The member of the police force making the search may arrest without warrant any person found on the premises whom he has reason to believe to be guilty of an offence under this Division.
- (c) Save as aforesaid the rules to be observed with regard to search warrants mentioned in the **Magistrates' Court Act 1989** shall extend and apply to warrants under this section.
- S. 317(9)(a)**
amended by
Nos 8179 s. 4,
57/1989
s. 3(Sch.
item 42.16(a)).

S. 317(9)(c)
amended by
Nos 8731
s. 173, 57/1989
s. 3(Sch.
item 42.16(b)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 317A

- (d) The provisions of this section shall be read and construed as in aid and not in derogation of the provisions with regard to warrants to search contained in the said Act or elsewhere²⁷.

S. 317A
inserted by
No. 95/1994
s. 6.

317A. Bomb hoaxes

S. 317A(1)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 88),
69/1997
s. 22(7).

- (1) A person must not—
- (a) place an article or substance in any place; or
 - (b) send an article or substance by any means of transportation—

with the intention of inducing in another person a false belief that the article or substance is likely to explode or ignite or discharge a dangerous or deleterious matter.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

S. 317A(2)
amended by
Nos 48/1997
s. 60(1)(Sch. 1
item 88),
69/1997
s. 22(7).

- (2) A person must not, whether within or outside Victoria, make a statement or convey information to another person which the person making the statement or conveying the information knows or believes to be false with the intention of inducing in that person or any other person a belief that an article or substance liable to explode or ignite or discharge a dangerous or deleterious matter is present in any place in Victoria.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 318

- (3) For a person to be guilty of an offence against sub-section (1) or (2) it is not necessary for him or her to have any particular person in mind as the person in whom he or she intends to induce the belief referred to in that sub-section.

Note: Division 2B of Part 4 of the **Sentencing Act 1991** provides for the making of cost recovery orders in respect of costs incurred by emergency service agencies in providing an immediate response to an emergency arising out of the commission of an offence against this section.

Note to
s. 317A
inserted by
No. 80/2001
s. 7(4)

Division 9—Driving Offences Connected with Motor Vehicles

Pt 1 Div. 9
(Heading)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.3).

318. Culpable driving causing death

S. 318
amended by
Nos 6762
s. 13(a)(b),
7184 s. 3, 7407
s. 2(a)(b),
substituted by
No. 7645 s. 3.

- (1) Any person who by the culpable driving of a motor vehicle causes the death of another person shall be guilty of an indictable offence and shall be liable to level 3 imprisonment (20 years maximum) or a level 3 fine or both.

S. 318(1)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 58), 9576
s. 11(1),
111/1986
s. 180(2)
(Sch. 2
item 5),
127/1986
s. 102(Sch. 4
item 5.4),
49/1991
s. 119(1)
(Sch. 2
item 61),
13/1992
s. 3(1),
48/1997
s. 60(1)(Sch. 1
item 89).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 318

S. 318(2)
amended by
No. 127/1986
s. 102(Sch. 4
item 5.4).

(2) For the purposes of sub-section (1) a person drives a motor vehicle culpably if he drives the motor vehicle—

- (a) recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or
- (b) negligently, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or
- (c) whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or
- (d) whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.

S. 318(2A)
inserted by
No. 59/2004
s. 5.

(2A) Without limiting sub-section (2)(b), negligence within the meaning of that sub-section may be established by proving that—

- (a) a person drove a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep while driving or of losing control of the vehicle; and
- (b) by so driving the motor vehicle the person failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 318

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| (3) A presentment for an indictable offence under this section shall specify which form of culpability within the meaning of sub-section (2) is charged but evidence of the whole of the circumstances shall be admissible on the hearing of the presentment. | S. 318(3)
amended by
No. 9576
s. 11(1). |
| (4) A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the death concerned subsequently be prosecuted for unlawful homicide or under this section. | S. 318(4)
amended by
No. 9576
s. 11(1). |
| (5) A person who is convicted or acquitted of any form of unlawful homicide not referred to in this section shall not in respect of the death concerned subsequently be prosecuted under this section and no other form of unlawful homicide shall be charged in the same presentment with an indictable offence under this section. | S. 318(5)
amended by
No. 9576
s. 11(1). |
| (6) A person who is convicted or acquitted of an indictable offence under this section shall not in respect of the circumstances concerned be proceeded against under the Road Safety Act 1986 for having driven a motor vehicle whilst under the influence of alcohol or a drug and no such offence shall be charged in the same presentment with an indictable offence under this section. | S. 318(6)
amended by
Nos 9576
s. 11(1),
127/1986
s. 102(Sch. 4
item 5.4),
13/1992
s. 3(2). |
| (7) "Drug" means a drug within the meaning of the Road Safety Act 1986 . | S. 318(7)
substituted by
Nos 8338 s. 4,
78/1987
s. 4(2). |
| * * * * * | S. 318(8)
repealed by
No. 78/1987
s. 4(3). |
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Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 319

S. 319
amended by
Nos 6658 s. 3,
6762
s. 13(c)(d),
7332
s. 2(Sch. 1
item 19), 7546
s. 6,
repealed by
No. 7645 s. 5,
new s. 319
inserted by
No. 59/2004
s. 6.

319. Dangerous driving causing death or serious injury

- (1) A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of, or serious injury to, another person is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum).
- (2) In this section "**serious injury**" has the meaning given by section 15.

S. 320
amended by
Nos 6762
s. 13(e), 7184
s. 4,
substituted by
No. 7645 s. 4,
amended by
Nos 7876
s. 2(3), 9576
s. 11(1), 10084
s. 5,
repealed by
No. 10260
s. 114(Sch. 4
item 4).

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S. 321
amended by
No. 6561 s. 3,
repealed by
No. 7645 s. 5.

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Pt 1 Div. 9A
(Heading and
s. 320)
inserted by
No. 48/1997
s. 56.

Division 9A—Penalties for Certain Common Law Offences

New s. 320
inserted by
No. 48/1997
s. 56.

320. Maximum term of imprisonment for certain common law offences

An offence at common law specified in column 1 of the Table is punishable by the maximum term of imprisonment specified opposite it in column 2 of the Table.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 320

TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Common law offence</i>	<i>Maximum Term of Imprisonment</i>
Affray	Level 6 imprisonment (5 years maximum)
Attempt to pervert the course of justice	Level 2 imprisonment (25 years maximum)
Breach of prison	Level 6 imprisonment (5 years maximum)
Bribery of public official	Level 5 imprisonment (10 years maximum)
Common assault	Level 6 imprisonment (5 years maximum)
Conspiracy to cheat and defraud	Level 4 imprisonment (15 years maximum)
Conspiracy to defraud	Level 4 imprisonment (15 years maximum)
Criminal defamation	Level 5 imprisonment (10 years maximum)
Embracery	Level 4 imprisonment (15 years maximum)
False imprisonment	Level 5 imprisonment (10 years maximum)
Kidnapping	Level 2 imprisonment (25 years maximum)
Misconduct in public office	Level 5 imprisonment (10 years maximum)
Perverting the course of justice	Level 2 imprisonment (25 years maximum)
Public nuisance	Level 6 imprisonment (5 years maximum)
Riot	Level 5 imprisonment (10 years maximum)
Rout	Level 6 imprisonment (5 years maximum)
Unlawful assembly	Level 6 imprisonment (5 years maximum).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321

Pt 1 Div. 10
(Heading and
s. 322)
repealed by
No. 9576
s. 8(a), new
Pt 1 Div. 10
(Heading and
ss 321–321F)
inserted by
No. 10079
s. 7(2).

New s. 321
inserted by
No. 10079
s. 7(2).

Division 10—Conspiracy

321. Conspiracy to commit an offence

- (1) Subject to this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will involve the commission of an offence by one or more of the parties to the agreement, he is guilty of the indictable offence of conspiracy to commit that offence.
- (2) For a person to be guilty under sub-section (1) of conspiracy to commit a particular offence both he and at least one other party to the agreement—
 - (a) must intend that the offence the subject of the agreement be committed; and
 - (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time when the conduct constituting the offence is to take place.
- (3) A person may be guilty under sub-section (1) of conspiracy to commit an offence notwithstanding the existence of facts of which he is unaware which make commission of the offence by the agreed course of conduct impossible.
- (4) A presentment at the Supreme Court or the County Court of a person for an offence against this section shall not be made without the approval of the Director of Public Prosecutions or

S. 321(4)
inserted by
No. 10233
s. 9(a).

of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this sub-section.

321A. Agreements to commit offences outside Victoria

S. 321A
inserted by
No. 10079
s. 7(2).

- (1) The expression "the commission of an offence" in section 321(1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—
 - (a) the necessary elements of that offence include elements which, if present or occurring in Victoria, would constitute an offence against a law in Victoria; and
 - (b) one or more of the persons referred to in section 321(1) is or are in Victoria when the agreement referred to in that sub-section is made.
- (2) Where all parties to an agreement are outside Victoria when it is made, section 321 shall apply in relation to it if, but only if, that agreement is to pursue a course of conduct which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence against a law in force in Victoria.

321B. As to consequences of acquittal of co-conspirators

(See *R. v. Darby* (1982)
40 ALR 594).

S. 321B
inserted by
No. 10079
s. 7(2).

It is hereby declared that the conviction of a conspirator whether tried together with or separately from another alleged conspirator or other alleged conspirators may stand notwithstanding that the other alleged conspirator or conspirators is or may be acquitted unless in all the circumstances of the case the conviction is inconsistent with the acquittal of the other alleged conspirator or conspirators.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321C

S. 321C
inserted by
No. 10079
s. 7(2).

321C. Penalties for conspiracy

(1) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force in Victoria—

(a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;

S. 321C(1)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 62(a)),
48/1997
s. 60(1)(Sch. 1
item 90(a)).

(b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the person shall be liable to level 4 imprisonment (15 years maximum);

S. 321C(1)(ba)
inserted by
No. 41/1993
s. 22(a),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 90(b)(i)).

(ba) despite paragraph (b), if the relevant offence, or any of the relevant offences, is murder or treason, the person is liable to—

S. 321C(1)
(ba)(i)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 90(b)(ii)).

(i) level 1 imprisonment (life); or

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

as the court determines;

S. 321C(1)(c)
amended by
No. 41/1993
s. 22(b).

(c) subject to paragraphs (a), (b), (ba) and (d), if the relevant offence, or any of the relevant offences, is an offence for which a maximum penalty is prescribed by law, the person shall be liable to a penalty not exceeding that maximum penalty or the accumulated maximum penalties, as the case may be; or

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321C

(d) if the relevant offence, or each of the relevant offences, is triable only in the Magistrates' Court, the person shall be liable to—

S. 321C(1)(d) amended by Nos 57/1989 s. 3(Sch. item 42.17), 49/1991 s. 119(1) (Sch. 2 item 62(b)(i)).

(i) level 6 imprisonment (5 years maximum); or

S. 321C(1) (d)(i) substituted by Nos 49/1991 s. 119(1) (Sch. 2 item 62(b)(ii)), 48/1997 s. 60(1)(Sch. 1 item 90(c)(i)).

(ii) imprisonment for a term not exceeding the maximum term of imprisonment (if any) prescribed in respect of the relevant offence or the greatest of the maximum terms prescribed in respect of any of the relevant offences, as the case requires—

S. 321C(1) (d)(ii) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 62(b)(iii)).

whichever is the greater.

(2) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force only in a place outside Victoria—

(a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to a term of imprisonment not exceeding the maximum term of imprisonment prescribed in respect of the relevant offence; and

S. 321C(2)(a) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 62(c)(i)), 48/1997 s. 60(1)(Sch. 1 item 91).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321D

S. 321C(2)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 62(c)(iii)),
69/1997
s. 22(8).

- (b) the person shall, in any other case, be liable to a level 6 fine (600 penalty units maximum).

S. 321D
inserted by
No. 10079
s. 7(2).

321D. Application of certain provisions

Sections 321(2) and (3) and 321B shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

S. 321E
inserted by
No. 10079
s. 7(2).

321E. Limitations on prosecution

- (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321 for conspiracy to commit that offence.
- (2) Where—
- (a) an indictable offence has been committed in pursuance of an agreement; and
 - (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—
- proceedings under section 321 for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321F

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- (3) A person shall not be liable to be convicted in respect of the same agreement of both—
- (a) conspiracy under section 321; and
 - (b) conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

321F. Abolition of certain offences of conspiracy at common law

S. 321F
inserted by
No. 10079
s. 7(2).

- (1) The offence of conspiracy at common law is hereby abolished.
- (2) Nothing in sub-section (1) shall affect the offence of conspiracy at common law so far as it relates to conspiracy to cheat and defraud and conspiracy to defraud.
- (3) Any offence at common law of incitement to commit the offence of conspiracy or attempt to commit the offence of conspiracy (whether the offence of conspiracy incited or attempted would be an offence at common law or under section 321 or any other enactment) is hereby abolished.
- (4) A presentment at the Supreme Court or the County Court of a person for an offence of conspiracy to cheat and defraud or conspiracy to defraud shall not be made without the approval of the Director of Public Prosecutions or of a person authorized by the Director of Public Prosecutions to give approval for the purposes of this sub-section.

S. 321F(4)
inserted by
No. 10233
s. 9(b).

Pt 1 Div. 11
(Heading and
ss 321G–
321L)
inserted by
No. 10079
s. 7(2).

Division 11—Incitement

S. 321G
inserted by
No. 10079
s. 7(2).

321G. Incitement

- (1) Subject to this Act, where a person in Victoria or elsewhere incites any other person to pursue a course of conduct which will involve the commission of an offence by—
 - (a) the person incited;
 - (b) the inciter; or
 - (c) both the inciter and the person incited—if the inciting is acted on in accordance with the inciter's intention, the inciter is guilty of the indictable offence of incitement.
- (2) For a person to be guilty under sub-section (1) of incitement the person—
 - (a) must intend that the offence the subject of the incitement be committed; and
 - (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence in question will exist at the time when the conduct constituting the offence is to take place.
- (3) A person may be guilty under sub-section (1) of incitement notwithstanding the existence of facts of which the person is unaware which make commission of the offence in question by the course of conduct incited impossible.

321H. Incitement to commit offences outside Victoria

The expression "the commission of an offence" in section 321G(1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—

S. 321H
inserted by
No. 10079
s. 7(2),
amended by
No. 25/1989
s. 20(g).

- (a) the necessary elements of the offence consist of or include elements which, if present or occurring in Victoria, would constitute an offence against a law in force in Victoria; and
- (b) the person inciting is in Victoria at the time of the inciting.

321I. Penalties for incitement

S. 321I
inserted by
No. 10079
s. 7(2).

- (1) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law or laws in force in Victoria—
 - (a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;
 - (b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the person shall be liable to level 4 imprisonment (15 years maximum);
 - (ba) despite paragraph (b), if the relevant offence, or any of the relevant offences, is murder or treason, the person is liable to—

S. 321I(1)(b)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 57),
48/1997
s. 60(1)(Sch. 1
item 92(a)).

S. 321I(1)(ba)
inserted by
No. 41/1993
s. 23(a),
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 92(b)(i)).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321I

S. 321I(1)
(ba)(i)
substituted by
No. 48/1997
s. 60(1)(Sch. 1
item 92(b)(ii)).

(i) level 1 imprisonment (life); or

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

as the court determines;

S. 321I(1)(c)
amended by
No. 41/1993
s. 23(b).

(c) subject to paragraphs (a), (b), (ba) and (d), if
the relevant offence, or any of the relevant
offences is an offence for which a maximum
penalty is prescribed by law, the person shall
be liable to a penalty not exceeding that
maximum penalty or the accumulated
maximum penalties, as the case may be; or

S. 321I(1)(d)
amended by
Nos 57/1989
s. 3(Sch.
item 42.18),
49/1991
s. 119(1)
(Sch. 2
item 63(a)(i)).

(d) if the relevant offence, or each of the
relevant offences, is triable only in the
Magistrates' Court, the person shall be liable
to—

S. 321I(1)(d)(i)
substituted by
Nos 49/1991
s. 119(1)
(Sch. 2
item 63(a)(ii)),
48/1997
s. 60(1)(Sch. 1
item 92(c)).

(i) level 6 imprisonment (5 years
maximum); or

S. 321I(1)(d)(ii)
amended by
No. 49/1991
s. 119(1)
(Sch. 2
item 63(a)(iii)).

(ii) imprisonment for a term not exceeding
the maximum term of imprisonment
(if any) prescribed in respect of the
relevant offence or the greatest of the
maximum terms prescribed in respect
of any of the relevant offences as the
case requires—

whichever is the greater.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321J

(2) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law in force only in a place outside Victoria—

- (a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to a term of imprisonment not exceeding the maximum term of imprisonment prescribed in respect of the relevant offence; and
- (b) the person shall, in any other case, be liable to a level 6 fine (600 penalty units maximum).

S. 321I(2)(a) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 63(b)(i)), 48/1997 s. 60(1)(Sch. 1 item 93).

S. 321I(2)(b) amended by Nos 49/1991 s. 119(1) (Sch. 2 item 63(b)(ii)), 69/1997 s. 22(9).

321J. Application of certain provisions

Sub-sections (2) and (3) of section 321G shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of incitement under any enactment other than section 321G.

S. 321J inserted by No. 10079 s. 7(2).

321K. Limitations on prosecution

- (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321G for incitement to commit that offence.

S. 321K inserted by No. 10079 s. 7(2).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321L

(2) Where—

- (a) an indictable offence has been committed;
and
- (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—

proceedings under section 321G for incitement to commit that offence shall not be instituted against any person.

(3) A person shall not be liable to be convicted in respect of the same inciting of both—

- (a) incitement under section 321G; and
- (b) incitement under any enactment other than section 321G.

S. 321L
inserted by
No. 10079
s. 7(2).

321L. Incitement at common law abolished

The offence of incitement at common law is hereby abolished.

Pt 1 Div. 12
(Heading and
(ss 321M–
321S)
inserted by
No. 10233 s. 4.

Division 12—Attempts

S. 321M
inserted by
No. 10233 s. 4.

321M. Attempt

A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.

S. 321N
inserted by
No. 10233 s. 4.

321N. Conduct constituting attempt

- (1) A person is not guilty of attempting to commit an offence unless the conduct of the person is—
 - (a) more than merely preparatory to the commission of the offence; and
 - (b) immediately and not remotely connected with the commission of the offence.

-
- (2) For a person to be guilty of attempting to commit an offence, the person must—
- (a) intend that the offence the subject of the attempt be committed; and
 - (b) intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time the offence is to take place.
- (3) A person may be guilty of attempting to commit an offence despite the existence of facts of which he or she is unaware which make the commission of the offence attempted impossible.

321O. Attempts to commit offence outside Victoria

S. 321O
inserted by
No. 10233 s. 4.

- (1) A person in Victoria who attempts to commit in another State or in a Territory an offence which, if committed in whole or in part in Victoria, would be an indictable offence against the law of Victoria is guilty of the indictable offence of attempting to commit that offence.
- (2) A person outside Victoria who attempts to commit an indictable offence in Victoria is guilty of the indictable offence of attempting to commit that offence.
- (3) In sub-section (1), "**Territory**" means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

321P. Penalties for attempt

S. 321P
inserted by
No. 10233 s. 4.

- (1) A person convicted of attempting to commit an offence is liable—
 - (a) if the penalty for the relevant offence is set out by reference to an expression specified in column 1 of the Table, to the penalty set out opposite it in column 2 of the Table:

S. 321P(1)
substituted by
No. 49/1991
s. 119(1)
(Sch. 2
item 64).

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321P

S. 321P(1)(a)
Table
substituted by
Nos 48/1997
s. 60(1)(Sch. 1
item 94(a)),
69/1997
s. 23.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Level 1 imprisonment (life)	Level 2 imprisonment (25 years maximum)
Level 2 imprisonment (25 years maximum)	Level 3 imprisonment (20 years maximum)
Level 2 fine (3000 penalty units maximum)	Level 3 fine (2400 penalty units maximum)
Level 3 imprisonment (20 years maximum)	Level 4 imprisonment (15 years maximum)
Level 3 fine (2400 penalty units maximum)	Level 4 fine (1800 penalty units maximum)
Level 4 imprisonment (15 years maximum)	Level 5 imprisonment (10 years maximum)
Level 4 fine (1800 penalty units maximum)	Level 5 fine (1200 penalty units maximum)
Level 5 imprisonment (10 years maximum)	Level 6 imprisonment (5 years maximum)
Level 5 fine (1200 penalty units maximum)	Level 6 fine (600 penalty units maximum)
Level 6 imprisonment (5 years maximum)	Level 7 imprisonment (2 years maximum)
Level 6 fine (600 penalty units maximum)	Level 7 fine (240 penalty units maximum)
Level 7 imprisonment (2 years maximum)	Level 8 imprisonment (1 year maximum)
Level 7 fine (240 penalty units maximum)	Level 8 fine (120 penalty units maximum)
Level 8 imprisonment (1 year maximum)	Level 9 imprisonment (6 months maximum)
Level 8 fine (120 penalty units maximum)	Level 9 fine (60 penalty units maximum)
Level 9 imprisonment (6 months maximum)	Level 10 fine (10 penalty units maximum)

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321P

<i>Column 1</i>	<i>Column 2</i>
Level 9 fine (60 penalty units maximum)	Level 10 fine (10 penalty units maximum)
Level 10 fine (10 penalty units maximum)	Level 11 fine (5 penalty units maximum)
Level 11 fine (5 penalty units maximum)	Level 12 fine (1 penalty unit maximum)
Level 12 fine (1 penalty unit maximum)	Level 12 fine (1 penalty unit maximum)

- (b) if the penalty for the relevant offence is not set out by reference to an expression specified in column 1 of the Table in paragraph (a), to a penalty not exceeding 60% of the maximum penalty fixed or prescribed by law for the relevant offence; or
- (c) if the maximum penalty for the relevant offence is not fixed or prescribed by law, to level 6 imprisonment (5 years maximum).

S. 321P(1)(c)
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 94(b)).

- (1A) For the avoidance of doubt, it is declared that if a person is convicted of attempting to commit murder or treason, the person is liable to level 2 imprisonment (25 years maximum).

S. 321P(1A)
inserted by
No. 41/1993
s. 24,
amended by
No. 48/1997
s. 60(1)(Sch. 1
item 95(a)(b)).

- (2) A person convicted under this Division of attempting to commit an offence for which, under another enactment, a penalty is provided that is lower than that provided under sub-section (1), the person is liable only to that lower penalty.

s. 321Q

- (3) In this section, a reference to a maximum penalty includes, in relation to an offence against the law of a place outside Victoria, a reference to a maximum penalty (not exceeding life imprisonment) fixed or prescribed by a law of that place and, if a maximum penalty so fixed or prescribed exceeds life imprisonment, is a reference to life imprisonment.

S. 321Q
inserted by
No. 10233 s. 4.

321Q. Limitations on prosecution

- (1) Any provision to which this section applies has the same effect with respect to an offence of attempting to commit an offence as it has with respect to the offence attempted.
- (2) This section applies to provisions of any of the following descriptions made by or under any enactment—
- (a) provisions concerning the power to institute proceedings;
 - (b) provisions conferring a power of search in respect of persons or property;
 - (c) provisions conferring a power of seizure or detention of property;
 - (d) provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than two credible witnesses);
 - (e) provisions conferring a power to fine or of forfeiture, including any power to deal with anything liable to be forfeited;
 - (f) provisions concerning the liability of a person for the commission of an offence by a body corporate.

Crimes Act 1958
Act No. 6231/1958

Part I—Offences

s. 321R

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- (3) A person is not liable to be convicted in respect of the same conduct of both—
- (a) an offence under section 321M; and
 - (b) an offence under any other enactment of attempting to commit an offence.

321R. Application of Division

S. 321R
inserted by
No. 10233 s. 4.

- (1) This Division applies to and in respect of an offence under any other enactment of attempting to commit an offence.
- (2) The preceding provisions of this Division do not apply to an attempt—
 - (a) to aid, abet, counsel or procure the commission of an indictable offence; or
 - (b) to commit the offence of conspiracy whether that offence is a statutory offence or an offence at common law.

321S. Abolition of attempt at common law

S. 321S
inserted by
No. 10233 s. 4.

The offence of attempt at common law is abolished.

Crimes Act 1958
Act No. 6231/1958

Part IA—Abolition of Obsolete Offences

s. 322A

Pt 1A
(Heading and
s. 322A)
inserted by
No. 7884
s. 2(2).

PART IA—ABOLITION OF OBSOLETE OFFENCES

S. 322A
inserted by
No. 7884
s. 2(2).

322A. Maintenance and certain other offences abolished

Any distinct offences under the common law of maintenance (including champerty but not embracery), or of being a common barrator, a common scold or a common night walker are hereby abolished.

Crimes Act 1958
Act No. 6231/1958

Part IB—Abolition of Historical Classifications

s. 322B

**PART IB—ABOLITION OF HISTORICAL
CLASSIFICATIONS**

Pt 1B
(Heading and
ss 322B–
322F)
inserted by
No. 9576 s. 2.

**322B. Abolition of distinctions between felony and
misdemeanour**

S. 322B
inserted by
No. 9576 s. 2.

- (1) All distinctions between felony and misdemeanour are hereby abolished.
- (2) Subject to section 322D, in all matters in which before the commencement of this Part a distinction has been made between felony and misdemeanour (including mode of trial), the law and practice in relation to all indictable offences cognizable under the law of Victoria (including piracy and offences deemed to be piracy) shall be the law and practice applicable immediately before the commencement of this Part in relation to misdemeanour.

322C. Nomenclature

S. 322C
inserted by
No. 9576 s. 2.

- (1) Subject to any express amendment or repeal made by the **Crimes (Classification of Offences) Act 1981**, any enactment passed before the commencement of this Part and creating an offence by directing it to be a felony shall be read as directing it to be an indictable offence.
- (2) Nothing in this Part shall affect the operation of any reference to an indictable offence in the enactments specially relating to that offence by reason only of the reference being in terms no longer applicable after the commencement of this Part.

Crimes Act 1958
Act No. 6231/1958

Part IB—Abolition of Historical Classifications

s. 322D

- (3) Any offence known to the common law as a felony or a misdemeanour shall on and from the commencement of this Part be known as an indictable offence.
- (4) Subject to sub-section (1) and to any express amendment or repeal made by the **Crimes (Classification of Offences) Act 1981**, a reference in any instrument or document whatsoever (including Acts, rules, regulations and other instruments of a legislative character) to—
- (a) a class of felony; or
 - (b) felonies in general—
- shall be read and construed as a reference to that class of serious indictable offence or to serious indictable offences generally, as the case requires; and for the purposes of this sub-section the expression "**serious indictable offence**" has the same meaning as it has in section 325.
- (5) Where in any Act, rule, regulation or other instrument of a legislative character a provision is expressed to apply to or in relation to indictable offences, the provision shall be read and construed as applying to offences which may be tried on indictment or presentment, including offences which may, or may in certain circumstances, also be tried summarily.

S. 322D
inserted by
No. 9576 s. 2.

322D. Transitional provisions

- (1) This Part, insofar as it affects any matter of procedure or evidence or the jurisdiction or powers of any court in relation to indictable offences, shall have effect in relation to proceedings on indictment or presentment for an offence (except as provided by the following sub-sections of this section) if, but only if, the person charged with the offence is arraigned after the commencement of this Part.

Crimes Act 1958
Act No. 6231/1958

Part IB—Abolition of Historical Classifications

s. 322E

- (2) Where a person is arraigned after the commencement of this Part on indictment or presentment for a felony committed before that commencement, the offence shall for the purposes of his trial on that indictment or presentment be deemed always to have been a misdemeanour and, notwithstanding that the indictment or presentment is framed for felony, shall be deemed to be charged as a misdemeanour.
- (3) On an indictment or presentment found or made before the commencement of this Part a person may notwithstanding sub-section (2) be found guilty of any offence of which he could have been found guilty on the indictment or presentment if the **Crimes (Classification of Offences) Act 1981** had not come into operation, but not of any other offence.

322E. Treason and misprision of treason not affected

Nothing in this Part shall be taken to affect directly or indirectly any matter of law or practice applicable to treason or misprision of treason.

S. 322E
inserted by
No. 9576 s. 2.

322F. Other enactments not affected

This Part shall not affect the operation of any enactment restricting the institution of proceedings for an offence.

S. 322F
inserted by
No. 9576 s. 2.

PART II—OFFENDERS

Pt 2 Div. 1
(Heading)
substituted by
No. 9576
s. 4(1).

**Division 1—Abettors, Accessories and Concealers of
Offences**

Pt 2 Div. 1
Subdiv. (1)
(Heading and
s. 323)
substituted by
No. 9576
s. 4(1).

(1) *Abettors in Indictable Offences*

S. 323
substituted by
No. 9576
s. 4(1).

**323. Abettors in indictable offences triable as principal
offenders**

A person who aids, abets, counsels or procures the commission of an indictable offence may be tried, indicted or presented and punished as a principal offender.

Pt 2 Div. 1
Subdiv. (2)
(Heading and
ss 324–328)
substituted as
Pt 2 Div. 1
Subdiv. (2)
(Heading and
s. 324) by
No. 9576
s. 4(1).

(2) *Abettors in Offences Punishable Summarily*

S. 324
substituted by
No. 9576
s. 4(1).

**324. Abettors in summary offences triable as principal
offenders**

A person who aids, abets, counsels or procures the commission of an offence which is by this Act punishable on summary conviction either for every time of its commission or for the first and second time only shall be liable for every first, second or subsequent offence of aiding, abetting, counselling or procuring to the same punishment as a principal offender.

(3) Accessories

Pt 2 Div. 1
Subdiv. (3)
(Heading)
inserted by
No. 9576
s. 4(1).

325. Accessories

S. 325
substituted by
No. 9576
s. 4(1).

- (1) Where a person (in this section called "the principal offender") has committed a serious indictable offence (in this section called "the principal offence"), any other person who, knowing or believing the principal offender to be guilty of the principal offence or some other serious indictable offence, without lawful authority or reasonable excuse does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of the principal offender shall be guilty of an indictable offence.
- (2) If, on the trial of any person for a serious indictable offence, the jury are satisfied that the offence charged (or some other serious indictable offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under sub-section (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).
- (3) A person charged with an offence against sub-section (1) may be indicted or presented and convicted together with or before or after the principal offender and whether or not the principal offender is amenable to justice.

Crimes Act 1958
Act No. 6231/1958

Part II—Offenders

s. 325

(4) A person convicted of an offence against subsection (1) shall be liable—

S. 325(4)(a) substituted by No. 49/1991 s. 119(1) (Sch. 2 item 65(a)), amended by No. 48/1997 s. 60(1)(Sch. 1 item 96(a)).

(a) if the principal offence is one for which the penalty is level 1 imprisonment (life) to level 3 imprisonment (20 years maximum);
or

(b) in any other case, to imprisonment for a term which is neither—

S. 325(4)(b)(i) amended by No. 49/1991 s. 119(1) (Sch. 2 item 65(b)), substituted by No. 48/1997 s. 60(1)(Sch. 1 item 96(b)).

(i) more than 5 years in length; nor

(ii) more than one-half the length of the longest term which may be imposed on first conviction for the principal offence.

S. 325(5) repealed by No. 9848 s. 18(1).

* * * * *

(6) In this section, "**serious indictable offence**" means an indictable offence which, by virtue of any enactment, is punishable on first conviction with imprisonment for life or for a term of five years or more.

(4) *Concealers of Offences*

Pt 2 Div. 1
Subdiv. (4)
(Heading)
inserted by
No. 9576
s. 4(1).

326. Concealing offences for benefit

S. 326
substituted by
No. 9576
s. 4(1).

- (1) Where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence, has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information shall be guilty of a summary offence and liable to level 8 imprisonment (1 year maximum).
- (2) Notwithstanding anything to the contrary in subsection (1), it is no offence against this section to fail to disclose the commission of any offence against—
 - (a) Division 2 of Part I; or
 - (b) sub-division (1), (2) or (3) of Division 3 of Part I—

S. 326(1)
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 66),
48/1997
s. 60(1)(Sch. 1
item 97(a)(b)).

if the only benefit accepted in return for failing to disclose the commission of the offence is the making good of any loss or injury caused by its commission or the making of reasonable compensation for any such loss or injury.

Crimes Act 1958
Act No. 6231/1958

Part II—Offenders

s. 326

- (3) For the purposes of this section a person shall be deemed to accept a benefit if he accepts or agrees to accept any benefit or advantage, or the promise of any benefit or advantage, either to himself or to another, whether or not the benefit or advantage is in money or money's worth.

S. 326(4)
repealed by
No. 9848
s. 18(1).

* * * * *

- (5) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

- (6) In this section, "**serious indictable offence**" has the same meaning as it has in section 325.

Ss 327–332
repealed.²⁸

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Pt 2 Div. 1
Subdivs (4)(5)
(Headings
and
ss 333, 334)
repealed by
No. 9576
s. 4(1).

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Pt 2 Div. 2
(Heading)
repealed by
No. 74/2000
s. 3(Sch. 1
item 30.3).

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S. 335
repealed by
No. 56/1989
s. 286(Sch. 2
item 7.1).

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Division 3—Criminal Liability of Married Persons

Pt 2 Div. 3
(Heading and
ss 336–350)
amended by
Nos 7705
s. 10, 7876
s. 2(3),
repealed by
No. 8338 s. 5,
new Pt 2
Div. 3
(Heading and
ss 336–339)
inserted by
No. 9073
s. 2(b).

336. Marital coercion

New s. 336
inserted by
No. 9073
s. 2(b).

- (1) Any presumption that an offence committed by a wife in the presence of her husband is committed under his coercion is hereby abolished.
- (2) Where a woman is charged with an offence other than treason or murder, that woman shall have a complete defence to such charge if her action or inaction (as the case may be) was due to coercion by a man to whom she was then married.
- (3) For the purposes of this section "**coercion**" means pressure, whether in the form of threats or in any other form, sufficient to cause a woman of ordinary good character and normal firmness of mind, placed in the circumstances in which the woman was placed, to conduct herself in the manner charged.
- (4) Without limiting the generality of the expression "the circumstances in which the woman was placed" in sub-section (3), such circumstances shall include the degree of dependence, whether economic or otherwise, of the woman on her husband.

S. 336(2)
amended by
No. 77/2005
s. 9.

Crimes Act 1958
Act No. 6231/1958

Part II—Offenders

s. 337

- (5) The accused shall bear the burden of adducing evidence that she conducted herself in the manner charged because she was coerced by her husband, but if such evidence has been adduced, the prosecution shall bear the burden of proving that the action or inaction charged was not due to coercion by the husband.
- (6) This section shall operate in substitution for the common law as to any presumption or defence of marital coercion.
- (7) This section shall not affect the law relating to the defence of duress.

New s. 337
inserted by
No. 9073
s. 2(b).

337. Misprision

A married person shall not become guilty of misprision by concealing or failing to disclose the commission of an indictable offence by his or her spouse, or by the spouse and another party or parties, nor by concealing or failing to disclose facts which might lead to the apprehension of the spouse, or the spouse and such other or others, in respect of the offence.

New s. 338
inserted by
No. 9073
s. 2(b),
amended by
Nos 9228
s. 2(1)(i), 9576
s. 11(1),
19/1987 s. 28.

338. Accessory after the fact

A married person shall not become an accessory to any indictable offence by receiving, relieving, comforting or assisting his or her spouse, or the spouse and another person or persons, though with knowledge that the spouse, whether alone or with the other person or persons, has committed an offence and though the purpose of what is done is to enable the spouse, or the spouse and the other person or persons, to escape being apprehended, tried or punished.

339. Conspiracy and incitement

- (1) A married person shall be criminally responsible for incitement or conspiracy to commit treason or murder and for any offence specified in section 4 as if he or she were unmarried.
- (2) Subject to sub-section (1), a married person shall not be criminally responsible for conspiracy with his or her spouse alone, nor for incitement of his or her spouse to commit a criminal offence.
- (3) Nothing in sub-section (2) shall affect the liability of a married person as a principal offender in any offence except conspiracy or incitement.

**New s. 339
inserted by
No. 9073
s. 2(b).**

**S. 339(3)
amended by
No. 9576
s. 11(1).**

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**Ss 340–350
repealed by
No. 8338 s. 5.**

Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 340

Pt 2A
(Heading and
ss 340–345)
inserted by
No. 70/1987
s. 4.

PART IIA—EXTRA-TERRITORIAL OFFENCES

New s. 340
inserted by
No. 70/1987
s. 4.

340. Definitions

(1) In this Part—

"appropriate authority" means—

- (a) in relation to another State of the Commonwealth, or a Territory of the Commonwealth (other than the Australian Capital Territory)—an authority exercising in relation to the police force of that State or Territory functions corresponding to those of the Chief Commissioner of Police for Victoria in relation to the police force of Victoria;
- (b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police;

"corresponding law" means a law of another State, or of a Territory, of the Commonwealth declared by Proclamation to be a corresponding law;

"night" means the interval between 9 o'clock in the evening and 6 o'clock in the morning;

"obstruct" includes assault, threaten, abuse, insult, intimidate, hinder and attempt to obstruct;

Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 340

"offence to which this Part applies" means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs which, if done or occurring in Victoria, would attract criminal liability under the law of Victoria);

"owner", of an object, includes a person entitled to possession of the object;

"police force" means the police force of Victoria;

"premises" means a building, structure or any place whatsoever (whether built upon or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle;

"reciprocating State" means another State, or a Territory, of the Commonwealth—

(a) in which a corresponding law is in force; and

(b) in relation to which arrangements are in force under section 344;

"search warrant" means a warrant under this Part authorising a search of premises.

(2) For the purposes of this Part—

(a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed; or

(b) anything that may afford evidence of the commission of an offence; or

(c) anything intended to be used for the purpose of committing an offence—

is an object relevant to the investigation of the offence.

Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 341

- (3) The Governor in Council may, by proclamation published in the Government Gazette, declare a law of another State, or of a Territory, of the Commonwealth to be a corresponding law.

New s. 341
inserted by
No. 70/1987
s. 4.

341. Issue of search warrant

- (1) If, upon the application of a member of the police force, a magistrate is satisfied that there are reasonable grounds to believe—
- (a) that an offence to which this Part applies has been, or is intended to be, committed; and
 - (b) that there is at any premises an object relevant to the investigation of that offence—

the magistrate may issue a search warrant in respect of those premises.

- (2) The grounds of an application for a search warrant must be verified by affidavit.
- (3) A magistrate by whom a search warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, with the principal registrar of the Court.

S. 341(3)
amended by
No. 57/1989
s. 3(Sch.
item 42.19).

342. Authority conferred by and other incidents of a search warrant

- (1) A search warrant authorises any member of the police force, with such assistants as he or she thinks necessary, to enter and search the premises to which the warrant relates, and anything in those premises.
- (2) Subject to any direction by a magistrate authorising execution of a search warrant at night, or during specified hours of the night, it must not be executed at night.

New s. 342
inserted by
No. 70/1987
s. 4.

Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 342

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- (3) A member of the police force, or a person assisting him or her, may use such force as is reasonably necessary for the execution of a search warrant.
 - (4) A member of the police force executing a search warrant may seize and remove any object that he or she believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.
 - (5) An object seized and removed under subsection (4) must be dealt with in accordance with arrangements in force under section 344.
 - (6) A member of the police force who executes a search warrant—
 - (a) must prepare a notice in the prescribed form containing—
 - (i) his or her own name and rank;
 - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
 - (iii) a description of any objects seized and removed in pursuance of the warrant; and
 - (b) as soon as practicable, after the execution of the warrant, must give the notice to the occupier (if any) of the premises in respect of which the warrant was issued or leave it for him or her in a prominent position on those premises.
 - (7) A search warrant, if not executed at the expiration of one month from the date of its issue, then expires.
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Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 343

New s. 343
inserted by
No. 70/1987
s. 4,
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 67),
48/1997
s. 60(1)(Sch. 1
item 98).

343. Obstruction

S. 343(1)
amended by
No. 69/1997
s. 22(10).

- (1) A person must not, without lawful excuse, obstruct a member of the police force, or a person assisting a member of the police force, in the execution of a search warrant.

Penalty: Level 9 fine (60 penalty units maximum).

S. 343(2)
inserted by
No. 48/1997
s. 60(1)(Sch. 1
item 99).

- (2) An offence under sub-section (1) is a summary offence.

New s. 344
inserted by
No. 70/1987
s. 4.

344. Ministerial arrangements for transmission and return of seized objects

- (1) The Minister may enter into arrangements with a Minister to whom the administration of a corresponding law is committed under which—
- (a) objects seized under this Part that may be relevant to the investigation of an offence against the law of the State, or Territory in which the corresponding law is in force—
- (i) are to be transmitted to the appropriate authority in that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and

Crimes Act 1958
Act No. 6231/1958

Part IIA—Extra-Territorial Offences

s. 345

- (ii) when no longer required for the purpose of any such investigation or proceedings, are (unless disposed of by order or direction of a court) to be returned to the Chief Commissioner of Police for Victoria; and
- (b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the law of Victoria—
 - (i) are to be transmitted to the Chief Commissioner of Police of Victoria; and
 - (ii) when no longer required for the purposes of investigation of an offence, or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority in the State or Territory in which they were seized.
- (2) The owner of an object returned to the Chief Commissioner of Police in pursuance of arrangements under sub-section (1) is entitled to the return of the objects.
- (3) The right referred to in sub-section (2) is enforceable by action in detinue in a court of competent jurisdiction.

345. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Part to be prescribed to give effect to this Part.

New s. 345
inserted by
No. 70/1987
s. 4,
amended by
No. 10/1999
s. 31(5)(a).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 351

PART III—PROCEDURE AND PUNISHMENT

Division 1—Pleading Procedure, Proof &c.

(1) *Mode of Prosecution*

No. 6103
s. 351.

351. Mode of prosecution

All treasons and misprisions of treason shall be prosecuted by indictment only, and all other indictable offences may be prosecuted by indictment or by presentment as hereinafter directed.

S. 352
amended by
No. 7546 s. 7,
repealed by
No. 43/1994
s. 56(Sch.
item 1.1).

* * * * *

No. 6103
s. 353.

353. Presentments

S. 353
amended by
Nos 7703 s. 5,
7705 s. 10,
9848
s. 18(1), 10026
s. 3(1)(a)(b),
43/1994
s. 56(Sch.
item 1.2(a)(b)).

- (1) Subject to the provisions hereinbefore contained and to sub-section (2) and to the **Public Prosecutions Act 1994**, the Director of Public Prosecutions or any Crown Prosecutor in the name of the Director of Public Prosecutions may make presentment at the Supreme Court or County Court of any person for any indictable offence cognisable by such courts respectively, and every such presentment may be in the form contained in the Third Schedule or to that effect and shall be as good and of the same force strength and effect in the law as if the same had been presented and found by the oaths of twelve men.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 353

(2) Subject to sub-section (5), where in respect of any indictable offence a person has been committed for trial—

(a) a presentment referred to in sub-section (1) shall be made;

(b) an indictment shall be laid;

(c) a charge shall be filed; or

(d) a notice of trial or of intention to prefer a presentment shall be given to the person by or on behalf of the Director of Public Prosecutions or a Crown Prosecutor—

in respect of the offence within the period prescribed by the regulations made under this Act.

(2A) A copy of a presentment of a person for an indictable offence shall be served on the person in accordance with rules of court.

(3) The trial of the person referred to in sub-section (2) shall be commenced within the period prescribed by the regulations made under this Act.

(4) A regulation made under sub-section (2) or (3) is subject to disallowance by a House of the Parliament.

S. 353(2) repealed by No. 7703 s. 5, new s. 353(2) inserted by No. 10026 s. 3(2), amended by Nos 57/1989 s. 3(Sch. item 42.20(a)(b)), 64/1990 s. 12(1)(a).

S. 353(2)(c) amended by No. 57/1989 s. 3(Sch. item 42.20(c)).

S. 353(2)(d) amended by No. 43/1994 s. 56(Sch. item 1.3).

S. 353(2A) inserted by No. 10233 s. 9(c).

S. 353(3) inserted by No. 10026 s. 3(2).

S. 353(4) inserted by No. 10026 s. 3(2), substituted by No. 10/1999 s. 31(5)(b).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 353

S. 353(5)
inserted by
No. 10026
s. 3(2),
amended by
Nos 110/1986
s. 140(2),
19/1989
s. 16(Sch.
item
16.2(a)(b)).

- (5) The Supreme Court or the County Court may if it thinks fit at any time and notwithstanding that the period prescribed under sub-section (2) or (3) (as the case may be) has expired grant an extension of the period.

S. 353(5A)
inserted by
No. 50/2006
s. 7(1).

- (5A) It is not necessary to make an application under sub-section (5) for an extension of time if a ruling made, or direction given, by the court provides for the extension.

S. 353(6)
inserted by
No. 10026
s. 3(2).

- (6) More than one extension of time may be granted under sub-section (5) in relation to sub-section (2) or (3) (as the case may be).

S. 353(6A)
inserted by
No. 35/1999
s. 34(1).

- (6A) An application for an extension of time under sub-section (5) may be made to the court orally.

S. 353(6B)
inserted by
No. 35/1999
s. 34(1).

- (6B) Unless the court otherwise orders, no material in support of the application need be filed.

S. 353(6C)
inserted by
No. 35/1999
s. 34(1),
repealed by
No. 50/2006
s. 7(2).

* * * * *

S. 353(7)
inserted by
No. 64/1990
s. 12(1)(b),
amended by
No. 43/1994
s. 56(Sch.
item 1.4).

- (7) If a person has been committed for trial in respect of an offence which may be tried in the County Court, the Director of Public Prosecutions or any Crown Prosecutor in the name of the Director of Public Prosecutions may make presentment at either the Supreme Court or the County Court.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 354

- (8) In determining at which court to make presentment the Director of Public Prosecutions or a Crown Prosecutor must have regard to—
- (a) the complexity of the case; and
 - (b) the seriousness of the alleged crime; and
 - (c) any particular importance attaching to the case; and
 - (d) any other consideration that he or she regards as relevant.

S. 353(8)
inserted by
No. 64/1990
s. 12(1)(b),
amended by
No. 43/1994
s. 56(Sch.
item 1.5).

354. Indictments

Upon the application of any person supported by an affidavit disclosing an indictable offence and either that the same has been committed by some body corporate or that a court has declined or refused to commit or hold to bail the alleged offender or that no presentment was made against him at the court at which the trial would in due course have taken place, or upon the application of the Director of Public Prosecutions, it shall be lawful for the Full Court to order the Juries Commissioner to summon a grand jury to appear at a court to be holden at a time and place to be mentioned in the order; and upon receipt of such order the Juries Commissioner shall summon not less than twenty-three men to attend at such court at the time and place aforesaid to inquire present do and execute all things which on the part of the Queen shall then and there be commanded of them, and such men shall be taken from the jury roll of the jury district in which such place is situate and at the time and place aforesaid the said Juries Commissioner shall bring into court the said order with the name, occupation and date of birth of every grand juror written on a panel signed by him and sealed with his seal of office and shall deliver the said panel to the proper

No. 6103
s. 354.
S. 354
amended by
Nos 9576
s. 11(1), 9848
s. 18(1),
57/1989
s. 3(Sch.
item 42.21),
53/2000
s. 94(2)(a)-(c).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 354

officer of the said court, who shall in open court call aloud the names of the grand jurors on the said panel one after another, and the twenty-three men so first drawn and appearing or if twenty-three men shall not appear such of them as do appear not being less than twelve men shall be the grand jury and shall be sworn and act as such accordingly:

Provided always that every such order shall be delivered to the Juries Commissioner ten days before the day on which the indictment is intended to be preferred.

Ss 355, 356
repealed.²⁹

* * * * *

Pt 3 Div. 1
Subdiv. (2)
(Heading)
repealed by
No. 25/1989
s. 20(h)(i).

* * * * *

S. 357
amended by
Nos 8338
s. 7(c), 9554
s. 2(2)(Sch. 2
item 59), 9576
s. 11(1), 9848
s. 18(1),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

* * * * *

New Pt 3
Div. 1
Subdiv. (2)
(Heading and
s. 357)
inserted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.1).

(2) *Discharge without Prosecution*

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 357

357. Discharge of persons under committal for indictable offence

- (1) The Attorney-General or the Director of Public Prosecutions may, in respect of any person imprisoned under committal for trial for an indictable offence, grant at any time a certificate in the form of Schedule 4 addressed to the Judges of the Supreme Court or any one of them.
- (2) The Judges or Judge to whom the certificate is addressed must, by warrant in the form of Schedule 5, order and direct the sheriff or officer in charge of the prison in whose custody the person imprisoned is, to discharge him or her from imprisonment in respect of the offence mentioned in the warrant, immediately and without fee or reward.
- (3) A sheriff or officer in charge of a prison who refuses or fails to comply with a warrant issued under sub-section (2) must forfeit and pay to the use of Her Majesty a penalty of 5 penalty units.
- (4) A penalty under sub-section (3) may be recovered by a proceeding brought in the name of the Attorney-General or the Director of Public Prosecutions.

No. 6103
s. 357.

New s. 357
inserted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.1).

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Pt 3 Div. 1
Subdiv. (3)
(Heading)
repealed by
No. 7703 s. 5,
new Pt 3
Div. 1
Subdiv. (3)
(Heading)
inserted by
No. 8280 s. 13,
amended by
No. 9019
s. 2(1)
(Sch. item 40),
repealed by
No. 9902
s. 2(1)(Sch.
item 52).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359

S. 358
repealed by
No. 7703 s. 5,
new s. 358
inserted by
No. 8280 s. 13,
repealed by
No. 9008
s. 2(1)(Sch.
item 2(b)).

* * * * *

(4) *Change of Time or Place of Trial*

No. 6103
s. 359.

359. Order for change of time or place of trial

S. 359(1)
amended by
Nos 7703 s. 5,
7705 s. 10,
9848 s. 18(1),
110/1986
s. 140(2),
64/1990
s. 12(2)(a)(b),
43/1994
s. 56(Sch.
item 1.6).

- (1) When in respect of any indictable offence any person has been committed or remanded for trial or notice of trial or of intention to prefer a presentment has been given to any person by or on behalf of the Director of Public Prosecutions or a Crown Prosecutor the Supreme Court may of its own motion or on application on behalf of Her Majesty or by or on behalf of such person order that such person shall be tried at any sitting of the Supreme Court specified in such order or (if such offence is triable by the County Court) at any sitting of the County Court specified in such order. Such order may be made notwithstanding that in its result a case which would otherwise be tried by the Supreme Court is ordered to be tried by the County Court or vice versa and notwithstanding that it is ordered that the trial shall take place at a date earlier than otherwise it would take place.

In circumstances of special urgency or importance such order may be made for trial by the Supreme Court at any place appointed for holding the court at a date other than a date appointed by the Governor in Council for holding the court at that place and the consequences in all respects and with regard to all officers and persons shall be the

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359

same as if the date specified in the order had been a date appointed by the Governor in Council for holding the court at that place.

- (1A) When in respect of an indictable offence any person has been committed or remanded for trial or notice of trial in the County Court or of intention to prefer a presentment in the County Court has been given to any person as aforesaid and a change is sought to some other sitting of the County Court at another time or place the County Court may, in addition to and without in any way derogating from the powers of the Supreme Court under sub-section (1), on application as aforesaid order that the person be tried at the sitting of the County Court specified in the order and he shall be tried accordingly notwithstanding that the trial shall take place at a date earlier than otherwise it would take place.
- (2) When an order as mentioned in sub-section (1) or sub-section (1A) is made the consequences except so far as is otherwise expressly provided shall in all respects and with regard to all persons be the same as if the sitting specified in the order had been the sitting specified in or in connexion with the commitment remand or notice and in particular every undertaking of bail and every recognisance given in connexion with such commitment or remand by such accused person or any surety or sureties for him or by any person bound to attend as a witness or for the purpose of producing documents shall be deemed to be altered as if the sitting specified in the order had been the sitting specified in or in connexion with the commitment or remand:

S. 359(1A)
inserted by
No. 7705 s. 10,
amended by
Nos 110/1986
s. 140(2),
64/1990
s. 12(3).

S. 359(2)
amended by
Nos 7705
s. 10, 9008
s. 2(1)(Sch.
item 2(c)).

Provided that the recognisance of any person bound to attend as a witness or for the purpose of producing documents shall not be estreated unless a reasonable time before the sitting at which such

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359

trial is ordered notice in writing of the alteration in the effect of the recognisance produced by such order has been given to him either personally or by sending a telegram or prepaid post letter addressed to him at his usual place of abode.

S. 359(3)
amended by
Nos 7705
s. 10, 8338
s. 7(a)(e),
110/1986
s. 140(2),
64/1990
s. 12(4)(a)–(c),
35/1996
s. 453(Sch. 1
item 16.2).

- (3) On the hearing of any proceeding under sub-section (1) or sub-section (1A) it shall not be necessary for the accused person to be present provided that if the proceeding arises otherwise than by virtue of an application made by or on behalf of the accused person and the accused person is detained in any prison he shall be notified in writing that he may through the officer in charge of the prison forward to the Supreme Court an affidavit or statement in relation to the proceeding and that he may be represented on the hearing of the proceeding by his legal practitioner.

S. 359(4)
amended by
Nos 7705
s. 10, 8338
s. 7(a)(d)(f),
110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 16.3).

- (4) The Supreme Court or the County Court may by the order mentioned in sub-section (1) or sub-section (1A) or on an ex parte application on behalf of Her Majesty (and whether an order has been made under sub-section (1) or sub-section (1A) or not) direct that any accused person who is detained in any prison shall be removed to any other prison for the purposes of trial whether before the Supreme Court or the County Court and the officer in charge of the prison in which such person is detained shall on delivery to him of an office copy of such order of removal cause such person with his commitment and detainer to be removed in safe custody to such other prison and the officer in charge of such other prison shall on delivery to him of an office copy of such order of removal receive such person into his custody there to remain until he is discharged or delivered in due course of law.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359

- (5) Whenever any such order as is mentioned in sub-section (1) or sub-section (1A) has been made on application on behalf of Her Majesty the court shall if requested so to do by or on behalf of such accused person at any time before the trial issue a certificate that an order under this section has been made upon the production of which the Minister administering Part 7 of the **Financial Management Act 1994** may order to be paid (out of any moneys provided by Parliament for allowances to witnesses) to the accused person a sum not exceeding \$60 to enable him to defray the charges and expenses of his witnesses. If the accused person is on the trial acquitted the court before which the trial takes place may at any time within one month of the conclusion of the trial issue a certificate for such sum as appears to the court to have been properly expended for charges and expenses of witnesses in consequence of any change of the time or place of trial deducting therefrom the amount of any moneys so advanced as aforesaid and the Minister administering Part 7 of the **Financial Management Act 1994** may upon receipt of such certificate pay such sum to the person so acquitted out of any moneys provided by Parliament for allowances to witnesses.
- (6) In this section and in sections 360 and 361 "**prison**" means prison under Part V of the **Community Services Act 1970**.

S. 359(5)
amended by
Nos 7705
s. 10, 110/1986
s. 140(2),
57/1989
s. 3(Sch. item
42.23(a)(b)),
46/1998
s. 7(Sch. 1).

S. 359(6)
substituted by
No. 8338
s. 7(q),
amended by
Nos 10087
s. 3(1)(Sch. 1
item 26),
16/1987
s. 4(3)(Sch. 1
item 8(a)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359AA

S. 359AA
inserted by
No. 10026 s. 4.

359AA. Supreme Court and County Court may determine summary offences

S. 359AA(1)
repealed by
No. 92/2000
s. 11(1).

* * * * *

S. 359AA(2)
amended by
Nos 25/1989
s. 19(b),
57/1989
s. 3(Sch.
item 42.24),
92/2000
s. 11(2).

- (2) Notwithstanding anything to the contrary in this or in any other Act or rule of law, where an accused person is before the Supreme Court or County Court in respect of any indictable offence, the Supreme Court or County Court (as the case may be) may, subject to sub-section (3) and on application by or on behalf of the Director of Public Prosecutions or the accused person hear and determine summarily any summary offence in respect of which a charge has been filed.

S. 359AA(3)
amended by
No. 92/2000
s. 11(3).

- (3) The following provisions shall apply in relation to a summary offence—

S. 359AA(3)(a)
amended by
No. 92/2000
s. 11(3).

- (a) the Supreme Court or County Court shall not hear and determine a summary offence pursuant to sub-section (2) unless the person charged with the offence—
- (i) consents to the Supreme Court or County Court (as the case may be) so doing; and
 - (ii) states his intention of entering a plea of guilty in respect of the offence;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359AA

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| <p>(b) where a person charged with a summary offence states his intention of entering a plea of guilty in respect of the offence, but subsequently states his intention of entering a plea of not guilty in respect of the offence or enters a plea of not guilty in respect of the offence, the Supreme Court or the County Court shall direct that the offence be heard by the Magistrates' Court;</p> | <p>S. 359AA(3)(b)
amended by
Nos 57/1989
s. 3(Sch.
item 42.25(a)),
92/2000
s. 11(3).</p> |
| <p>(c) a summary offence which is to be heard and determined by the Supreme Court or County Court pursuant to sub-section (2) shall be determined by the Court without a jury and subject to any rules made under paragraph (d) the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences shall apply as far as is appropriate to the hearing of the offence;</p> | <p>S. 359AA(3)(c)
amended by
Nos 110/1986
s. 140(2),
57/1989
s. 3(Sch.
item 42.25(a)),
92/2000
s. 11(3).</p> |
| <p>(d) the rule-making powers of the Supreme Court and County Court extend to the making of rules for or with respect to the practice and procedure to be applied in the hearing and determination summarily of summary offences;</p> | <p>S. 359AA(3)(d)
amended by
No. 92/2000
s. 11(3).</p> |
| <p>(e) a Supreme Court or County Court which convicts a person of a summary offence may make such orders in relation to the conviction as might be made by the Magistrates' Court; and</p> | <p>S. 359AA(3)(e)
amended by
Nos 57/1989
s. 3(Sch.
item 42.25(a)),
92/2000
s. 11(3).</p> |
| <p>(f) a charge with respect to a summary offence which is to be heard and determined by the Supreme Court or County Court pursuant to sub-section (2) may be filed at any time notwithstanding any limitation in any Act as to the time for commencing proceedings for a summary offence.</p> | <p>S. 359AA(3)(f)
amended by
Nos 57/1989
s. 3(Sch. item
42.25(b)(i)(ii)),
92/2000
s. 11(3).</p> |
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 359A

359A. Time limit on certain prosecutions

S. 359A
inserted by
No. 8950 s. 4,
substituted by
No. 9509
s. 7(1).

S. 359A(1)(a)
amended by
Nos 57/1989
s. 3(Sch. item
42.26), 8/1991
s. 4(a)(i)(ii),
81/1991
s. 10(Sch.
item 1.1),
67/2000
s. 7(3).

S. 359A(1)(b)
amended by
Nos 57/1989
s. 3(Sch. item
42.26), 8/1991
s. 4(b)(i)(ii).

S. 359A(2)
amended by
Nos 110/1986
s. 140(2),
25/1989 s. 7.

S. 359A(2A)
inserted by
No. 50/2006
s. 7(3).

- (1) Subject to this section, but notwithstanding anything else to the contrary in this or any other Act or any rule of law, where—
 - (a) a person is, after a committal proceeding in the Magistrates' Court, directed to be tried for an alleged offence against section 38, 39 (if the complainant was under the age of 16 at the time of the alleged offence), 44, 45, 47, 47A, 51, 52 or 57 or for an attempt to commit any such offence or for an assault with intent to commit any such offence; or
 - (b) a person is charged on indictment or presentment with an alleged offence referred to in paragraph (a) or for an attempt to commit any such offence or for an assault with intent to commit any such offence without a committal proceeding having previously been held before the Magistrates' Court in respect of the alleged offence—

the trial of the person for the alleged offence shall not be commenced more than three months after the person is directed to be tried or the charge is made (as the case may be).
- (2) The Supreme Court or, if a person is to be tried before the County Court, the County Court may if it thinks fit at any time and notwithstanding that the period fixed by sub-section (1) has expired grant an extension of the period, being an extension for a period not exceeding three months.
- (2A) It is not necessary to make an application under sub-section (2) for an extension of time if a ruling made, or direction given, by the court provides for the extension.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 360

- (3) More than one extension of time may be granted under sub-section (2) in relation to the commencement of the trial of an accused.
- (4) An application for an extension of time under sub-section (2) may be made to the court orally.
- (5) Unless the court otherwise orders, no material in support of the application need be filed.

S. 359A(4)
inserted by
No. 35/1999
s. 34(2).

S. 359A(5)
inserted by
No. 35/1999
s. 34(2).

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S. 359A(6)
inserted by
No. 35/1999
s. 34(2),
repealed by
No. 50/2006
s. 7(4).

(5) *Postponement of Trial*

360. Order for postponement of trial

No. 6103
s. 360.

- (1) When in respect of any indictable offence any person has been committed or remanded for trial or notice of trial or of an intention to prefer a presentment has been given to any person by or on behalf of the Director of Public Prosecutions or a Crown Prosecutor or an indictment or presentment has been found or made against any person or an order under sub-section (1) or sub-section (1A) of section three hundred and fifty-nine has been made and such commitment remand or notice is returnable or the trial of the accused is to be held or is being held at a sitting of the Supreme Court or County Court the court at such sitting may at any stage of the proceedings whenever it is so provided in this Act or whenever otherwise in the interest of justice it is expedient so to do and whether the accused person is present or not direct—

S. 360(1)
amended by
Nos 7705
s. 10, 9576
s. 11(1), 9848
s. 18(1),
43/1994
s. 56(Sch.
item 1.7).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 360

S. 360(1)(b)
amended by
No. 7703 s. 5.

- (a) that the trial shall take place at a later time at the same sitting; or
- (b) that the receiving or taking of any plea or demurrer shall be adjourned and that the trial shall be postponed or that the trial shall be postponed and that the accused person shall be remanded for trial at a sitting of the Supreme Court or (if the offence is triable by the County Court) by the County Court at such time and place as the court making such order may direct.

S. 360(2)
amended by
No. 9576
s. 11(1).

- (2) If necessary in any case referred to in paragraph (a) or (b) of sub-section (1) any jury sworn may be discharged from giving a verdict and an indorsement made on the indictment or presentment "Jury discharged from giving a verdict."

S. 360(3)
amended by
Nos 8338
s. 7(a), 9008
s. 2(1)(Sch.
item 2(d)),
9427
s. 6(1)(Sch. 5
item 37).

- (3) The time and place for the commencement of any such sittings to which the trial is postponed shall be stated in open court and the court may (with the consent of any surety or sureties) respite the bail of the accused person and may respite the recognisance of any person bound to attend as a witness or for the purpose of producing documents and thereupon the accused person and the persons so bound to attend shall be bound to attend at such time and place without entering into fresh undertakings or recognisances and any surety so consenting shall be bound accordingly or the court may in the case of the accused person make such order as to bail and commitment and removal to any prison specified by the court until such bail is forthcoming as seems fit:

S. 360(3)
Proviso
amended by
No. 9008
s. 2(1)(Sch.
item 2(d)).

Provided that the court may extend bail without the consent of the surety or sureties in any case where the undertaking contains or contain a provision in that behalf.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 360A

- (4) The powers conferred by this section may be exercised by the County Court notwithstanding that the offence charged is not triable in such court.

S. 360(4)
amended by
No. 7705 s. 10.

360A. Adjournment or stay of trial

S. 360A
inserted by
No. 60/1993
s. 27.

- (1) Subject to sub-section (2) and despite any rule of law to the contrary, if—

- (a) a person is committed for trial; or
- (b) a presentment has been filed—

the fact that an accused has been refused legal assistance in respect of a trial is not a ground for an adjournment or stay of the trial.

- (2) If a court is satisfied at any time before or during the trial that—

S. 360A(2)
amended by
No. 48/1995
s. 11(3)(a)(i).

- (a) it will be unable to ensure that the accused will receive a fair trial unless the accused is legally represented in the trial; and
- (b) the accused is in need of legal assistance because he or she is unable to afford the full cost of obtaining from a private law practice or private legal practitioner legal representation in the trial—

S. 360A(2)(b)
amended by
No. 18/2005
s. 18(Sch. 1
item 27.4).

the court may order Victoria Legal Aid to provide assistance to the accused, on any conditions specified by the court, and may adjourn the trial until such assistance has been provided.

- (3) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must provide legal representation in accordance with an order under sub-section (2).

S. 360A(3)
amended by
No. 48/1995
s. 11(3)(a)(i)(ii).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 360A

S. 360A(4)
inserted by
No. 65/1998
s. 6.

(4) Despite anything to the contrary in sub-section (2)—

S. 360A(4)(a)
amended by
No. 18/2005
s. 18(Sch. 1
item 27.4).

- (a) if the court is satisfied that, in relation to the trial, the accused has engaged in vexatious or unreasonable conduct that has contributed to the accused's inability to afford the full cost of obtaining from a private law practice or private legal practitioner legal representation in the trial, the court may refuse to make an order under sub-section (2);
- (b) the legal burden of proof for the purposes of sub-section (2)(b) that the accused is unable to afford the full cost of obtaining legal representation rests on the accused;
- (c) for the purposes of proving under sub-section (2)(b) that the accused is unable to afford the full cost of obtaining legal representation, regard must be had to property—
 - (i) that is subject to the effective control of the accused (whether or not the accused has an interest in it); or
 - (ii) in which the accused has an interest—as determined in accordance with section 9 or 10 of the **Confiscation Act 1997**;
- (d) a reference in sub-section (2) to the provision of assistance to the accused is a reference to the provision of legal representation;
- (e) the conditions that may be specified by the court under sub-section (2) do not include conditions relating to the identity, number or remuneration of persons representing the accused;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 361

- (f) the court must give Victoria Legal Aid an opportunity to appear and be heard before an order is made under sub-section (2).
- (5) Despite anything to the contrary in section 17A of the **Supreme Court Act 1986**, Victoria Legal Aid may appeal to the Court of Appeal, with leave of the Court of Appeal, from an order under sub-section (2) of the Trial Division constituted by a Judge. S. 360A(5)
inserted by
No. 65/1998
s. 6.
- (6) This section, as amended by section 6 of the **Crimes (Amendment) Act 1998**, applies to and with respect to an order made by a court under sub-section (2) of this section after the commencement of that section, whether proceedings relating to the relevant trial commenced before or after that commencement. S. 360A(6)
inserted by
No. 65/1998
s. 6.
- (7) In this section, "**private law practice**" and "**private legal practitioner**" have the same meaning as in the **Legal Aid Act 1978**. S. 360A(7)
inserted by
No. 18/2005
s. 18(Sch. 1
item 27.5).

(6) Removal of Accused Persons to and from Prison

Pt 3 Div. 1
Subdiv. (6)
(Heading)
amended by
No. 9019
s. 2(1)(Sch.
item 41).

361. Removal of accused persons to and from prison

No. 6103
s. 361.

- (1) Every accused person in the legal custody of the Secretary to the Department of Justice in a prison shall without writ of habeas corpus or other writ for that purpose be caused to be removed to and from the court at which he is to be tried when and so often as may be necessary by the Secretary in order that he may be tried sentenced or otherwise dealt with according to law and such removal shall not be deemed to be an escape. S. 361(1)
amended by
Nos 8338
s. 7(a)(d),
26/1997
s. 51(1),
45/2001
s. 40(1)(a)(i)(ii),
11/2002
s. 3(Sch. 1
item 13).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 361

S. 361(1A)
inserted by
No. 8280
s. 14(1),
amended by
Nos 110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 16.4(a)–
(c)).

- (1A) Where it appears to the Supreme Court or the County Court (as the case requires) to be desirable in the interests of justice that an accused person committed to prison should be present in court otherwise than for trial or sentence the court may order that the accused person be brought before the court and the officer in charge of the prison in which the accused person is detained shall, on delivery to him of an office copy of the order, cause the accused person to be brought before the court in accordance with the order.

S. 361(2)
amended by
Nos 7703 s. 5,
8280 s. 14(2),
8338 s. 7(a)(g),
26/1997
s. 51(2)(a)(b),
repealed by
No. 45/2001
s. 40(1)(b).

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S. 361(3)
amended by
No. 8338
s. 7(g).

- (3) No proceeding either criminal or civil shall be maintained by such accused person or any other person against any prison officer or member of the police force or against any other person by reason of any such removal or detainer.

S. 361(4)
inserted by
No. 26/1997
s. 51(3).

- (4) This section extends and applies—
(a) to any accused person in custody in a police gaol, as if—

S. 361(4)(a)(ii)
amended by
No. 45/2001
s. 40(1)(c).

- (i) any reference to a prison were a reference to the police gaol; and
(ii) any reference to the Secretary to the Department of Justice or to the officer in charge of a prison were a reference to the Chief Commissioner of Police; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 361

(b) to any accused person detained in an approved mental health service within the meaning of the **Mental Health Act 1986**, as if—

(i) any reference to a prison were a reference to the approved mental health service; and

(ii) any reference to the Secretary to the Department of Justice or to the officer in charge of a prison were a reference to the authorised psychiatrist of the approved mental health service; and

S. 361(4)(b)(ii)
amended by
No. 45/2001
s. 40(1)(c).

(c) to any accused person in custody in a remand centre, youth residential centre or youth training centre within the meaning of the **Children and Young Persons Act 1989** or in a residential institution within the meaning of the **Intellectually Disabled Persons' Services Act 1986**, as if—

S. 361(4)(c)
amended by
No. 65/1997
s. 82(1)(a).

(i) any reference to a prison were a reference to the remand centre, youth residential centre, youth training centre or residential institution; and

S. 361(4)(c)(i)
amended by
No. 65/1997
s. 82(1)(b).

(ii) any reference to the Secretary to the Department of Justice or to the officer in charge of a prison were a reference to the Secretary to the Department of Human Services.

S. 361(4)(c)(ii)
amended by
No. 45/2001
s. 40(1)(c).

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Pt 3 Div. 1
Subdiv. (7)
(Heading)
repealed by
No. 9902
s. 2(1)(Sch.
item 53).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 363

S. 362
amended by
No. 8338
s. 7(a),
repealed by
No. 9008
s. 2(1)(Sch.
item 2(e)).

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(8) Joinder of Defendants in Certain Cases

S. 363
amended by
No. 8425
s. 2(1)(i),
substituted by
No. 9576
s. 11(1).

363. Separate abettors or accessories may be tried together

Any number of abettors or accessories at different times to any indictable offence may be charged with substantive offences in the same indictment or presentment and be tried together, notwithstanding that the principal offender is not included in the indictment or presentment or is not in custody or amenable to justice.

Pt 3 Div. 1
Subdiv. (9)
(Heading)
amended by
No. 9576
s. 11(1).

(9) What Presentments Indictments and Instruments Shall Suffice and Avail

No. 6103
s. 364.

364. Definition

In the next ten succeeding sections unless inconsistent with the context or subject-matter—

"the court" means the court before which any indictable offence is tried or prosecuted.

Nos 6103
s. 365, 6166
s. 3(a).

365. Provisions relating to presentments to apply to indictments etc.

S. 365
amended by
No. 9576
s. 11(1).

The provisions of the next nine succeeding sections relating to presentments shall apply to indictments in the Supreme Court and also to any plea replication or other criminal pleading with such modifications as are made by rules under this Act.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 366

366. Rules as to presentments

No. 6103
s. 366.

The rules contained in the Sixth Schedule to this Act with respect to presentments shall have effect as if enacted in this Act, but those rules may be added to varied or annulled by further rules made by the judges of the Supreme Court under this Act.

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S. 367
repealed by
No. 57/1989
s. 3(Sch.
item 42.27).

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S. 368
repealed by
No. 25/1989
s. 20(i).

369. General provisions as to presentments

No. 6103
s. 369.

Every presentment shall be indorsed with a statement of the specific offence or offences with which the accused person is charged and shall contain and shall be sufficient if it contains such particulars as are necessary for giving reasonable information as to the nature of the charge.

370. No objections as to form

No. 6103
s. 370.

Notwithstanding any rule of law or practice or any statute a presentment shall subject to the provisions of this Act not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Act.

371. Joinder of charges in the same presentment

No. 6103
s. 371.
S. 371
amended by
No. 9576
s. 11(1).

Subject to the provisions of the rules under this Act charges for more than one indictable offence may be joined in the same presentment.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 372

No. 6103
s. 372.

372. Orders for amendment of presentment, separate trial etc.

- (1) Where before trial or at any stage of a trial it appears to the court that the presentment is defective the court shall make such order for the amendment of the presentment as the court thinks necessary to meet the circumstances of the case unless having regard to the merits of the case the required amendments cannot be made without injustice.
- (2) Where a presentment is so amended a note of the order for amendment shall be indorsed on the presentment and the presentment shall be treated for the purposes of the trial and for the purposes of all proceedings in connexion therewith as having been made in the amended form.
- (3) Where before trial or at any stage of a trial the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same presentment or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a presentment the court may order a separate trial of any count or counts of such presentment.

S. 372(3AA)
inserted by
No. 81/1997
s. 7(1).

- (3AA) Despite sub-section (3) and any rule of law to the contrary, if, in accordance with this Act, 2 or more counts charging sexual offences are joined in the same presentment, it is presumed that those counts are triable together.

S. 372(3AB)
inserted by
No. 81/1997
s. 7(1).

- (3AB) The presumption created by sub-section (3AA) is not rebutted merely because evidence on one count is inadmissible on another count.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 372

(3AC) In sub-section (3AA) "**sexual offence**" means—

S. 372(3AC)
inserted by
No. 81/1997
s. 7(1).

(a) an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence; or

(b) an offence to which clause 1 of Schedule 1 to the **Sentencing Act 1991** applies.

(3A) Where a presentment contains a count of conspiracy to commit an offence and another count alleging the commission of that offence, the court shall, unless it is of the opinion that to try those counts together would be in the interests of justice, order that the count of conspiracy shall be tried separately from the other count, and the prosecution may elect which count shall be tried first.

S. 372(3A)
inserted by
No. 10079
s. 8(e).

(4) Where before trial or at any stage of a trial the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend a presentment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for the postponement of a trial—

(a) if such an order is made during a trial the court may order that any jury sworn be discharged from giving a verdict on the count or counts the trial of which is postponed or on the presentment (as the case may be) and that an indorsement be made on

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 373

the presentment "Jury discharged from giving a verdict"; and

- (b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been set out in a separate presentment and the procedure on the postponed trial shall be the same in all respects (if the jury have been discharged) as if the trial had not commenced; and
- (c) the court may make such order as to admitting the accused person to bail, and as to the enlargement of recognisances and otherwise as the court thinks fit.

**No. 6103
s. 373.**

373. Other powers not affected

Any power of the court under the last preceding section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

**No. 6103
s. 374.**

374. Savings

Nothing in the last ten preceding sections or the rules thereunder shall affect the law or practice relating to the jurisdiction of a court or the place where an accused person can be tried, or prejudice or diminish in any respect the obligation to establish by evidence according to law any acts omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged, or otherwise affect the laws of evidence in criminal cases.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 375

375. Omission of certain details not fatal to presentment etc.

No. 6103
s. 375.
S. 375
amended by
No. 9576
s. 11(1).

No indictment or presentment shall be held insufficient for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or presentment or on an impossible day or on a day that never happened.

376. Previous convictions may be added to presentment³⁰

No. 6103
s. 376.
S. 376
amended by
No. 9576
s. 11(1),
substituted by
No. 10084
s. 6(1).

- (1) In an indictment or presentment for an indictable offence it shall be lawful, in order to enable the court the better to exercise its discretion with respect to punishment, to add to the presentment a count or counts averring that the offender, at the time of committing the offence, had a previous conviction or previous convictions.
- (2) A count or counts may be added under sub-section (1) at any time before the jury gives its verdict.
- (3) A count may be added under sub-section (1) whether or not the previous conviction, because of a provision of this Act, affects the degree, character or punishment of the offence.
- (4) In this section "**previous conviction**" means a prior conviction or finding of guilt by a court (whether in or out of Victoria), including a conviction or finding of guilt consequent on which is made—
 - (a) an order of a court releasing a person on an adjournment without recording a conviction;
or

S. 376(4)(a)
substituted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 379

S. 376(4)(b)
amended by
No. 10260
s. 114(Sch. 4
item 5),
substituted by
No. 49/1991
s. 119(7)
(Sch 4
item 4.2).

(b) a community-based order—

but does not include a conviction or finding of
guilt by a children's court (whether in or out of
Victoria) made more than 10 years prior to the
hearing at which it is sought to be proved.

S. 377
repealed by
No. 10084
s. 6(2).

* * * *

S. 378
amended by
No. 9576
s. 11(1),
repealed by
No. 10084
s. 6(2).

* * * *

No. 6103
s. 379.

**379. Description of property of Her Majesty in theft
cases**

S. 379
substituted by
No. 8425
s. 2(1)(i).

In any proceedings for an offence under
Division 2 of Part I relating to the property of Her
Majesty the property may be described as the
property of Her Majesty.

No. 6103
s. 380.

**380. Property under management of body corporate to
be property thereof³¹**

S. 380
amended by
No. 9576
s. 11(1).

All property real and personal whereof any body
corporate has by law the management control or
custody shall, for the purpose of any indictment or
presentment or proceeding against any other
person for any offence committed on or in respect
thereof, be deemed to be the property of such
body corporate.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 381

381. Money or securities etc. may be described simply as money

In every indictment or presentment for an offence under Division 2 of Part I it shall be sufficient to describe such money or valuable security simply as money, without specifying any particular kind of money or security, which description shall be sustained by proof of the stealing taking receiving embezzling applying or disposing or obtaining of any money or valuable security, although some part of the value thereof was agreed to be or was in fact returned.

No. 6103
s. 381.
S. 381
amended by
Nos 8425
s. 2(1)(k), 9019
s. 2(1)(Sch.
item 42), 9576
s. 11(1).

382. Presentment for stealing etc. documents of title

In any indictment or presentment for stealing or for any fraudulent purpose destroying cancelling obliterating or concealing the whole or any part of any document of title to lands, it shall be sufficient to allege that such document is or contains evidence of the title or of part of the title of the person or of some one of the persons having an interest in the real estate to which the same relates, and to mention such real estate or some part thereof.

No. 6103
s. 382.
S. 382
amended by
No. 9576
s. 11(1).

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Ss 383, 384
repealed by
No. 8425
s. 2(1)(h).

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S. 385
amended by
No. 9576
s. 11(1),
repealed by
No. 25/1989
s. 9.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 386

No. 6103
s. 386.
S. 386
amended by
Nos 9019
s. 2(1)
(Sch. item 43),
9427
s. 6(1)(Sch. 5
item 38), 9576
s. 11(1).

386. Form of presentment or indictment for perjury etc.

In any indictment or presentment for perjury or for any offence deemed to be perjury it shall be sufficient to set forth the substance of the offence charged upon the defendant and before what court or before whom the accused falsely swore or falsely declared or affirmed the matter charged as false without setting forth the proceedings and without setting forth the commission or authority of the court or the person before whom such offence was committed.

No. 6103
s. 387.
S. 387
amended by
No. 9576
s. 11(1).

387. Form of presentment or indictment etc. for subornation of perjury etc.

In every indictment or presentment for subornation of perjury and other like offences it shall be sufficient wherever such perjury has been actually committed to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully did cause and procure the said person the said offence in manner and form aforesaid to do and commit; and wherever such perjury or other offence aforesaid has not been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth any of the matters or things hereinbefore rendered unnecessary to be set forth in the case of wilful and corrupt perjury.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 388

(10) *Preliminary Objections Not to be Taken*

388. No technical objections allowed

No person by himself or by his legal practitioner shall take any objection in any court to any order made under sections three hundred and fifty-nine or three hundred and sixty under or by virtue of which the time or place of trial has been altered or except as otherwise expressly enacted to any matter or thing set out or appearing on the face of the record.

No. 6103
s. 388.
S. 388
amended by
No. 35/1996
s. 453(Sch. 1
item 16.3).

(11) *No right to traverse or postpone*

389. No person entitled to traverse or have time to plead

No accused person shall be entitled as of right to traverse or postpone the trial of any indictment or presentment preferred against him in the Supreme Court or County Court or to have time to plead or demur to any such presentment indictment or information allowed him:

Provided that if the court is of opinion that the accused ought to be allowed a further time to plead or demur or to prepare for his defence or otherwise, it may grant such further time to plead or demur or may adjourn the receiving or taking of the plea or demurrer and postpone the trial or as the case may be postpone the trial as provided by section three hundred and sixty.

No. 6103
s. 389.
S. 389
amended by
Nos 7705
s. 10, 9576
s. 11(1).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 390

(12) *Trial, Arraignment, Plea &c.*

390. Police to be present at courts

No. 6103
s. 390.
S. 390
(Heading)
inserted by
No. 50/2006
s. 9(2).

S. 390(1)
amended by
Nos 7705
s. 10, 8338
s. 7(j), 9848
s. 18(1),
45/2001
s. 40(2),
repealed by
No. 50/2006
s. 9(1).

* * * * *

S. 390(2)
amended by
Nos 7705
s. 10, 19/1989
s. 16(Sch.
item 16.5).

- (2) The Chief Commissioner of Police shall direct that a sufficient number of members of the police force shall be present to keep order in and within the precincts of the court-room at all sittings of the Supreme Court in its criminal jurisdiction and of the County Court in its criminal jurisdiction and shall at the request of the presiding judge direct that an additional number of such members shall be present at any particular sitting with respect to which the request is made.

S. 390A
inserted by
No. 9576 s. 5.

390A. Entitlement to plead "Not Guilty"

- (1) Where a person is arraigned on indictment or presentment he shall in all cases be entitled to make plea of not guilty in addition to any demurrer or special plea.
- (2) Where a person is arraigned on indictment or presentment he may plead not guilty to the offence specifically charged therein but guilty of another offence of which he might be found guilty on that indictment or presentment; and the consequences of so making a plea of guilty shall

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 391

be the same as if the charge to which the plea was made had been included in the indictment or presentment.

391. Plea of "Not Guilty" puts the accused on trial by jury; procedure where no evidence led

If any person arraigned on any indictment or presentment pleads thereto "Not Guilty," he shall without further form be deemed to have put himself upon the country for trial; and subject to section 391A the jury for his trial shall in the usual manner be impanelled accordingly.

Provided that where a person arraigned on any indictment or presentment pleads "Not Guilty" to any count in respect of which the prosecution proposes not to lead evidence the prosecution shall so inform the trial judge before a jury is impanelled and the trial judge shall thereupon direct that an entry of "Not Guilty" be made upon the record in respect of such count and every such entry shall have effect as if it were the verdict of a jury upon the trial of the accused person on that count.

391A. Judge may hear and determine question of law etc. before jury is impanelled

Where an accused person is arraigned on indictment or presentment before the Supreme Court or the County Court the Court before which the arraignment takes place, if the Court thinks fit, may before the impanelling of a jury for the trial hear and determine any question with respect to the trial of the accused person which the Court considers necessary to ensure that the trial will be conducted fairly and expeditiously and the hearing and determination of any such question shall be conducted and have the same effect and consequences in all respects as such a hearing and determination would have had before the

No. 6103
s. 391.
S. 391
amended by
Nos 9576
s. 11(1), 10026
s. 5(1).

S. 391
Proviso
inserted by
No. 7994 s. 2,
amended by
Nos 25/1989
s. 19(c)(i)(ii),
35/1996
s. 453(Sch. 1
item 16.4).

S. 391A
inserted by
No. 10026
s. 5(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 391B

enactment of this section if the hearing and determination had occurred after the jury had been impanelled.

S. 391B
inserted by
No. 10233
s. 9(d).

391B. Hearing of application for exclusion of evidence

If an accused person arraigned on an indictment or presentment before the Supreme Court or the County Court seeks to satisfy the Court (whether before or after the empanelling of a jury) that it should exclude evidence solely by the exercise of a discretion, the Court may, in hearing and determining the question, hear evidence called on behalf of the accused person before it hears evidence called on behalf of the Crown.

No. 6103
s. 392.

392. Refusal to plead

S. 392
amended by
No. 9576
s. 11(1).

If any person being so arraigned stands mute of malice or will not answer directly to the indictment or presentment, the court may order the proper officer to enter a plea of "Not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if he had actually pleaded the same.

S. 393
amended by
Nos 6884
s. 2(1), 9576
s. 11(1),
102/1986
s. 8(a)(b),
repealed by
No. 65/1997
s. 82(2)(a).³²

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No. 6103
s. 394.

394. Form of plea of autrefois convict or autrefois acquit

S. 394
amended by
No. 9576
s. 11(1).

In any plea of autrefois convict or autrefois acquit it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the indictment or presentment.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 395

395. Trial where accused has previous convictions

(1) In proceedings upon an indictment or presentment where the person being tried has a previous conviction or where a count averring a previous conviction has been added to the indictment or presentment, the following provisions apply—

(a) the person shall be arraigned on only so much of the indictment or presentment as charges the offence;

(b) where—

(i) the person pleads not guilty; or

(ii) the court orders a plea of not guilty to be entered on behalf of the person—

the jury shall be charged to inquire concerning only the offence with which the person is charged;

(c) where the person pleads guilty or the jury returns a verdict of guilty and after the discharge of the jury (whether or not the jurors are still present) the person shall be asked whether he or she has previous convictions as alleged in the indictment or presentment;

(d) if, in response to questions put under paragraph (c), the person distinctly admits to the previous convictions the court may proceed to sentence the person accordingly;

(e) if, in response to questions put under paragraph (c) the person does not distinctly admit to the previous convictions—

(i) the prosecution may lead evidence to prove the previous convictions; and

No. 6103
s. 395.
S. 395
amended by
Nos 9576
s. 11(1), 10026
s. 6(1)(a)–(c),
substituted by
No. 10084
s. 6(3).

S. 395(1)(e)(i)
amended by
Nos 25/1989
s. 19(d),
35/1996
s. 453(Sch. 1
item 16.5).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 395

- (ii) all questions concerning the alleged previous convictions shall be determined by the judge without jury; and
- (f) Despite paragraphs (c) to (e), where the person has been found guilty of an offence punishable only with imprisonment for the term of his or her natural life, the person shall not be asked any questions concerning previous convictions.
- (2) Where in proceedings upon indictment or presentment evidence of a previous conviction of a person may be given, a certified statement of conviction may, subject to sub-section (4), be tendered in evidence.
- (3) In sub-section (2) "**certified statement of conviction**" means a certificate in the prescribed form stating that in a specified court, on a specified day, a person of the same name and date of birth as the person against whom it is sought to be proved was convicted of a specified offence, or admitted specified previous convictions.
- (4) To be admissible in evidence, a certified statement of conviction must purport to be signed—
 - (a) in the case of a previous conviction in the Magistrates' Court or the Children's Court—by a registrar of the Magistrates' Court or a registrar of the Children's Court;
 - (b) in the case of a previous conviction in the County Court—by the Registrar or a Deputy Registrar of the County Court;

S. 395(3)
amended by
No. 48/1997
s. 57.

S. 395(4)(a)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.2),
57/1989
s. 3(Sch.
item 42.30(a)
(b)) (as
amended by
No. 34/1990
s. 5(Sch. 4
item 23)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 395

- (c) in the case of a previous conviction in the Supreme Court—by the Prothonotary or a Deputy Prothonotary of the Supreme Court; or
 - (d) in the case of a previous conviction in a court outside Victoria (whether or not in Australia)—by the officer having custody of the records of the court, or by the deputy of such officer.
- (5) A certified statement of conviction tendered in evidence under sub-section (2) is sufficient evidence (unless the contrary is proved)—
- (a) of the facts stated in the certificate; and
 - (b) that the person against whom the conviction is sought to be proved is the same person as the person referred to in the certificate.
- (6) Where under sub-section (1) a person may be asked whether he or she has a previous conviction, the method of asking the question, in the Court's discretion, shall be either—
- (a) by the person being shown a document on which the alleged previous conviction is set out, showing—
 - (i) the date of the alleged previous conviction;
 - (ii) the court which imposed the alleged previous conviction;
 - (iii) the place of sitting of that court;
 - (iv) the nature of the offence; and
 - (v) the sentence imposed; or
 - (b) by the alleged previous conviction being read to the person.

S. 395(6)
amended by
No. 57/1989
s. 3(Sch.
item 42.31).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 396

- (7) Where upon the trial of a person on indictment or presentment the person gives evidence of his or her good character, the court may permit evidence of a previous conviction to be led before verdict.
- (8) In this section "**previous conviction**" has the same meaning as in section 376.

No. 6103
s. 396.
S. 396
amended by
Nos 9576
s. 11(1), 10026
s. 6(2).

396. Not necessary to inquire into accused's lands etc.

Where any person is indicted or presented for treason or any other indictable offence, it shall not be necessary to inquire concerning his lands or goods, nor whether he fled for such treason or other indictable offence.

(13) Defence

No. 6103
s. 397.
S. 397
amended by
Nos 35/1996
s. 453(Sch. 1
item 16.6),
18/2005
s. 18(Sch. 1
item 27.6).

397. When and by whom prisoner's defence may be made

Every accused person shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by his or her legal practitioner.

(14) Evidence. Depositions. Subpoenas and Warrants against Witnesses

No. 6103
s. 398.
S. 398
amended by
Nos 8731
s. 173, 25/1989
s. 19(e),
57/1989
s. 3(Sch.
item 42.32),
12/1993
s. 4(a),
35/1996
s. 453(Sch. 1
item 16.7
(a)–(d).

398. Caution to be given to person charged³³

Where a person charged with an offence is not defended by a legal practitioner, the following caution or words to the like effect shall, before he is called as a witness, be handed to him in writing under the direction of the court (that is to say):—
"You now have the right to answer the charge against you and may take either of the following courses:

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 398A

- (a) You may enter the witness box, take the oath, and say what you want to say in answer to the charge. This is known as giving sworn evidence and when you have given your evidence you may be asked questions about it by the prosecution or the Court;
- (b) You may say nothing in answer to the charge.

S. 398(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.7(b)).

In either of these cases you may call any witness or witnesses to give sworn evidence for you. What do you desire to do?"

398A. Admissibility of propensity evidence

- (1) This section applies to proceedings for an indictable or summary offence.
- (2) Propensity evidence relevant to facts in issue in a proceeding for an offence is admissible if the court considers that in all the circumstances it is just to admit it despite any prejudicial effect it may have on the person charged with the offence.
- (3) The possibility of a reasonable explanation consistent with the innocence of the person charged with an offence is not relevant to the admissibility of evidence referred to in subsection (2).
- (4) Nothing in this section prevents a court taking into account the possibility of a reasonable explanation consistent with the innocence of the person charged with an offence when considering the weight of the evidence or the credibility of a witness.
- (5) This section has effect despite any rule of law to the contrary.

S. 398A
inserted by
No. 37/1986
s. 5(a),
repealed by
No. 12/1993
s. 4(b),
new s. 398A
inserted by
No. 81/1997
s. 14.³⁴

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399

S. 399
amended by
Nos 7546
s. 8(a)(b), 8870
s. 5(2), 9008
s. 2(1)(Sch.
item 2(f)),
substituted by
No. 9230 s. 2.

399. The accused, husbands and wives as witnesses for the defence; evidence of character of accused

- (1) Subject to this section, where a person is charged with an offence he shall at every stage of the proceedings against him be a competent, but not compellable, witness in his own defence or in defence of any other person charged in those proceedings.
- (2) Subject to this section, where a person is charged with an offence, the wife or former wife or husband or former husband (as the case may be) of that person shall at every stage of the proceedings against that person be a competent and, unless he or she is also charged in those proceedings, compellable witness for the defence of that person or of any other person charged in those proceedings as if the marriage had never taken place.
- (3) The failure of any person charged with an offence to give sworn evidence shall not be made the subject of comment to the jury by either the prosecution, or by the presiding judge³⁵.
- (4) A person charged and being a witness pursuant to this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.
- (5) A person charged and called as a witness pursuant to this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

S. 399(3)
amended by
Nos 37/1986
s. 5(b)(i)(A)(B),
25/1989
s. 19(f),
12/1993
s. 4(c),
35/1996
s. 453(Sch. 1
item 16.8).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399

- (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
 - (b) he has personally or by his advocate asked questions of the witnesses for the prosecution (other than his wife or former wife or her husband or former husband as the case may be) with a view to establishing his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution (other than his wife or former wife or her husband or former husband as the case may be); or
 - (c) he has given evidence against any other person charged with the same offence.
- (6) A person charged and called as a witness pursuant to this section shall not be asked, and if asked shall not be required to answer, any question on the ground that paragraph (b) of sub-section (5) applies to him unless the permission of the presiding judge or magistrate (to be applied for in the absence of the jury, if any) has first been obtained.
- (7) Every person called as a witness pursuant to this section shall unless otherwise ordered by the presiding judge or magistrate give his evidence from the witness-box or other place from which the other witnesses give their evidence.

S. 399(6)
amended by
No. 57/1989
s. 3(Sch.
item 42.33).

S. 399(7)
amended by
No. 57/1989
s. 3(Sch.
item 42.33).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399A

S. 399(7A)
inserted by
No. 37/1986
s. 5(b)(ii),
amended by
No. 25/1989
s. 19(g),
repealed by
No. 12/1993
s. 4(d).³⁶

* * * * *

S. 399(8)
amended by
Nos 37/1986
s. 5(b)(iii),
57/1989
s. 3(Sch.
item 42.34),
12/1993
s. 4(e).

- (8) Nothing in this section shall affect the provisions of Schedule 5 to the **Magistrates' Court Act 1989**³⁷.

S. 399A
inserted by
No. 8870
s. 4(1).

399A. Alibi evidence

- (1) On a trial on presentment the accused shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi in the manner provided by sub-section (4).
- (2) Without prejudice to sub-section (1), on any such trial the accused shall not, without the leave of the court call any other person to give such evidence unless—
- (a) the notice under that sub-section includes the name and address of the witness or, if the name or address is not known to the accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;
 - (b) if the name or the address is not included in that notice, the court is satisfied that the accused, before giving the notice, took reasonable steps to secure that the name or address would be ascertained; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399A

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|---|---|
| (c) if the accused is notified by or on behalf of the Director of Public Prosecutions that the witness has not been traced by the name or at the address or by the information given, he forthwith gives notice of any information then in his possession which might be of material assistance in finding the witnesses or on subsequently receiving any such information, forthwith gives notice of it. | S. 399A(2)(c)
amended by
No. 9848
s. 18(1). |
|
(3) The court shall not refuse leave under this section if it appears to the court— | |
| (a) in a case where the accused was committed for trial on the charge in respect of which the alibi is sought to be relied upon, that he was not informed of the requirements of this section; or | S. 399A(3)(a)
amended by
No. 57/1989
s. 3(Sch.
item 42.35). |
| (b) in any other case, that he was not informed of these requirements in writing by the Director of Public Prosecutions upon or before the supply to him of a copy of the statement and particulars of the offence as charged in the presentment. | S. 399A(3)(b)
amended by
No. 9848
s. 18(1). |
| (4) Notice under sub-section (1) shall either be given in court during or at the end of the committal proceedings, or be given in writing to the Director of Public Prosecutions; and notice under paragraph (c) of sub-section (2) shall be given in writing to the Director of Public Prosecutions. | S. 399A(4)
amended by
No. 9848
s. 18(1). |
| (5) A notice to the Director of Public Prosecutions under this section may be given by leaving it at his office or by sending it in a registered letter addressed to him at his office. | S. 399A(5)
amended by
No. 9848
s. 18(1). |
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399A

S. 399A(6)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.9).

(6) Any notice purporting to be given under this section on behalf of the accused by his or her legal practitioner shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(7) In this section—

"evidence in support of an alibi" means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he 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;

"the prescribed period" means a period of ten days from—

- (a) in a case where the accused was committed for trial on the charge in relation to which the alibi is sought to be relied upon, the day on which he was so committed; and
 - (b) in any other case, the day on which he was supplied with a copy of the statement and particulars of the offence as charged in the presentment.
- (8) For the purposes of this section the Governor in Council may make regulations for or with respect to—
- (a) the form of notices referred to in this section and the nature of any particulars required to be given thereon;
 - (b) the service of such notices and proof of service thereof;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 399B

- (c) the information to be given to accused persons of the requirements of this section and the giving of such information;
- (d) recording and certifying the giving of notices and particulars under this section, the disclosure thereof to courts, and the transmission to the Director of Public Prosecutions of a copy of the record of such notices; and
- (e) any matter or thing necessary to be prescribed for carrying into effect the provisions of this section.

S. 399A(8)(d)
amended by
No. 9848
s. 18(1).

399B. Provision relating to witnesses to alibis

No one who has been named or referred to as a proposed witness in any notice given by the accused under the preceding section shall, before the conclusion of the trial for the purposes of which the notice was given or any re-trial which may be directed, be communicated with directly or indirectly by any person acting for the prosecution or by any member of the police force with respect to the case or to any matter related thereto, unless in the presence and with the consent of the accused's legal practitioner or, where he is unrepresented, the accused himself; and any such person or member so communicating with knowledge of facts which render his conduct a contravention of this section shall be guilty of a contempt of the court of trial and may be dealt with by it accordingly.

S. 399B
inserted by
No. 8870
s. 4(1),
amended by
No. 35/1996
s. 453(Sch. 1
item 16.10).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 400

S. 400
substituted by
No. 7546 s. 9,
amended by
Nos 7994 s. 3,
8338 s. 6, 8410
s. 2(a)(b), 9019
s. 2(1)(Sch.
item 44),
substituted by
No. 9230 s. 3.

S. 400(3)
amended by
No. 57/1989
s. 3(Sch.
item 42.36).

400. Wife or husband etc. of the accused to be competent and compellable witnesses

- (1) Nothing in this section shall operate to compel any person charged with an offence (in this section called "the accused") to give evidence in any proceedings wherein such charge is heard.
- (2) Subject to sub-section (3), the wife, former wife, husband or former husband of the accused shall be a competent and compellable witness for the prosecution at every stage of the proceedings against the accused, including proceedings for the grant, variation or revocation of bail, as if the marriage had never taken place.
- (3) In any proceedings against the accused, the presiding judge or magistrate shall exempt the accused's wife, husband, mother, father or child (in this section called the "proposed witness") from giving evidence on behalf of the prosecution, either generally or in relation to a particular matter, if, but only if, he is satisfied upon application made to him in the absence of the jury (if any) that, having regard to all the circumstances of the case, the interest of the community in obtaining the evidence of the proposed witness is outweighed by—
 - (a) the likelihood of damage to the relationship between the accused and the proposed witness; or
 - (b) the harshness of compelling the proposed witness to give the evidence; or
 - (c) the combined effect of the matters mentioned in paragraphs (a) and (b).
- (4) Without restricting the generality of the phrase "all the circumstances of the case" in sub-section (3), such circumstances shall include—
 - (a) the nature of the offence charged;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 401

- (b) the importance in the case of the facts which the proposed witness is to be asked to depose to;
 - (c) the availability of other evidence to establish those facts and the weight likely to be attached to the proposed witness's testimony as to those facts;
 - (d) the nature, in law and in fact, of the relationship between the proposed witness and the accused;
 - (e) the likely effect upon the relationship and the likely emotional, social and economic consequences if the proposed witness is compelled to give the evidence; and
 - (f) any breach of confidence that would be involved.
- (5) The fact that a proposed witness has applied for or been granted an exemption pursuant to this section shall not be made the subject of any comment to the jury by the prosecution or by the presiding judge.
- (6) Where the husband, wife, mother, father or child of the accused is called as a witness for the prosecution, the presiding judge or magistrate shall satisfy himself that the person so called is aware of his or her right to apply for an exemption pursuant to this section.

S. 400(5)
amended by
Nos 25/1989
s. 19(h),
35/1996
s. 453(Sch. 1
item 16.11).

S. 400(6)
amended by
No. 57/1989
s. 3(Sch.
item 42.37).

401. Provision for simplifying proof of previous offences

No. 6103
s. 401.

When any person has been indicted or presented for committing any offence after a previous conviction or convictions or where a count or counts averring a previous conviction or previous convictions have been added as hereinbefore provided³⁸ and such person has been convicted of such subsequent offence (hereinafter in this section termed the "first-mentioned principal

S. 401
amended by
Nos 8338
s. 7(h)(k), 9576
s. 11(1).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 401

offence") and such previous conviction or convictions or any of them have thereupon been admitted by or proved against him, and at any subsequent time such person indicted or presented for committing any other offence subsequent to the committing of such first-mentioned principal offence and to such previous conviction or convictions as aforesaid then such first-mentioned principal offence and such other previous conviction or convictions as aforesaid may notwithstanding anything contained in this or any other Act be proved against such person as follows:

A certificate containing the substance and effect only of the conviction for such first-mentioned principal offence purporting to be signed by the officer having the custody of the records of the court where the offender was convicted or by the deputy of such officer or by the officer for the time being acting in such first-mentioned capacity and setting forth that at the time of such conviction such previous convictions (at the places and times therein mentioned, for the offences therein specified or generally for indictable offences or offences punishable on summary conviction, as the case may be) were admitted by or proved against such offender may be given in evidence; such certificate shall (upon proof of the identity of the person against whom the same is given in evidence with the offender mentioned in the certificate as having been convicted of such first-mentioned principal offence) be sufficient evidence of the conviction of such person not only for such first-mentioned principal offence but also of the previous conviction or convictions therein mentioned without proof of the signature or official character of the person appearing to have signed the same;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 402

Or a certificate purporting to be signed by the governor or officer in charge of any prison or penal establishment or by the officer for the time being acting in that capacity and setting forth that the person therein mentioned underwent the whole or a portion of the sentence of imprisonment therein mentioned may be given in evidence; such certificate shall contain a copy of the record warrant or other authority under which such person was detained in such prison or penal establishment, and shall (upon proof of the identity of the person against whom the same is given in evidence with the offender mentioned in the certificate as having so undergone the whole or a portion of such sentence of imprisonment) be sufficient evidence not only of the conviction of such person for the crime for which such sentence of imprisonment appears from such certificate to have been awarded but also of the admission by or proof against such person immediately before such sentence was awarded of any previous conviction or convictions mentioned in such copy of the record warrant or other authority.

Nothing in this section contained shall be construed to affect or alter the law with respect to the proper stage of the proceedings upon such indictment or presentment for proving any previous conviction therein averred.

402. Previous convictions to be noted in new sentence

Where any person has been indicted or presented for committing any offence after a previous conviction or convictions or where a count or counts averring a previous conviction or convictions have been added as hereinbefore provided and such person has been convicted of such subsequent offence and such previous conviction or convictions or any of them have been admitted by or proved against him the fact

No. 6103
s. 402.
S. 402
amended by
No. 9576
s. 11(1).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 404

that such previous conviction or convictions have been so admitted or proved and the date or dates thereof and the term or terms of imprisonment awarded therefor respectively shall be entered upon the minutes or record of such subsequent offence.

S. 403
repealed by
No. 6758 s. 3.

* * * * *

No. 6103
s. 404.
S. 404
amended by
No. 57/1989
s. 3(Sch.
item 42.38).

404. Proof of marriage on trial for bigamy

On the hearing before a magistrate of or on the trial of any person on a charge of having (during the life of his or her wife or husband) gone through the form or ceremony of marriage with some other person, the production of a copy of the register or other official record of a marriage or of an extract from such register or other official record shall on proof of the identity of such first-mentioned person be prima facie evidence of his or her marriage or of his or her having gone through the ceremony of marriage—

- (a) if such copy or extract is proved to be an examined copy or extract of or from the register or other official record of marriages kept in any portion of Her Majesty's dominions; or
- (b) if such copy or extract purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and if the facts that such officer is an officer intrusted with the custody of the original register or official record and that the signature thereto is the signature of such officer and that such register or other official record is an official record within the meaning of this Act purports to be certified to by a judge of a superior court or Governor

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 405

or Administrator of the Government of that
portion of Her Majesty's dominions in which
such register or official record is kept.

405. Meaning of term "official record"

No. 6103
s. 405.

- (1) For the purposes of the last preceding section, an official record of a marriage shall be such record of marriages as is required by law to be kept, or as is made by law evidence of marriages celebrated in that portion of Her Majesty's dominions in which the same is kept.
- (2) Nothing in this or the last preceding section shall apply to the proof of a marriage celebrated or of a ceremony of marriage performed in Victoria.

* * * * *

Ss 406–408A
repealed.³⁹

409. No need to prove specific intent to defraud in trials relating to instruments

No. 6103
s. 409.
S. 409
amended by
Nos 8425
s. 2(1)(l), 9576
s. 11(1),
25/1989
s. 10(a)–(c).

On the trial of any indictment or presentment for any offence against Division three of Part I it shall not be necessary to prove an intent on the part of the accused to injure any particular person; but it shall be sufficient to prove that the accused did the act charged with an intent to injure.

* * * * *

S. 410
repealed by
No. 51/1989
s. 143(b).

411. Determination of age

No. 6103
s. 411.

Where for the purposes of this Act it is necessary for any judge or jury or for the Magistrates' Court to determine the age of any person such judge or jury or court shall determine such age as he they or it may be best able having regard to the evidence or if there is no other sufficient evidence to the appearance of such person.

S. 411
amended by
Nos 7705
s. 10, 7876
s. 2(3),
57/1989
s. 3(Sch. item
42.39(a)(b)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 412

No. 6103
s. 412.

412. Prisoners entitled to inspect depositions on trial⁴⁰

All persons under trial shall be entitled at the time of their trial to inspect without fee or reward all depositions which have been taken against them and delivered in manner by law required to the proper officer of the court before which such trial is had or copies of such depositions.

No. 6103
s. 413.
S. 413
amended by
Nos 8275
s. 12(a)(b),
9059
s. 2(1)(Sch.
item 10),
57/1989
s. 3(Sch.
item 42.40),
10/1999
s. 8(5).

413. Depositions taken on one charge may be read in prosecution of others

Depositions taken and statements referred to in clause 6(1) of Schedule 5 to the **Magistrates' Court Act 1989** that are admitted in evidence in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of the same or any other offence whatsoever upon the like proof and in the same manner in all respects as they may according to law be read in the prosecution of the offence with which such person was charged when such depositions were taken or such statements were so admitted as evidence.

No. 6103
s. 414.
S. 414
amended by
No. 7703 s. 5.

414. Subpoenas in criminal cases may be issued by sheriffs etc.

Every sheriff and every deputy sheriff may issue subpoenas ad testificandum and subpoenas duces tecum in any criminal case to be tried at the Supreme Court. Every such subpoena shall be sealed by the sheriff or deputy sheriff issuing the same, and every person served with any such subpoena shall be liable and subject to the like penalties for disobedience thereof as if the same had been issued out of the Supreme Court.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 415

415. Issue of warrant when witness does not appear

No. 6103
s. 415.

(1) Whenever—

S. 415(1)
amended by
Nos 7705
s. 10, 8410
s. 3(1)(a)(b),
9554
s. 2(2)(Sch. 2
item 60),
110/1986
s. 140(2),
19/1989
s. 16(Sch.
item
16.6(a)(b)),
57/1989
s. 3(Sch.
item 42.41),
49/1991
s. 119(1)
(Sch. 2
item 68),
69/1997
s. 22(11).

- (a) any person has been bound over to appear and give evidence or to appear for the purpose of producing documents on any trial before the Supreme Court or before the County Court; or
- (b) a subpoena ad testificandum subpoena duces tecum or summons has been issued for the attendance of any person on any trial before the Supreme Court or the County Court and a copy thereof has been duly served upon such person, and a reasonable sum of money has been paid or tendered to him for his costs and expenses in that behalf—

the Supreme Court or the County Court may if such person neglects or refuses to attend issue its warrant to apprehend such person, and may also order any such person to pay a fine not exceeding 5 penalty units, but no such fine shall exempt such person from any other proceedings for disobeying such subpoena or summons.

(1A) Whenever it is proved to the satisfaction of the Supreme Court or the County Court (as the case requires)—

S. 415(1A)
inserted by
No. 8410
s. 3(2),
amended by
Nos 9554
s. 2(2)(Sch. 2
item 60),
110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 16.7(a)–
(c)), 49/1991
s. 119(1)
(Sch. 2
item 68),
69/1997
s. 22(11).

- (a) that any person referred to in paragraph (a) or paragraph (b) in sub-section (1) is likely to absent himself from the trial; or
- (b) that any person for whose attendance on a trial a subpoena ad testificandum subpoena duces tecum or summons has been issued is keeping out of the way to avoid service thereof—

the court may issue its warrant to apprehend such person, and may also order any such person to pay

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 416

a fine not exceeding 5 penalty units, but no such fine shall exempt such person from any other proceedings for disobeying such subpoena or summons.

S. 415(2)
amended by
No. 57/1989
s. 3(Sch.
item 42.42).

- (2) When a witness has been apprehended under a warrant as hereinbefore provided any bail justice may discharge such witness upon his entering into a recognisance with or without sureties at the discretion of such bail justice conditioned for his appearance at the time and place mentioned in the said warrant.

(15) Amendments and Errors⁴¹

No. 6103
s. 416.

416. Amendments in criminal proceedings

In or in connexion with criminal proceedings all powers of amendment reform or correction existing at the time of the commencement of the **Imperial Acts Application Act 1922** may notwithstanding any repeal effected thereby be exercised and acted upon as if the said Act had not been passed and no judgment plea record process warrant panel or return shall be affected by any mere rasure interlineation addition subtraction diminution or literal error therein and in affirmance of any judgment any such defect may be amended reformed or corrected.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 417

(16) *Summing Up*

417. Rights of prosecution on trials before juries

- (1) Upon every trial before a jury for an indictable offence the prosecution shall be allowed to address the jury a second time in support of its case for the purpose of summing up the evidence but the time at which it shall be entitled to exercise that right shall in all cases be after the close of all evidence and before the closing speech, if any, by or on behalf of the accused⁴².
- (2) The prosecution shall not be entitled to any further or other right of reply upon the ground that the Attorney-General or the Solicitor-General or a legal practitioner representing either of them appears for the prosecution at the trial nor upon any other ground.
- (3) Notwithstanding anything in this section if, in the closing speech by or on behalf of the accused, relevant facts are asserted which are not supported by any sworn evidence that is before the jury, the presiding judge may grant leave to the prosecution to make a supplementary submission to the jury confined to replying to such assertion⁴³.

S. 417
amended by
No. 7705 s. 10,
substituted by
No. 8870
s. 5(1),
amended by
Nos 12/1993
s. 4(f), 35/1996
s. 453(Sch. 1
item 16.12
(a)(i)–(iii)).

S. 417(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.12(b)).

S. 417(3)
amended by
Nos 37/1986
s. 5(c),
12/1993
s. 4(g),
35/1996
s. 453(Sch. 1
item 16.12(c)).

(17) *Statements by Prisoners*

418. Procedure for evidence by accused

Upon every trial before a jury for an indictable offence—

- (a) where the only witness called by the defence is the accused he shall be called as a witness immediately after the close of the evidence for the prosecution;

* * * * *

S. 418
substituted by
No. 8870
s. 5(1).

S. 418(b)
repealed by
No. 12/1993
s. 4(h)(i).⁴⁴

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 418

S. 418(c)
amended by
No. 12/1993
s. 4(h)(ii).

(c) in cases not falling within (a)⁴⁵—

S. 418(c)(i)
amended by
No. 12/1993
s. 4(h)(iii).

(i) the accused may be called as a witness at such stage as he may think fit after the close of the evidence for the prosecution and either before or after the opening, if any, to the jury of the evidence of any witnesses to be called on his behalf⁴⁶;

S. 418(c)(ii)
substituted by
No. 10084
s. 7(a),
amended by
No. 35/1996
s. 453(Sch. 1
item 16.13
(a)(i)(ii)).

(ii) the accused or, where the accused is defended by a legal practitioner, the accused's legal practitioner, is entitled⁴⁷—

S. 418(c)(ii)(A)
amended by
Nos 37/1986
s. 5(d)(i),
35/1996
s. 453(Sch. 1
item 16.13
(a)(iii)).

A. to open to the jury the evidence of any witness to be called in support of the defence (including, where the accused is defended by a legal practitioner, the evidence of the accused)⁴⁸; and

S. 418(c)(ii)(B)
amended by
No. 12/1993
s. 4(h)(iv).

B. when all the evidence, if any, for the defence and the final address, if any, for the prosecution have been concluded, to address the jury for the purpose of summing up the evidence⁴⁹;

S. 418(d)
amended by
Nos 10084
s. 7(b),
35/1996
s. 453(Sch. 1
item 16.13(b)).

(d) for the purpose of enabling him to determine the proper course of the proceedings the presiding judge shall, at the close of the case for the prosecution, question the accused's legal practitioner or, if he is unrepresented, the accused himself, as to what course the defence proposes to follow: and except by

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 419

leave of the court the defence shall not be presented in any manner other than that of which the court has been advised in response to such questioning.

* * * * *

S. 418(e) inserted by No. 37/1986 s. 5(d)(ii), repealed by No. 12/1993 s. 4(h)(v).⁵⁰

(18) View

419. View

No. 6103
s. 419.

The court may in any case if it thinks fit at any time before the jury have given their verdict direct that they shall view any place or thing which the court thinks it desirable that they should see and may give any directions necessary for that purpose. The validity of the proceedings shall not be affected by disobedience to any such directions, but if the fact is discovered before the verdict is given the court may if it thinks fit discharge the jury and direct that a new trial shall take place during the same sitting or may postpone the trial as provided by section three hundred and sixty.

(19) Verdicts. Attempts, &c.

Pt 3 Div. 1 Subdiv. (19) (Heading) amended by No. 65/1997 s. 82(2)(b).

* * * * *

S. 420 amended by Nos 6884 s. 2(2), 102/1986 s. 8(c)(d), repealed by No. 65/1997 s. 82(2)(c).⁵¹

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 420A

cf. [1792] 32
George III
c. LX s. 1.
S. 420A
inserted by
No. 9407
s. 2(e).

420A. Where person charged with unlawful publication of defamatory matter

On the trial of a person charged with the unlawful publication of defamatory matter—

- (a) the jury may give a general verdict of guilty or not guilty upon the whole matter in issue, in like manner as in other cases; and
- (b) the question whether any matter alleged to be defamatory is or is not capable of a defamatory meaning is a question of law.

S. 421
substituted by
No. 9576 s. 6.

421. Alternative verdicts on charge of murder

- (1) On an indictment or presentment for murder a person found not guilty of murder may be found guilty of—
 - (a) manslaughter;
 - (b) any offence of which he may be found guilty under an enactment specifically so providing;
 - (c) an offence against section 325; or
 - (d) an attempt to commit murder or an attempt to commit any offence of which he may by virtue of this sub-section be found guilty—but may not be found guilty of any other offence.
- (2) Where, on a person's trial on indictment or presentment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged therein, but the allegations in the indictment or presentment amount to or include (expressly or by necessary implication) an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 422

- (3) For the purposes of sub-section (2), any allegation of an offence shall be taken as including an allegation of an attempt to commit that offence.
- (4) Notwithstanding anything in this section, where at the trial of a person on indictment or presentment for an offence the judge considers that in the interest of justice it is expedient for the judge to do so, the judge may order that the guilt of the person in respect of all or any of the other offences of which the person may by virtue of this section be found guilty shall not be determined at the trial.

S. 421(4)
amended by
Nos 110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 16.8).

422. Procedure where facts proved on trial disclose more serious offence

S. 422
substituted by
No. 9576 s. 6.

- (1) Where on the trial of a person for an indictable offence it appears that the facts in evidence amount in law to another indictable offence carrying a heavier penalty, he shall not for that reason be entitled to be acquitted of the offence charged and, subject to sub-section (3), shall not be liable to be prosecuted afterwards for the other offence.
- (2) Where on the trial of a person on indictment or presentment for attempting to commit an offence or any assault or other act preliminary to an offence it appears that the facts in evidence amount in law to the completed offence, the person shall not for that reason be entitled to be acquitted of the offence charged and, subject to sub-section (3), shall not be liable to be prosecuted afterwards for the completed offence.
- (3) Notwithstanding sub-sections (1) and (2), in a case to which either of those sub-sections applies the trial judge may if he thinks fit in his discretion discharge the jury from giving any verdict and direct the person to be presented for the other

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 422A

indictable offence or the completed offence, as the case may be.

S. 422A
inserted by
No. 59/2004
s. 7.

422A. Alternative verdict for certain charges relating to driving

- (1) If on the trial of a person charged with an offence against section 24 (negligently causing serious injury) or 318 (culpable driving causing death) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 319 (dangerous driving causing death or serious injury), the jury may acquit the accused of the offence charged and find him or her guilty of the offence against section 319 and he or she is liable to punishment accordingly.
- (2) This section does not restrict the operation of section 421 or 422.

No. 6103
s. 423.
S. 423
amended by
Nos 9576
s. 11(1),
77/2005
s. 8(3)(b).

423. Jury may acquit of indictable offence and convict of unlawfully wounding etc.

Where on the trial of any person for any indictable offence except murder, manslaughter or defensive homicide the indictment or presentment alleges that the defendant did wound any person or did cause grievous bodily harm to any person and the jury are satisfied that the defendant is guilty of the wounding or of inflicting the grievous bodily harm charged in such indictment or presentment but are not satisfied that the defendant is guilty of the indictable offence charged they may acquit him of such indictable offence and find him guilty of unlawfully wounding or of inflicting grievous bodily harm (as the case may be); and he shall be liable to punishment accordingly.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 424

424. Alternative verdict on poisoning charge

Where on the trial of a person for the indictable offence of unlawfully and maliciously administering poison so as thereby to endanger life or for any other indictable offence mentioned in section twenty-two of this Act the jury are not satisfied that the accused is guilty thereof but are satisfied that he is guilty of any indictable offence mentioned in section twenty-three they may acquit him of the offence charged and find him guilty of the offence against section 23; and he shall be liable to punishment accordingly.

No. 6103
s. 424.
S. 424
amended by
No. 9576
s. 11(1).

425. Alternative verdicts for certain charges of sexual offences

S. 425
substituted by
Nos 7577 s. 4,
9509 s. 8,
8/1991 s. 5.

(1) If on the trial of a person charged with rape the jury are not satisfied that he or she is guilty of rape or of an attempt to commit rape but are satisfied that he or she is guilty of—

- (a) assault with intent to commit rape; or
- (b) an offence against section 39 (indecent assault); or

S. 425(1)(b)
amended by
No. 81/1991
s. 10(Sch.
item 1.2).

- (c) assault with intent to commit an offence against section 45(1) (sexual penetration of child under the age of 16); or

S. 425(1)(c)
amended by
No. 67/2000
s. 7(4).

* * * * *

S. 425(1)(d)
repealed by
No. 67/2000
s. 7(5).

- (e) an offence against section 47(1) (indecent act with child under the age of 16); or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 425

(f) an offence against section 18 (causing injury intentionally or recklessly)—

the jury may acquit the accused of rape and find him or her guilty of whichever of those offences they are satisfied he or she is guilty and he or she is liable to punishment accordingly.

S. 425(2)
repealed by
No. 81/1991
s. 10(Sch.
item 1.3).

* * * * *

S. 425(3)
amended by
No. 67/2000
s. 7(6).

(3) If on the trial of a person charged with an offence against section 44 or 45(1) the jury are not satisfied that he or she is guilty of the offence charged or of an attempt to commit the offence charged but are satisfied that he or she is guilty of—

(a) assault with intent to commit the offence charged; or

(b) an offence against section 47(1) (indecent act with child under the age of 16); or

(c) an offence against section 18 (causing injury intentionally or recklessly)—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is guilty and he or she is liable to punishment accordingly.

S. 425(3)
re-numbered
as s. 425(4) by
No. 65/1991
s. 4.

(4) This section does not restrict the operation of section 421 or 422.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 427

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S. 426
amended by
No. 9576
s. 11(1),
repealed by
No. 9576
s. 11(1).

427. Alternative verdict for destroying property charges

S. 427
repealed by
No. 8425
s. 2(1)(h),
new s. 427
inserted by
No. 9228
s. 2(1)(j),
amended by
No. 48/1997
s. 58(1).

- (1) Where a person is charged with committing an offence against section 197(2) or section 197(3) and the jury are not satisfied that he is guilty of that offence but are satisfied that he is guilty of an offence against section 197(1), the jury may return as their verdict that he is not guilty of the offence charged but is guilty of the offence against section 197(1).
- (2) If on the trial of a person charged with an offence against section 197A the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 197, the jury may acquit the accused of the offence charged and find him or her guilty of whichever of the offences against section 197 they are satisfied that he or she is guilty of and he or she is liable to punishment accordingly.

S. 427(2)
inserted by
No. 48/1997
s. 58(2).

428. Alternative verdict for charges of unauthorised modification of data to cause impairment

S. 428
amended by
Nos 8425
s. 2(1)(m),
9019
s. 2(1)(Sch.
item 45),
repealed by
No. 9576
s. 11(1),
new s. 428
inserted by
10/2003 s. 7.

If on the trial of a person charged with an offence against section 247C the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of—

- (a) an offence under section 197(1); or
- (b) an offence under section 247D—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 429

guilty and he or she is liable to punishment accordingly.

New s. 429
inserted by
No. 10/2003
s. 7.

**429. Alternative verdict for charges of unauthorised
impairment of electronic communication**

If on the trial of a person charged with an offence against section 247D the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that he or she is guilty of—

- (a) an offence under section 197(1); or
- (b) an offence under section 247C—

the jury may acquit the accused of the offence charged and find him or her guilty of whichever of those offences they are satisfied that he or she is guilty and he or she is liable to punishment accordingly.

Ss 429–434
repealed by
No. 8425
s. 2(1)(h).

* * * * *

S. 435
substituted by
No. 9576
s. 11(1).

435. Alternative verdict for charges relating to riots

Where on the trial of a person for any offence against section 206(1) the jury are not satisfied that he is guilty of the offence charged but are satisfied that he is guilty of an offence against section 206(2), the jury may return as their verdict that he is not guilty of the offence charged but is guilty of the offence against section 206(2); and he shall be liable to punishment accordingly.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 436

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Pt 3 Div. 1
Subdiv. (19A)
(Heading)
inserted by
No. 8870
s. 6(1),
repealed by
No. 25/1989
s. 20(h)(ii).

S. 435A
inserted by
No. 8870
s. 6(1),
amended by
No. 9848
s. 18(1),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

(20) Records after Amendment

436. Records to be drawn up in amended form

If it becomes necessary at any time for any purpose to draw up a formal record in any case where any amendment has been made under this Act,⁵² such record shall be drawn up in the form in which the indictment or presentment was after such amendment was made without taking any notice of the fact of such amendment having been made.

No. 6103
s. 436.
S. 436
amended by
No. 9902
s. 2(1)(Sch.
item 54).

(21) Judgments

437. Judgment not to be reversed because juror not returned as a juror

No judgment after verdict in respect of any indictable offence shall be stayed or reversed because any person has served upon the jury who has not been returned as a juror by the Juries Commissioner or other officer.

S. 437
substituted by
No. 9576
s. 11(1),
amended by
No. 53/2000
s. 94(3).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 439

S. 438
repealed by
No. 9576
s. 11(1).

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S. 439
substituted by
No. 7184 s. 6.

439. Payment of fine forwarded to Prothonotary

S. 439(1)–(5)
repealed.⁵³

* * * * *

S. 439(6)
amended by
Nos 8338
s. 7(a)(d),
57/1989
s. 3(Sch.
item 42.44).

- (6) The officer in charge of a prison shall, on receiving payment of or towards a fine, forthwith pay the amount received to the Prothonotary or to the registrar of the County Court or the appropriate registrar of the Magistrates' Court (as the case requires).

S. 439(7)
amended by
Nos 7705
s. 10, 10152
s. 9(a).

- (7) For the purposes of this section "**Prothonotary**" includes Deputy Prothonotary.

(22) Restitution of Property Stolen &c.

Ss 440–442
repealed by
No. 8425
s. 2(1)(h).

* * * * *

S. 443
amended by
No. 7577 s. 5,
repealed by
No. 8425
s. 2(1)(h).

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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 443A

**443A. DPP may give directions for release of property
tendered in evidence**

S. 443A
inserted by
No. 8280 s. 15.

- (1) Where property is tendered in evidence during a preliminary examination for an indictable offence and some accused person is committed for trial for an offence with respect to the property the Director of Public Prosecutions, upon application made to him in writing, may give directions in writing that the property be released to the applicant.
- (2) The release of property under sub-section (1) may be subject to a condition that the property released shall be produced at the trial and to such other conditions as the Director of Public Prosecutions thinks fit.
- (3) The Director of Public Prosecutions may require a person to whom property is released under this section to give an undertaking to comply with the conditions to which the release is subject and any person who fails without reasonable cause to comply with an undertaking given by him shall be guilty of a summary offence and liable to a level 10 fine (10 penalty units maximum).
- (4) Directions given under sub-section (1) shall not affect the legal title to the property or any legal right to possession of the property.
- (5) The Director of Public Prosecutions shall not be subject to any liability for or with respect to any directions given by him under sub-section (1).

S. 443A(1)
amended by
No. 9848
s. 18(1).

S. 443A(2)
amended by
No. 9848
s. 18(1).

S. 443A(3)
amended by
Nos 9554
s. 2(2)(Sch. 2
item 61), 9848
s. 18(1),
49/1991
s. 119(1)
(Sch. 2
item 69),
69/1997
s. 22(12).

S. 443A(5)
amended by
No. 9848
s. 18(1).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 444

(23) Procedure on Disagreement of Jury

No. 6103
s. 444.

444. Procedure on disagreement of jury

Where on the trial of a person for any offence the jury after six hours deliberation are unable to agree on their verdict and the jury are discharged from giving a verdict the court may direct that a new trial shall take place during the same sitting or may postpone the trial as provided by section three hundred and sixty.

(24) Power to Commit for Perjury

No. 6103
s. 445.
S. 445
amended by
Nos 7705
s. 10, 7876
s. 2(3), 9008
s. 2(1)
(Sch.
item 2(g)),
110/1986
s. 140(2),
57/1989
s. 3(Sch.
item 42.45).

445. Any court or judge may direct that a person be prosecuted for perjury

The Supreme Court or the County Court or a judge of any court of record or the Magistrates' Court, or the sheriff or his lawful deputy before whom any inquiry or trial is held which the said sheriff or deputy is by law required or authorized to hold, in case it appears to him or it that any person has been guilty of wilful and corrupt perjury in any evidence given or in any affidavit deposition examination answer or other proceeding made or taken before him or it, may direct such person to be tried for such perjury at some sittings of the Supreme Court or the County Court and may commit such person to gaol in the meantime or may admit him to bail to appear at his trial or grant such bail; and may require any person he or it thinks fit to enter into a recognisance conditioned to appear or to appear and give evidence against such person so directed to be tried as aforesaid.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 446

(25) Crown Cases Reserved

446. Questions of law may be reserved

- (1) If on the trial of any person convicted of any indictable offence in or before the Supreme Court or the County Court or on the hearing of any appeal in a criminal proceeding to the County Court from the Magistrates' Court any question of difficulty in point of law has arisen, the court may in its discretion reserve such question of law for the consideration and determination of the Court of Appeal⁵⁴; and in any such case the court may respite the execution of the judgment on such conviction or postpone the judgment until such question of law has been considered and determined; and in either case the court in its discretion shall commit the person convicted to prison, or shall admit him to bail to appear before the court at such time or times and place as the court directs and receive judgment or render himself into custody as the case may be.
- (2) If on the trial of an accused person in the Supreme Court or the County Court, a question of difficulty in point of law arises before a jury is empanelled, the court may, on application by the accused, determine that the question of law is such that its determination could render the conduct of the trial unnecessary and reserve the question of law for the consideration and determination of the Court of Appeal⁵⁵.
- (3) If a court reserves a question of law under subsection (2), the court must adjourn the trial until the question of law has been considered and determined by the Court of Appeal⁵⁶ and may commit the accused to prison or admit him or her to bail to appear before the court at the time and place that the court directs.

No. 6103
s. 446.
S. 446
amended by
Nos 7705
s. 10, 9008
s. 2(1)(Sch.
item 2(h)),
110/1986
s. 140(2),
51/1989
s. 143(c),
60/1993
s. 28(1),
109/1994
s. 25(1).

S. 446(2)
inserted by
No. 60/1993
s. 28(2),
amended by
No. 109/1994
s. 25(1).

S. 446(3)
inserted by
No. 60/1993
s. 28(2),
amended by
No. 109/1994
s. 25(1).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 447

No. 6103
s. 447.

447. Case to be stated

S. 447(1)
amended by
Nos 7705
s. 10, 110/1986
s. 140(2),
60/1993
s. 28(3),
109/1994
s. 25(2)(a)–(g).

- (1) The court by which such question of law has been so reserved shall thereupon state a case, setting forth the question or questions of law which has or have been so reserved with the special circumstances upon which the same has arisen and shall sign and transmit the same within a reasonable time to the Court of Appeal; and the Court of Appeal shall have power to hear and finally determine the said question or questions, and thereupon, in the case of a question of law reserved under section 446(2), to remit the question and the determination of the Court of Appeal back to the court which reserved the question or, in any other case, to affirm or quash a conviction or to affirm amend or reverse any judgment which has been given and in case of quashing any conviction or reversing any judgment to direct a new trial to be had, or order an entry to be made on the record that in the judgment of the Court of Appeal the party convicted ought not to have been convicted, or to direct judgment to be given thereon at some other session of the Supreme Court or the County Court if no judgment has been before then given, or to make such other order as justice may require: Provided that the Court of Appeal notwithstanding that it is of opinion that any question reserved should be answered in favour of the person convicted may refrain from quashing the conviction or reversing the judgment if it considers that no substantial miscarriage of justice has actually occurred. In case a new trial is directed and the person convicted is in custody the Court of Appeal may make such order as to bail as it thinks fit. The judgment and order (if any) of the Court of Appeal and an office copy thereof shall

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 447

be delivered or transmitted by the Registrar of the Court of Appeal to the associate or registrar as the case may be, who shall enter the same on the original record in proper form^{57, 58}.

- (2) The said associate or registrar shall if the accused person is in custody forthwith deliver or transmit to the sheriff or officer in charge of the prison such office copy which shall be a sufficient warrant to such sheriff or officer in charge of the prison and all other persons for the execution of the judgment as the same has been affirmed or amended, and execution shall be thereupon executed upon such judgment; and for the discharge of the person convicted from further imprisonment under the judgment if it has been reversed and in that case such sheriff or officer in charge of the prison shall forthwith discharge him from such imprisonment provided that if a new trial is directed such person may unless released on bail be detained in safe custody to await such new trial.

S. 447(2)
amended by
Nos 7705
s. 10, 8338
s. 7(c).

- (3) If the Court of Appeal has reversed a judgment and has not directed a new trial the bail (if any) given under the last preceding section shall be vacated by the Supreme Court or the County Court as the case may be; and if the Supreme Court or the County Court is directed to give judgment, the said court shall proceed to give judgment at the session directed by the Court of Appeal, and if no such session has been directed may give such judgment at a session held at any place at which the court sits and at which the person convicted is bound to appear or at any court at which he does appear⁵⁹.

S. 447(3)
amended by
Nos 7705
s. 10, 9008
s. 2(1)(Sch.
item 2(j)),
109/1994
s. 25(3)(a).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 448

No. 6103
s. 448.
S. 448
amended by
No. 109/1994
s. 25(3)(b).

448. Case may be sent back for amendment

The Court of Appeal when a case has been reserved for its opinion shall have power if it thinks fit to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly and the judgment of the Court of Appeal shall be delivered after it has been amended⁶⁰.

No. 6103
s. 449.
S. 449
amended by
Nos 7705
s. 10, 9848
s. 18(1),
110/1986
s. 140(2),
109/1994
s. 25(3)(b).

449. Refusal of Court to reserve a question of law⁶¹

When the Supreme Court or the County Court refuses to reserve any question of law under the provisions of this Act the applicant may apply to the Court of Appeal for a rule or order nisi calling on that Court and also upon the Director of Public Prosecutions to show cause why such question should not be reserved for the opinion of the Court of Appeal, and the Court of Appeal may make the same absolute or discharge it with or without costs as it thinks proper.

No. 6103
s. 450.
S. 450
amended by
Nos 7705
s. 10, 110/1986
s. 140(2),
109/1994
s. 25(3)(b).

450. Court to state case upon being served with order absolute

The Court upon being served with any such rule or order absolute shall reserve such question of law accordingly for the opinion of the Court of Appeal⁶²; and thereupon the procedure defined by sections four hundred and forty-six four hundred and forty-seven and four hundred and forty-eight shall with any necessary modifications become applicable as if that Court had consented to reserve such question of law.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 450A

450A. Director of Public Prosecutions may refer point of law to Court of Appeal⁶³

S. 450A
inserted by
No. 9242 s. 2.

- (1) Where a person tried on an indictment or presentment or who has appealed to the County Court from the Magistrates' Court in a criminal proceeding has been acquitted (whether in respect of the whole or part of the indictment or presentment or charge) the Director of Public Prosecutions may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer the point of law to the Court of Appeal, and the Court of Appeal shall, in accordance with this section, consider the point of law and give its opinion on it.
- (2) For the purpose of its consideration of a point referred to it under this section the Court of Appeal shall hear argument—
 - (a) by the Director of Public Prosecutions or by a legal practitioner on his behalf; and
 - (b) where the acquitted person desires to present any argument before the court, by a legal practitioner on his behalf or, with the leave of the court, by the acquitted person himself.
- (3) Where on a point of law referred to the Court of Appeal under this section an acquitted person appears in person or by a legal practitioner on his behalf pursuant to paragraph (b) of sub-section (2), he shall be entitled to reasonable costs as settled by the Taxing Master.
- (4) A reference under this section shall not in any way affect the trial in relation to which the reference is made or any acquittal in that trial.

S. 450A(1)
amended by
Nos 9576
s. 11(1), 9848
s. 18(1),
51/1989
s. 143(d)(e),
109/1994
s. 25(3)(b).

S. 450A(2)
amended by
No. 109/1994
s. 25(3)(b).

S. 450A(2)(a)
amended by
Nos 9848
s. 18(1),
35/1996
s. 453(Sch. 1
item 16.14).

S. 450A(2)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.14).

S. 450A(3)
amended by
Nos 109/1994
s. 25(3)(b),
35/1996
s. 453(Sch. 1
item 16.14).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 453

(26) Costs

Ss 451, 452
amended by
No. 110/1986
s. 140(2),
repealed by
No. 35/1996
s. 453(Sch. 1
item 16.15).

* * * * *

No. 6103
s. 453.

453. Scale of charges

S. 453
amended by
Nos 110/1986
s. 140(2),
35/1996
s. 453(Sch. 1
item 16.16).

The court may establish a scale of fees and charges for the conduct of business in the criminal jurisdiction of such court; and the Taxing Master of the Court shall subject to any direction given by the court assess and allow all bills of costs according to such scale as far as the same applies; and for all business not comprehended within the said scale the like fees and charges shall be allowed as are sanctioned by the court for the conduct of the civil business of the said court.

(27) Court Fees Not Payable by Defendants

No. 6103
s. 454.

454. Court fees not payable by defendants

S. 454
amended by
Nos 9576
s. 11(1),
57/1989
s. 3(Sch.
item 42.46).

It shall not be lawful to receive any court fees for the issuing of process on behalf of a person charged with an indictable offence in any court; nor to receive a fee from any such person for taking a recognisance of bail or issuing any writ or recording any appearance or plea to any indictment or presentment or discharging any recognisance.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 455

(28) *No Certiorari. Warrants Not Void for Defects*

455. Presentments not to be removed by certiorari

No. 6103
s. 455.
S. 455
amended by
No. 7705 s. 10.

- (1) No presentment or indictment in the County Court shall be removed by writ of certiorari into the Supreme Court.
- (2) No summary conviction under this Act and no adjudication made on appeal therefrom to the County Court shall be quashed for want of form, or be removed by certiorari into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that the party has been convicted and there is a good and valid conviction to sustain the same.

(29) *Actions*

456. Provisions as to action against persons acting in pursuance of Act

No. 6103
s. 456.

- (1) No plaintiff shall recover in any civil proceeding against any person or anything done in pursuance of this Act if a tender of sufficient amends was made before the civil proceeding was brought or if a sufficient offer of compromise is made on behalf of the defendant after the civil proceeding is brought.
- (2) If a verdict passes for the defendant or the plaintiff discontinues the civil proceeding after issue joined, or if judgment is given against the plaintiff, the defendant shall recover costs as between solicitor and client.

S. 456(1)
amended by
No. 19/1989
s. 16(Sch.
item 16.9(a)–
(d)).

S. 456(2)
amended by
No. 19/1989
s. 16(Sch.
item
16.10(a)(b)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 456AA

(29A) *Giving name and address on demand*

Pt 3 Div. 1
Subdiv. (29A)
(Heading and
s. 456AA)
inserted by
No. 129/1993
s. 4 (as
amended by
No. 33/1994
s. 27(5)).

456AA. Requirement to give name and address

S. 456AA
inserted by
No. 129/1993
s. 4 (as
amended by
No. 33/1994
s. 27(5)).

- (1) A member of the police force may request a person to state his or her name and address if the member believes on reasonable grounds that the person—
 - (a) has committed or is about to commit an offence, whether indictable or summary; or
 - (b) may be able to assist in the investigation of an indictable offence which has been committed or is suspected of having been committed.
- (2) A member of the police force who makes a request under sub-section (1) must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.
- (3) A person who, in response to a request made by a member of the police force in accordance with this section—
 - (a) refuses or fails to comply with the request; or
 - (b) states a name that is false in a material particular; or

S. 456AA(3)
amended by
No. 69/1997
s. 22(13).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 456AA

- (c) states an address other than the full and correct address of his or her ordinary place of residence or business—

is guilty of a summary offence punishable on conviction by a level 11 fine (5 penalty units maximum).

- (4) A person who is requested by a member under sub-section (1) to state his or her name and address may request the member to state, orally or in writing, his or her name, rank and place of duty.
- (5) A member of the police force who, in response to a request under sub-section (4)—
- (a) refuses or fails to comply with the request; or
- (b) states a name or rank that is false in a material particular; or
- (c) states as his or her place of duty an address other than the name of the police station which is the member's ordinary place of duty; or
- (d) refuses to comply with the request in writing if requested to do so—

S. 456AA(5)
amended by
No. 69/1997
s. 22(13).

is guilty of a summary offence punishable on conviction by a level 11 fine (5 penalty units maximum).

* * * * *

Pt 3 Div. 1
Subdiv. (29B)
(Heading and
ss 456A–
456F)
inserted by
No. 120/1993
s. 79,
repealed by
No. 30/1997
s. 6.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 457

(30) *Apprehension of Offenders*

S. 457
substituted by
No. 8247 s. 2.

457. No person to be arrested without warrant except under this Act etc.

After the commencement of the **Crimes (Powers of Arrest) Act 1972** no person shall be arrested without warrant except pursuant to the provisions of—

- (a) this Act; or
- (b) some other Act expressly giving power to arrest without warrant.

S. 458
substituted by
No. 8247 s. 2,
amended by
No. 57/1989
s. 3(Sch.
item 42.47).

458. Person found committing offences may be arrested without warrant by any person

(1) Any person, whether a member of the police force or not, may at any time without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law or deliver to a member of the police force to be so taken, any person—

- (a) he finds committing any offence (whether an indictable offence or an offence punishable on summary conviction) where he believes on reasonable grounds that the apprehension of the person is necessary for any one or more of the following reasons, namely—
 - (i) to ensure the appearance of the offender before a court of competent jurisdiction;
 - (ii) to preserve public order;
 - (iii) to prevent the continuation or repetition of the offence or the commission of a further offence; or
 - (iv) for the safety or welfare of members of the public or of the offender;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 458

-
- (b) when instructed so to do by any member of the police force having power under this Act to apprehend that person; or
- (c) he believes on reasonable grounds is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend that person in the circumstances of the case.
- (2) For the purposes of paragraph (a) in sub-section (1) **"offence"** means offence at common law or a contravention of or failure to comply with a provision of an Act of Parliament and unless otherwise by Act of Parliament expressly provided does not include a contravention of or failure to comply with a rule regulation by-law or other law made under an Act of Parliament.
- (3) A person who has been apprehended without warrant pursuant to the provisions of paragraph (a) in sub-section (1) in respect of any offence punishable on summary conviction (not being an indictable offence punishable summarily) and taken into custody shall be held in the custody of the person apprehending him only so long as any reason referred to in the said paragraph for his apprehension continues and where, before that person is charged with an offence, it appears to the person arresting that person that the reason no longer continues the person arresting that other person shall, without any further or other authority than this sub-section, release that person from custody without bail or cause him to be so released and whether or not a summons has been issued against him with respect to the offence alleged.
- S. 458(1)(c)**
amended by
No. 117/1986
s. 6(Sch. 1
item 1(8)(a)).
- S. 458(3)**
amended by
No. 9008
s. 2(1)(Sch.
item 2(k)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 459

S. 459
substituted by
No. 8247 s. 2.

459. Powers of member of police force to apprehend offenders

In addition to exercising any of the powers conferred by section 458 or by or under any other Act a member of the police force may at any time without warrant apprehend any person—

- (a) he believes on reasonable grounds has committed an indictable offence in Victoria (including any indictable offence which may be heard or determined summarily); or
- (b) he believes on reasonable grounds has committed an offence elsewhere which if committed in Victoria would be an indictable offence against the law of Victoria (including any indictable offence which may be heard or determined summarily).

S. 459A
inserted by
No. 9576
s. 7(a).

459A. Entry and search of premises

- (1) A member of the police force may, for the purpose of arresting under section 458 or 459 or any other enactment a person whom he—
 - (a) believes on reasonable grounds—
 - (i) to have committed in Victoria a serious indictable offence;
 - (ii) to have committed an offence elsewhere which if committed in Victoria would be a serious indictable offence; or
 - (iii) to be escaping from legal custody; or
 - (b) finds committing a serious indictable offence—

enter and search any place where the member of the police force on reasonable grounds believes him to be.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 461

- (2) In order to enter a place pursuant to sub-section (1), a member of the police force may, if it is necessary to do so, use reasonable force.
- (3) In this section "**serious indictable offence**" has the same meaning as it has in section 325.

* * * * *

S. 460 substituted by No. 8247 s. 2, amended by Nos 8410 s. 4, 9008 s. 2(1)(Sch. item 2(l)), substituted by No. 10076 s. 4(1), amended by No. 16/1986 s. 30, repealed by No. 37/1988 s. 4.

461. Arrest on reasonable grounds not to be taken to be unlawful

S. 461 amended by No. 7546 s. 11, substituted by No. 8247 s. 2.

- (1) Where an apprehension is made under a belief on reasonable grounds in accordance with the provisions of section 458 or section 459 the apprehension shall not cease to be lawful or be taken to be unlawful where it subsequently appears or is found that the person apprehended did not commit the offence alleged.
- (2) A member of the police force shall not be bound to take into custody or to take before a bail justice or the Magistrates' Court any person found committing an offence if such member believes on reasonable grounds that proceedings can effectively be brought against that person by way of summons.

S. 461(2) amended by No. 57/1989 s. 3(Sch. item 42.54).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 462

S. 462
substituted by
No. 8247 s. 2.

462. Definition of "finds committing"

In this Act the expression "finds committing" and any derivative thereof extends to the case of a person found doing any act or so behaving or conducting himself or in such circumstances that the person finding him believes on reasonable grounds that the person so found is guilty of an offence.

S. 462A
inserted by
No. 9576
s. 7(b).

462A. Use of force to prevent the commission of an indictable offence

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

S. 463
repealed by
No. 8247 s. 2.

* * * * *

S. 463A
inserted by
No. 7088
s. 2(e),
amended by
No. 57/1989
s. 3(Sch.
item 42.55).

463A. Arrest of offenders on board aircraft

- (1) The person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom he finds committing, or reasonably suspects of having committed, or of having attempted to commit, an offence on or in relation to or affecting the use of an aircraft and that person in command or a person authorized by him may hold the person so arrested in custody until he can be brought before a bail justice or the Magistrates' Court or other proper authority to be dealt with in accordance with law.
- (2) The person in command of an aircraft may, where he considers it necessary so to do in order to prevent an offence on or in relation to or affecting the use of an aircraft or to avoid danger to the

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 463B

safety of the aircraft or of persons on board the aircraft, with such assistance as he thinks necessary—

- (a) place a person who is on board the aircraft under restraint or in custody; and
- (b) if the aircraft is not in the course of a flight—remove a person from the aircraft.

463B. Prevention of suicide

S. 463B
inserted by
No. 7546 s. 3.

Every person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which he believes on reasonable grounds would, if committed, amount to suicide.

* * * * *

S. 464
repealed by
No. 8425
s. 2(1)(h).

(30A) *Custody and Investigation*⁶⁴

Pt 3 Div. 1
Subdiv. (30A)
(Heading and
ss 464–464J)
inserted by
No. 37/1988
s. 5.

464. Definitions

New s. 464
inserted by
No. 37/1988
s. 5.

- (1) For the purposes of this Subdivision a person is in custody if he or she is—
 - (a) under lawful arrest by warrant; or
 - (b) under lawful arrest under section 458 or 459 or a provision of any other Act; or
 - (c) in the company of an investigating official and is—
 - (i) being questioned; or
 - (ii) to be questioned; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

(iii) otherwise being investigated—

to determine his or her involvement (if any) in the commission of an offence if there is sufficient information in the possession of the investigating official to justify the arrest of that person in respect of that offence.

(2) In this Subdivision—

"appropriate authority" means—

- (a) in relation to the Commonwealth or the Australian Capital Territory—the Commissioner (within the meaning of section 23WA of the Crimes Act 1914 of the Commonwealth) of the Australian Federal Police or any other prescribed authority; or
- (b) in relation to any other participating jurisdiction—an authority exercising, in relation to the police force of that jurisdiction, functions corresponding to those of the Chief Commissioner of Police or any other prescribed authority;

"approved mental health service" has the same meaning as in the **Mental Health Act 1986**;

S. 464(2)
def. of
"appropriate
authority"
inserted by
No. 16/2002
s. 5.

S. 464(2)
def. of
"approved
mental health
service"
inserted by
No. 81/1997
s. 16(a).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

"authorised person" means a person appointed as an authorised person under subsection (3)⁶⁵;

S. 464(2)
def. of
"authorised
person"
inserted by
No. 25/1989
s. 11(a),
repealed by
No. 23/1991
s. 8(1)(a),
new def. of
"authorised
person"
inserted by
No. 23/1991
s. 8(1)(b).

"compulsory procedure" means the taking of an intimate or non-intimate sample or the conduct of a physical examination;

S. 464(2)
def. of
"compulsory
procedure"
inserted by
No. 129/1993
s. 6(a).

"corresponding law" means a law relating to the carrying out of forensic procedures and DNA databases that—

S. 464(2)
def. of
"correspond-
ing law"
inserted by
No. 16/2002
s. 5.

- (a) substantially corresponds to this Subdivision; or
- (b) is prescribed for the purposes of this definition;

"crime scene index" means an index of DNA profiles derived from forensic material found or other material found—

S. 464(2)
def. of "crime
scene index"
inserted by
No. 16/2002
s. 5.

- (a) at any place (whether within or outside Victoria) where an offence (whether under the law of Victoria or of a participating jurisdiction) was, or is reasonably suspected of having been, committed; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

- (b) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
- (c) on an object or person reasonably believed to have been associated with the commission of the offence;

S. 464(2)
def. of
"dentist"
inserted by
No. 129/1993
s. 6(a),
substituted by
No. 26/1999
s. 107(Sch.
item 1).

"dentist" means a registered dentist within the meaning of the **Dental Practice Act 1999**;

S. 464(2)
def. of
"detained or
protected
person"
inserted by
No. 84/1989
s. 4(a),
amended by
No. 93/1990
s. 27(a).

"detained or protected person" means a person who—

- (a) is held in a prison, police gaol, youth training centre or youth residential centre; or
- (b) is held in an institution within the meaning of section 56 of the **Corrections Act 1986**; or
- (c) is a security resident within the meaning of the **Intellectually Disabled Persons' Services Act 1986**; or
- (d) is an involuntary or security patient within the meaning of the **Mental Health Act 1986**;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

"DNA database" means—

- (a) in relation to Victoria—the DNA database referred to in section 464ZFD or the DNA database system; and
- (b) in relation to a participating jurisdiction—a DNA database system that is kept under a corresponding law of the participating jurisdiction;

S. 464(2)
def. of "DNA
database"
inserted by
No. 16/2002
s. 5.

"DNA database system" means a database (whether in computerised or other form and however described) containing—

- (a) one or more of the following indexes of DNA profiles—
 - (i) a crime scene index;
 - (ii) a missing persons index;
 - (iii) an unknown deceased persons index;
 - (iv) a serious offenders index;
 - (v) a volunteers (unlimited purposes) index;
 - (vi) a volunteers (limited purposes) index;
 - (vii) a suspects index—
and information that may be used to identify the person from whose forensic material each DNA profile was derived;
and
- (b) a statistical index; and
- (c) any other prescribed index;

S. 464(2)
def. of "DNA
database
system"
inserted by
No. 16/2002
s. 5.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

S. 464(2)
def. of
"fingerprints"
inserted by
No. 38/1988
s. 5(a).

"fingerprints" includes finger, palm, toe and sole prints⁶⁶;

S. 464(2)
def. of
"fingerscan"
inserted by
No. 41/2004
s. 3.

"fingerscan" means fingerprints taken by means of a device to obtain a record of the fingerprints;

Example

Fingerprints may be taken by a scanning device to obtain a digital record of the fingerprints.

S. 464(2)
def. of
"forensic
material"
inserted by
No. 16/2002
s. 5.

"forensic material" means any material—

- (a) from which a DNA profile may be derived; and
- (b) which is obtained from samples taken or procedures conducted in accordance with this Subdivision—

but does not include a sample taken for the sole purpose of establishing the identity of the person from whom it is taken;

S. 464(2)
def. of
"forensic
procedure"
inserted by
No. 129/1993
s. 6(b).

"forensic procedure" means the taking of a sample from any part of the body, whether an intimate or non-intimate sample or any other type of sample, or the conduct of any procedure on or physical examination of the body but does not include the taking of a fingerprint;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

"held in a prison, police gaol, youth training centre or youth residential centre"
means⁶⁷—

- (a) deemed by section 4 of the **Corrections Act 1986** to be in the custody of the Secretary within the meaning of that Act; or
- (b) deemed by section 11(7) of the **Corrections Act 1986** to be in the custody of the Chief Commissioner of Police; or
- (c) detained in a youth training centre in the custody of the Secretary within the meaning of the **Children and Young Persons Act 1989**; or
- (d) detained in a youth residential centre in the custody of the Secretary within the meaning of the **Children and Young Persons Act 1989**;

S. 464(2)
def. of
"held in a
prison, police
gaol, youth
training centre
or youth
residential
centre"
inserted by
No. 38/1988
s. 5(a),
amended by
Nos 93/1990
s. 27(b)(i)(ii),
56/1989
s. 286(Sch. 2
item 7.3),
46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 6)).

"intimate part of the body" means the genital or anal region of a male or female or the breast of a female;

S. 464(2)
def. of
"intimate part
of the body"
inserted by
No. 129/1993
s. 6(c).

"intimate sample" means—

- (a) a blood sample;
- (b) a sample of pubic hair, including the root if required;
- (c) a swab, washing or sample taken from the external genital or anal region of a male or female or from the breast of a female;

S. 464(2)
def. of
"intimate
sample"
inserted by
No. 129/1993
s. 6(c).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

- (d) a sample of saliva;
- (e) a scraping taken from the mouth;
- (f) a dental impression;

"investigating official" means a member of the police force or a person appointed by or under an Act (other than a member or person who is engaged in covert investigations under the orders of a superior) whose functions or duties include functions or duties in respect of the prevention or investigation of offences;

S. 464(2) def. of "legal practitioner" repealed by No. 18/2005 s. 18(Sch. 1 item 27.3).

* * * * *

S. 464(2) def. of "medical practitioner" inserted by No. 129/1993 s. 6(d), substituted by No. 81/1997 s. 16(b).

"medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 464(2) def. of "mental impairment" inserted by No. 23/1991 s. 4(a).

"mental impairment" includes impairment because of mental illness, intellectual disability, dementia or brain injury;

S. 464(2) def. of "missing persons index" inserted by No. 16/2002 s. 5.

"missing persons index" means an index of DNA profiles, derived from forensic material, of—

- (a) persons who are missing; and
- (b) volunteers who are relatives by blood of missing persons;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

"non-intimate part of the body" means any part of the body other than an intimate part;

S. 464(2)
def. of
"non-intimate
part of the
body"
inserted by
No. 129/1993
s. 6(e).

"non-intimate sample" means—

S. 464(2)
def. of
"non-intimate
sample"
inserted by
No. 129/1993
s. 6(e).

- (a) a sample of hair, other than pubic hair, including the root if required;
- (b) a sample of matter taken from under a fingernail or toenail;
- (c) a swab, washing or sample taken from any external part of the body other than the genital or anal region of a male or female or the breast of a female;

"nurse" means a registered nurse within the meaning of the **Nurses Act 1993**;

S. 464(2)
def. of
"nurse"
inserted by
No. 81/1997
s. 16(c).

"participating jurisdiction" means the Commonwealth, another State or a Territory in which there is a corresponding law in force;

S. 464(2)
def. of
"participating
jurisdiction"
inserted by
No. 16/2002
s. 5.

"physical examination" means an examination of the external part of a person's body requiring touching of the person or removal of the person's clothing;

S. 464(2)
def. of
"physical
examination"
inserted by
No. 129/1993
s. 6(e).

"police gaol" has the same meaning as in the **Corrections Act 1986**;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

S. 464(2)
def. of
"prison"
amended by
No. 56/1989
s. 286(Sch. 2
item 7.4).

"prison" has the same meaning as in the
Corrections Act 1986 but includes a youth
training centre established under section 249
of the **Children and Young Persons Act**
1989;

S. 464(2)
def. of
"registered
medical
practitioner"
inserted by
No. 23/1994
s. 118(Sch. 1
item 15.1),
repealed by
No. 81/1997
s. 16(d).

* * * * *

S. 464(2)
def. of
"related
material and
information"
inserted by
No. 81/1997
s. 16(e),
amended by
No. 27/2006
ss 3(a), 17(1).

"related material and information"—

- (a) in relation to any sample taken in a forensic procedure conducted in accordance with sections 464R to 464ZA or section 464ZF or 464ZFAAA, means notes and audiovisual recording made of the forensic procedure and any information which may identify the person contained in any record of or report relating to the forensic procedure and in any copy of a record or report;
- (b) in relation to any sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, means notes and audiovisual recording (if any) made of the procedure to take the sample and any information which may identify the person contained in any record of or report relating to the taking of the sample and in any copy of a record or report;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

"relevant suspect" means a person of or above the age of 18 years who—

- (a) is suspected of having committed or attempted to commit an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**; or
- (b) has been charged with an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**;

S. 464(2)
def. of
"relevant
suspect"
inserted by
No. 84/1989
s. 4(b),
substituted by
No. 23/1991
s. 4(b),
amended by
Nos 81/1997
s. 16(f),
61/2001
s. 16(1)(a),
16/2002
s. 17(1),
35/2002
s. 28(Sch.
item 3.1),
72/2004 s. 24.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

S. 464(2)
def. of
"responsible
Minister"
inserted by
No. 16/2002
s. 5.

"responsible Minister", in relation to a participating jurisdiction means a Minister of that jurisdiction who is responsible for administration of a corresponding law;

S. 464(2)
def. of
"security
patient"
inserted by
No. 81/1997
s. 16(g).

"security patient" has the same meaning as in the **Mental Health Act 1986**;

S. 464(2) def.
of "senior
police officer"
inserted by
No. 41/2004
s. 8.

"senior police officer" means a member of the police force of or above the rank of senior sergeant;

S. 464(2)
def. of
"serious
offenders
index"
inserted by
No. 16/2002
s. 5.

"serious offenders index" means an index of DNA profiles derived from forensic material taken from—

- (a) offenders in accordance with section 464ZF, or under a corresponding law of a participating jurisdiction; and
- (b) suspects who have been convicted of—
 - (i) an offence and an order has been made under section 464ZFB(1); or
 - (ii) an offence in respect of which a forensic procedure may be conducted under a corresponding law of a participating jurisdiction;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

* * * * *

S. 464(2)
def. of "sexual
offence"
inserted by
No. 84/1989
s. 4(b),
amended by
No. 8/1991
s. 6(d),
repealed by
No. 23/1991
s. 4(c).

"statistical index" means an index of information
that—

S. 464(2)
def. of
"statistical
index"
inserted by
No. 16/2002
s. 5.

- (a) is obtained from the analysis of forensic
material taken from persons in
accordance with this Subdivision or
under a corresponding law of a
participating jurisdiction; and
- (b) has been compiled for statistical
purposes; and
- (c) cannot be used to discover the identity
of persons from whom the forensic
material was taken;

"suspect" means a person of or above the age of
18 years who⁶⁸—

S. 464(2)
def. of
"suspect"
inserted by
No. 38/1988
s. 5(b),
amended by
Nos 25/1989
s. 14(a),
72/2004 s. 25.

- (a) is suspected of having committed an
offence; or
- (b) has been charged with an offence; or
- (c) has been summonsed to answer to a
charge;

"suspects index" means an index of DNA
profiles derived from forensic material taken
from suspects in accordance with section
464R, 464T or 464U or under a
corresponding law of a participating
jurisdiction or taken from persons found not

S. 464(2)
def. of
"suspects
index"
inserted by
No. 16/2002
s. 5,
amended by
No. 27/2006
s. 3(b).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464

guilty because of mental impairment in
accordance with section 464ZFAAA;

S. 464(2) def.
of "tape
recording"
repealed by
No. 27/2006
s. 3(c).

* * * * *

S. 464(2)
def. of
"unknown
deceased
persons
index"
inserted by
No. 16/2002
s. 5.

"unknown deceased persons index" means an
index of DNA profiles of deceased persons
whose identities are unknown where the
DNA profile is derived from forensic
material;

S. 464(2)
def. of
"volunteer"
inserted by
No. 16/2002
s. 5.

"volunteer" means a person who volunteers to
give a sample under section 464ZGB;

S. 464(2)
def. of
"volunteers
(limited
purposes)
index"
inserted by
No. 16/2002
s. 5.

"volunteers (limited purposes) index" means an
index of DNA profiles derived from forensic
material taken from volunteers, under
section 464ZGB or a corresponding law of a
participating jurisdiction, who have chosen
that the information obtained from analysis
of the material may be used only for a
limited purpose that is specified by the
volunteer and noted on the index;

S. 464(2)
def. of
"volunteers
(unlimited
purposes)
index"
inserted by
No. 16/2002
s. 5.

"volunteers (unlimited purposes) index" means
an index of DNA profiles derived from
forensic material taken from volunteers,
under section 464ZGB or a corresponding
law of a participating jurisdiction, who have
chosen that the information obtained from
analysis of the material may be used for the
purpose of a criminal investigation or any

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464AA

other purpose for which the DNA database may be used;

"youth residential centre" has the same meaning as in the **Children and Young Persons Act 1989**;

S. 464(2)
def. of
"youth
residential
centre"
inserted by
No. 129/1993
s. 6(g).

* * * * *

S. 464(2)
def. of
"young
person"
inserted by
No. 38/1988
s. 5(c),
repealed by
No. 129/1993
s. 6(f).

- (3) The Minister administering the **Police Regulation Act 1958** may appoint by notice published in the Government Gazette a person or class of persons as a person or persons authorised to take fingerprints in accordance with this Subdivision⁶⁹.

S. 464(3)
inserted by
No. 25/1989
s. 11(b).

464AA. Digital recordings

S. 464AA
inserted by
No. 27/2006
s. 4.

If this Subdivision requires an audio recording or an audiovisual recording to be made and the recording is made in a digitised format, the maker of the recording must certify that the recording has not been altered after its making and that the prescribed requirements, if any, in relation to the method of recording have been met.

464A. Detention of person in custody

S. 464A
inserted by
No. 37/1988
s. 5.

- (1) Every person taken into custody for an offence (whether committed in Victoria or elsewhere) must be—
- (a) released unconditionally; or
 - (b) released on bail; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464A

S. 464A(1)(c)
amended by
No. 57/1989
s. 5(1)(a)(i).

- (c) brought before a bail justice or the Magistrates' Court—

within a reasonable time of being taken into custody.

- (2) If a person suspected of having committed an offence is in custody for that offence, an investigating official may, within the reasonable time referred to in sub-section (1)—

- (a) inform the person of the circumstances of that offence; and
- (b) question the person or carry out investigations in which the person participates in order to determine the involvement (if any) of the person in that offence.

S. 464A(3)
amended by
No. 129/1993
s. 5.

- (3) Before any questioning (other than a request for the person's name and address) or investigation under sub-section (2) commences, an investigating official must inform the person in custody that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.

- (4) In determining what constitutes a reasonable time for the purposes of sub-section (1) the following matters may be considered—

S. 464A(4)(a)
amended by
No. 57/1989
s. 5(1)(a)(ii).

- (a) the period of time reasonably required to bring the person before a bail justice or the Magistrates' Court;
- (b) the number and complexity of offences to be investigated;
- (c) any need of the investigating official to read and collate relevant material or to take any other steps that are reasonably necessary by

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464A

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- way of preparation for the questioning or investigation;
- (d) any need to transport the person from the place of apprehension to a place where facilities are available to conduct an interview or investigation;
 - (e) the number of other people who need to be questioned during the period of custody in respect of the offence for which the person is in custody;
 - (f) any need to visit the place where the offence is believed to have been committed or any other place reasonably connected with the investigation of the offence;
 - (g) any time taken to communicate with a legal practitioner, friend, relative, parent, guardian or independent person;
 - (h) any time taken by a legal practitioner, interpreter, parent, guardian or independent person to arrive at the place where questioning or investigation is to take place;
 - (i) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to receive medical attention;
 - (j) any time during which the questioning or investigation of the person is suspended or delayed to allow the person to rest;
 - (k) the total period of time during which the person has been in the company of an investigating official before and after the commencement of custody;
 - (l) any other matters reasonably connected with the investigation of the offence.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

S. 464B
inserted by
No. 37/1988
s. 5.

**464B. Questioning or investigation of person already held
for another matter**

S. 464B(1)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.5),
57/1989
s. 5(1)(b)(i),
86/2000
s. 4(1)(a).

- (1) An investigating official may apply to the Magistrates' Court or, if the application is in respect of a child, the Children's Court for an order that a person—

S. 464B(1)(a)
substituted by
No. 86/2000
s. 4(1)(b).

- (a) who is—
- (i) held in a prison or police gaol; or
 - (ii) a forensic resident or a security resident within the meaning of the **Intellectually Disabled Persons' Services Act 1986**; or
 - (iii) a forensic patient or a security patient within the meaning of the **Mental Health Act 1986**; or
 - (iv) detained under section 93 of the **Sentencing Act 1991** in an approved mental health service within the meaning of the **Mental Health Act 1986** as an involuntary patient or security patient within the meaning of that Act; and

S. 464B(1)(b)
amended by
No. 86/2000
s. 4(1)(c).

- (b) reasonably suspected of having committed an offence (being, in the case of an application in respect of a child, an indictable offence) other than the offence for which he or she is being held—

be delivered into the custody of the investigating official for the purpose of questioning or investigation in respect of the first-mentioned offence.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

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- (2) An application under sub-section (1) must—
- (a) be in writing; and
 - (b) state the grounds on which the application is made; and
 - (c) be served on the person who is the subject of the application by delivering a true copy of the application—
 - (i) to the person personally; or
 - (ii) to the person in charge of the place where the person is being held or detained.
- (3) At any time after the filing of an application under sub-section (1), the Magistrates' Court or Children's Court (as the case may be) may order that the person who is the subject of the application be brought before the court for the hearing of the application under sub-section (1).
- (4) While an order made under sub-section (3) is being carried out, the person is to be taken to be in the legal custody of the person acting under the order.
- (4A) The Magistrates' Court or the Children's Court (as the case may be) must not hear or determine an application under sub-section (1) unless the person who is the subject of the application is before the Court.
- (4B) If the person who is the subject of an application under sub-section (1) is not legally represented in a proceeding on the application, the Magistrates' Court or the Children's Court (as the case may be)—
- S. 464B(2)(c)**
amended by
No. 86/2000
s. 4(2)(a).
- S. 464B(2)**
(c)(ii)
substituted by
No. 86/2000
s. 4(2)(b).
- S. 464B(3)**
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.6),
86/2000
s. 4(3).
- S. 464B(4A)**
inserted by
No. 86/2000
s. 4(4).
- S. 464B(4B)**
inserted by
No. 86/2000
s. 4(4).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

- (a) must adjourn the hearing of the proceeding to enable the person to obtain legal representation unless satisfied that the person has had, or has refused to have, legal advice provided to him or her in relation to the application; and
- (b) must not resume the hearing unless the person is legally represented or the Court is satisfied that he or she has had, or has refused to have, legal advice provided to him or her in relation to the application.

S. 464B(4C)
inserted by
No. 86/2000
s. 4(4).

- (4C) The Magistrates' Court or the Children's Court (as the case may be) may order Victoria Legal Aid to provide legal assistance (of a kind to which section 26(1) of the **Legal Aid Act 1978** applies) to the person who is the subject of an application under sub-section (1) and, despite anything to the contrary in that Act, Victoria Legal Aid must provide legal assistance in accordance with the order.

S. 464B(5)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.7),
57/1989
s. 5(1)(b)(ii),
substituted by
No. 86/2000
s. 4(4).

- (5) On an application under sub-section (1), the Magistrates' Court or the Children's Court (as the case may be) may, if satisfied that it is in the interests of justice to do so but subject to sub-section (5C), order the transfer of the custody of the person who is the subject of the application to the applicant for the purpose of questioning or investigation for a maximum period of time specified in the order, being a reasonable period within which the questioning or investigation may take place.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

(5A) In determining what constitutes a reasonable period for the purposes of an order under sub-section (5), the Magistrates' Court or the Children's Court (as the case may be) must have regard to—

S. 464B(5A)
inserted by
No. 86/2000
s. 4(4).

- (a) the matters specified in section 464A(4), with any necessary modifications; and
- (b) if the person is a child, his or her age.

(5B) The Magistrates' Court or the Children's Court (as the case may be), on making an order under sub-section (5), may make any further order that it thinks fit as to where, and the circumstances under which, the questioning or investigation may take place but it must not order that the questioning or investigation take place somewhere other than the place at which the person who is the subject of the order was held or detained at the time of the application for the order under sub-section (5) unless it is not practicable for the questioning or investigation to take place there.

S. 464B(5B)
inserted by
No. 86/2000
s. 4(4).

(5C) The Magistrates' Court or the Children's Court (as the case may be) must not make an order under sub-section (5) in respect of a person referred to in sub-section (1)(a)(ii), (iii) or (iv) unless—

S. 464B(5C)
inserted by
No. 86/2000
s. 4(4).

- (a) having considered any known likely psychological effect of the questioning on the person; and
- (b) having received evidence (whether oral or written) on the fitness of the person to be questioned given by a medical practitioner—

it is satisfied on the balance of probabilities that the person is fit to be questioned.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

S. 464B(5D)
inserted by
No. 86/2000
s. 4(4).

- (5D) A person is unfit to be questioned for the purposes of sub-section (5C) if, because the person's mental processes are disordered or impaired, the person is or, at some time during the questioning, will be—
- (a) unable to understand the nature of the questioning (namely that it is questioning to ascertain his or her involvement in the commission of an offence); or
 - (b) unable to follow the course of questioning;
or
 - (c) unable to give instructions to his or her legal practitioner; or
 - (d) unable to understand that he or she does not have to say or do anything but that anything he or she does say or do may be given in evidence.

S. 464B(5E)
inserted by
No. 86/2000
s. 4(4).

- (5E) On making an order under sub-section (5) in respect of a person referred to in sub-section (1)(a)(ii), (iii) or (iv), the Magistrates' Court or the Children's Court (as the case may be)—
- (a) must include in that order a condition that—
 - (i) subject to sub-section (5F), an independent person is to be present while any questioning or investigation takes place in accordance with the order; and
 - (ii) before the commencement of any questioning or investigation, the investigating official must allow the person to communicate with the independent person in circumstances in which as far as practicable the communication will not be overheard;
and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

(b) may include in that order any other condition that it thinks fit in the interests of the well-being of the person during any questioning or investigation.

(5F) The Magistrates' Court or the Children's Court (as the case may be) is not required to include in an order under sub-section (5) a condition referred to in sub-section (5E)(a)(i) if the person who is the subject of the order applies to the Court for that condition not to be included and the Court is satisfied that, in all the circumstances, it is appropriate not to include it.

S. 464B(5F)
inserted by
No. 86/2000
s. 4(4).

(5G) On making an order under sub-section (5), the Magistrates' Court or the Children's Court (as the case may be) must inform the person who is the subject of the order—

S. 464B(5G)
inserted by
No. 86/2000
s. 4(4).

(a) that he or she does not have to say or do anything but that anything he or she does say or do may be given in evidence; and

(b) that the investigating official must give him or her the information required to be given by sub-section (6) and section 464C(1); and

S. 464B(5G)(b)
amended by
No. 41/2004
s. 9(1)(a).

(c) if the person was held in a prison or police gaol at the time of the application, that the making of the order does not prevent a senior police officer from authorising the conduct of a non-intimate compulsory procedure on the person under section 464SA.

S. 464B(5G)(c)
inserted by
No. 41/2004
s. 9(1)(b).

(5H) An audiovisual recording must be made of the following—

S. 464B(5H)
inserted by
No. 86/2000
s. 4(4),
amended by
No. 27/2006
s. 17(2).

(a) the giving of any information required to be given by sub-section (6) and section 464C(1);

(b) any response of the person in custody to the giving of that information;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

S. 464B(6)
amended by
No. 86/2000
s. 4(5).

(c) any questioning that takes place in accordance with an order made under sub-section (5) and anything said by the person questioned.

(6) If an order is made under sub-section (5), before any questioning or investigation commences, an investigating official must inform the person who is the subject of the order that he or she does not have to say or do anything but that anything the person does say or do may be given in evidence.

(7) An order under sub-section (5) has effect as a suspension of a direction in a warrant of commitment to deliver a person to the place of detention specified in the warrant or to hold a person in that place (as the case may be).

S. 464B(8)
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.7),
57/1989
s. 5(1)(b)(iii),
86/2000
s. 4(6)(a).

(8) The Magistrates' Court or the Children's Court (as the case may be) may, subject to sub-section (8A)—

(a) extend a period of custody ordered under sub-section (5); or

S. 464B(8)(b)
amended by
No. 86/2000
s. 4(6)(b).

(b) on a subsequent application under sub-section (1), make orders whether in respect of the same or a different offence reasonably suspected of having been committed by the person.

S. 464B(8A)
inserted by
No. 86/2000
s. 4(7).

(8A) The Magistrates' Court or the Children's Court (as the case may be) must not extend a period of custody ordered under sub-section (5) or, on a subsequent application under sub-section (1), make an order against the same person in respect of the same offence unless satisfied that there is a reasonable prospect that further questioning or investigation will assist in determining the involvement (if any) of the person in the commission of the offence.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464B

(8B) In determining the length of any extension of a period of custody ordered under sub-section (5), the Magistrates' Court or the Children's Court (as the case may be) must have regard to—

S. 464B(8B)
inserted by
No. 86/2000
s. 4(7).

- (a) the matters specified in section 464A(4), with any necessary modifications; and
- (b) if the person is a child, his or her age.

(9) At—

S. 464B(9)
amended by
No. 86/2000
s. 4(8)(a)(b).

- (a) the end of the period, or any extended period, specified in an order under sub-section (5); or
- (b) the cessation of questioning or investigation—

whichever is the earlier, the investigating official must deliver the person who is the subject of the order to the place of detention at which the person was held or detained at the time of the application for the order.

(9A) The making of an order under sub-section (5) does not prevent a senior police officer from giving an authorisation under section 464SA.

S. 464B(9A)
inserted by
No. 41/2004
s. 9(2).

(10) In this section—

"child", in relation to a person suspected of having committed an offence, means a person who at the time of the suspected commission of the offence was under the age of 18 years but does not include any person who is of or above the age of 19 years at the time of the making of an application in respect of him or her under this section.

S. 464B(10)
inserted by
No. 86/2000
s. 4(9),
amended by
No. 72/2004
s. 26(a)(b).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464C

S. 464C
inserted by
No. 37/1988
s. 5.

464C. Right to communicate with friend, relative and legal practitioner

- (1) Before any questioning or investigation under section 464A(2) commences, an investigating official must inform the person in custody that he or she—
 - (a) may communicate with or attempt to communicate with a friend or relative to inform that person of his or her whereabouts; and
 - (b) may communicate with or attempt to communicate with a legal practitioner—and, unless the investigating official believes on reasonable grounds that—
 - (c) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
 - (d) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed—

the investigating official must defer the questioning and investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.

- (2) Subject to sub-section (1), if a person wishes to communicate with a friend, relative or legal practitioner, the investigating official in whose custody the person then is—
 - (a) must afford the person reasonable facilities as soon as practicable to enable the person to do so; and
 - (b) must allow the person's legal practitioner or a clerk of the legal practitioner to communicate with the person in custody in

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464D

circumstances in which as far as practicable the communication will not be overheard.

- (3) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5).
- (4) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

S. 464C(3)
amended by
No. 86/2000
s. 5.

464D. Right to an interpreter

S. 464D
inserted by
No. 37/1988
s. 5.

- (1) If a person in custody does not have a knowledge of the English language that is sufficient to enable the person to understand the questioning, an investigating official must, before any questioning or investigation under section 464A(2) commences, arrange for the presence of a competent interpreter and defer the questioning or investigation until the interpreter is present.
- (2) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5).
- (3) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

464E. Persons under 18 years

S. 464E
(Heading)
inserted by
No. 72/2004
s. 27(1).

S. 464E
inserted by
No. 37/1988
s. 5.

- (1) If a person in custody is under the age of 18 years, an investigating official must not, subject to subsection (2), question or carry out an investigation under section 464A(2) unless—

S. 464E(1)
amended by
No. 72/2004
s. 27(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464F

- (a) a parent or guardian of the person in custody or, if a parent or guardian is not available, an independent person is present; and
 - (b) before the commencement of any questioning or investigation, the investigating official has allowed the person in custody to communicate with his or her parent or guardian or the independent person in circumstances in which as far as practicable the communication will not be overheard.
- (2) Sub-section (1) does not apply if the investigating official believes on reasonable grounds that—
- (a) the communication necessary to give effect to sub-section (1)(a) would result in the escape of an accomplice or the fabrication or destruction of evidence; or
 - (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed.
- (3) This section also applies to any questioning or investigation in accordance with an order made under section 464B(5).
- (4) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

S. 464F
inserted by
No. 37/1988
s. 5.

464F. Right of foreign national to communicate with consular office

- (1) If a person in custody is not a citizen or permanent resident of Australia, the investigating official in whose custody the person then is must, before any questioning or investigation under section 464A(2) commences, inform the person in custody that he or she may communicate with or attempt to communicate with the consular office of the country of which the person is a citizen and,

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464G

unless the investigating official believes on reasonable grounds that—

- (a) the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or
- (b) the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed—

the investigating official must defer the questioning or investigation for a time that is reasonable in the circumstances to enable the person to make, or attempt to make, the communication.

- (2) Subject to sub-section (1), if a person referred to in that sub-section wishes to communicate with the consular office of the country of which he or she is a citizen, the investigating official in whose custody the person then is must afford the person reasonable facilities as soon as practicable to enable the person to do so.
- (3) This section does not apply to questioning or investigation in connection with an offence under section 49(1) of the **Road Safety Act 1986**.

464G. Recording of information required to be given to person in custody

S. 464G
(Heading)
inserted by
No. 27/2006
s. 17(3).

S. 464G
inserted by
No. 37/1988
s. 5,
amended by
No. 86/2000
s. 8(1) (ILA
s. 39B(1)).

- (1) If a person is in custody in relation to an indictable offence, an investigating official who is required by sections 464A(3), 464C(1) and 464F(1) to give the person in custody certain

S. 464G(1)
amended by
No. 27/2006
s. 17(4).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464H

information must record (by audio recording or audiovisual recording), if practicable, the giving of that information and the person's responses, if any.

S. 464G(2)
inserted by
No. 86/2000
s. 8(1).

(2) Sub-section (1) is subject to section 464B(5H).

S. 464H
(Heading)
inserted by
No. 27/2006
s. 17(5).

464H. Recording of confessions and admissions

S. 464H
inserted by
No. 37/1988
s. 5.

S. 464H(1)
amended by
Nos 86/2000
s. 6(1)(c),
27/2006
s. 17(6)(c).

(1) Subject to sub-section (2), evidence of a confession or admission made to an investigating official by a person who—

- (a) was suspected; or
- (b) ought reasonably to have been suspected—

of having committed an offence is inadmissible as evidence against the person in proceedings for an indictable offence unless—

S. 464H(1)(c)
amended by
No. 27/2006
s. 17(6)(a).

(c) if the confession or admission was made before the commencement of questioning, the confession or admission was recorded by audio recording or audiovisual recording, or the substance of the confession or admission was confirmed by the person and the confirmation was recorded by audio recording or audiovisual recording; or

S. 464H(1)(d)
amended by
No. 27/2006
s. 17(6)(a).

(d) if the confession or admission was made during questioning at a place where facilities were available to conduct an interview, the questioning and anything said by the person

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464H

questioned was recorded by audio recording or audiovisual recording; or

- (e) if the confession or admission was made during questioning at a place where facilities were not available to conduct an interview, the questioning and anything said by the person questioned was recorded by audio recording or audiovisual recording, or the substance of the confession or admission was confirmed by the person questioned and the confirmation was recorded by audio recording or audiovisual recording; or

S. 464H(1)(e)
amended by
Nos 86/2000
s. 6(1)(a),
27/2006
s. 17(6)(a).

- (f) if the confession or admission was made during questioning in accordance with an order made under section 464B(5), the questioning and anything said by the person was recorded by audiovisual recording—

S. 464H(1)(f)
inserted by
No. 86/2000
s. 6(1)(b),
amended by
No. 27/2006
s. 17(6)(b).

and the recording (whether audio recording or audiovisual recording) is available to be tendered in evidence.

- (2) A court may admit evidence of a confession or admission otherwise inadmissible by reason of sub-section (1) if the person seeking to adduce the evidence satisfies the court on the balance of probabilities that the circumstances—

(a) are exceptional; and

(b) justify the reception of the evidence.

- (3) If the questioning or confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section or the giving of information is recorded as required under section 464B(5H) or 464G, the investigating official must give to the person or his or her legal practitioner without charge—

S. 464H(3)
amended by
No. 86/2000
s. 6(2)(a).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464I

S. 464H(3)(a)
amended by
Nos 86/2000
s. 6(2)(b),
27/2006
s. 17(7)(a).

(a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and

S. 464H(3)(b)
amended by
Nos 86/2000
s. 6(2)(b),
27/2006
s. 17(7)(b).

(b) if a transcript of the recording is prepared, a copy of the transcript.

S. 464H(4)
amended by
Nos 86/2000
s. 6(3),
27/2006
s. 17(8).

(4) Nothing in this section prevents the use of an audio recording or audiovisual recording in a proceeding for a summary offence.

S. 464I
inserted by
No. 37/1988
s. 5,
amended by
No. 86/2000
s. 8(2).

464I. No power to detain person not under arrest

Nothing in sections 464 to 464H (except as provided by an order made under section 464B(5)) confers a power to detain against his or her will a person who is not under arrest.

S. 464J
inserted by
No. 37/1988
s. 5,
amended by
No. 84/1989
s. 6.

464J. Right to remain silent etc. not affected

Nothing in this subdivision affects—

- (a) the right of a person suspected of having committed an offence to refuse to answer questions or to participate in investigations except where required to do so by or under an Act or a Commonwealth Act; or
- (b) the onus on the prosecution to establish the voluntariness of an admission or confession made by a person suspected of having committed an offence; or
- (c) the discretion of a court to exclude unfairly obtained evidence; or
- (d) the discretion of a court to exclude illegally or improperly obtained evidence.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464K

Fingerprinting

Heading
inserted by
No. 16/2002
s. 4(a).

464K. Fingerprinting of adults and children aged 15 or above

S. 464K
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 11(c),
57/1989
s. 5(1)(c),
substituted by
No. 129/1993
s. 7.

- (1) A member of the police force may take, or cause to be taken by an authorised person, the fingerprints of a person of or above the age of 15 years who—

- (a) is believed on reasonable grounds to have committed; or
- (b) has been charged with; or
- (c) has been summonsed to answer to a charge for—

an indictable offence or a summary offence referred to in Schedule 7.

- (2) A member of the police force intending to fingerprint a person under this section must inform the person in language likely to be understood by him or her—

- (a) of the purpose for which the fingerprints are required; and
- (b) of the offence which the person is believed to have committed or with which the person has been charged or for which the person has been summonsed to answer to a charge; and
- (c) that the fingerprints may be used in evidence in court; and
- (d) that if the person refuses to give his or her fingerprints voluntarily, a member of the police force may use reasonable force to obtain them; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464K

(e) that if the person is not charged with a relevant offence within 6 months or is so charged but the charge is not proceeded with or the person is not found guilty of the offence or any other relevant offence before the end of that period, the fingerprints will be destroyed.

(3) Subject to sub-section (4), the member of the police force who informs a person of the matters in sub-section (2) must—

S. 464K(3)(a)
substituted by
No. 27/2006
s. 17(9).

(a) record (whether by audio recording or audiovisual recording); or

(b) record in writing signed by the person—
the giving of that information and the person's responses, if any.

S. 464K(4)
amended by
No. 27/2006
s. 17(10).

(4) If a person is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of the information under sub-section (2) and the person's responses, if any, must be recorded by audio recording or audiovisual recording.

S. 464K(5)
amended by
No. 27/2006
s. 17(11)(a).

(5) If information and a person's responses are recorded by audio recording or audiovisual recording in accordance with this section, the member of the police force giving the information must give or send by post to the person or his or her legal practitioner without charge—

S. 464K(5)(a)
amended by
No. 27/2006
s. 17(11)(b).

(a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and

S. 464K(5)(b)
amended by
No. 27/2006
s. 17(11)(c).

(b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464L

- (6) If information and a person's responses are recorded in writing in accordance with this section, the member requesting the person's fingerprints must give to the person, or cause the person to be given, a copy of the signed record forthwith.
- (7) A member of the police force may use reasonable force to take the fingerprints of a person referred to in sub-section (1) who refuses to give them voluntarily if the use of reasonable force is authorised by a member in charge of a police station at the time of the request or a member of or above the rank of sergeant.
- (8) If the person from whom fingerprints are required is a child aged 15, 16 or 17 years—
 - (a) a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person must be present during the request for the fingerprints, the giving of the information referred to in sub-section (2) and the taking of the fingerprints; and
 - (b) if the use of reasonable force has been authorised in accordance with sub-section (7), the taking of the fingerprints must be recorded by audiovisual recording, if practicable, or by audio recording.

S. 464K(8)
amended by
No. 72/2004
s. 28.

S. 464K(8)(b)
amended by
No. 27/2006
s. 17(12).

464L. Fingerprinting of children aged 14 or under

- (1) A child under the age of 10 years who is suspected of having done or omitted to have done any act which would have constituted an offence had the child been of the age of criminal responsibility must not—
 - (a) be requested to give his or her fingerprints;
or
 - (b) have his or her fingerprints taken.

S. 464L
inserted by
No. 38/1988
s. 4,
amended by
No. 23/1991
s. 5(a)(b),
substituted by
No. 129/1993
s. 7.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464L

(2) A member of the police force may take, or cause to be taken by an authorised person, the fingerprints of a child aged 10 years or more but under 15 years who—

- (a) is believed on reasonable grounds to have committed; or
- (b) has been charged with; or
- (c) has been summonsed to answer to a charge for—

an indictable offence or a summary offence referred to in Schedule 7 if—

- (d) both the child and a parent or guardian of the child consent; or
- (e) where consent is refused or the parent or guardian cannot be located, the Children's Court makes an order under section 464M(5).

(3) A member of the police force wishing to fingerprint a child referred to in sub-section (2) must inform the child and the parent or guardian of the child in language likely to be understood by each of them—

- (a) of the purpose for which the fingerprints are required; and
- (b) of the offence which the child is believed to have committed or with which the child has been charged or for which the child has been summonsed to answer to a charge; and
- (c) that the fingerprints may be used in evidence in court; and
- (d) that the child's parent or guardian may refuse consent to the child's fingerprints being taken; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464L

- (e) that if consent is refused, an application may be made to the Children's Court for an order directing the child to give his or her fingerprints; and
 - (f) that if the child is not charged with a relevant offence within 6 months or is so charged but the charge is not proceeded with or the child is not found guilty of the offence or any other relevant offence before the end of that period, the fingerprints will be destroyed.
- (4) A parent or guardian of a child must be present during the request for the fingerprints under this section, the giving of the information referred to in sub-section (3) and the taking of the fingerprints with consent.
- (5) Subject to sub-section (6), the member of the police force who informs a child of the matters in sub-section (3) must—
- (a) record by audio recording or audiovisual recording; or
 - (b) record in writing signed by the child and the parent or guardian present—
- the giving of that information and the responses, if any, of the child and the parent or guardian.
- (6) If a child is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of the information under sub-section (3) and the responses, if any, of the child and the parent or guardian must be recorded by audio recording or audiovisual recording.

S. 464L(5)(a)
substituted by
No. 27/2006
s. 17(13).

S. 464L(6)
amended by
No. 27/2006
s. 17(14).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464M

S. 464L(7)
amended by
No. 27/2006
s. 17(15)(a).

- (7) If information and the responses of the child and parent or guardian are recorded by audio recording or audiovisual recording, the member of the police force giving the information must give or send by post to the child or his or her legal practitioner without charge—

S. 464L(7)(a)
amended by
No. 27/2006
s. 17(15)(b).

- (a) the recording (whether audio recording or audiovisual recording) or a copy of it within 7 days; and

S. 464L(7)(b)
amended by
No. 27/2006
s. 17(15)(c).

- (b) if a transcript of the recording is prepared, a copy of the transcript as soon as practicable.

- (8) If information and the responses of the child and parent or guardian are recorded in writing, the member requesting the child's fingerprints must give to the child, or cause the child to be given, a copy of the signed record forthwith.

S. 464M
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 14(b),
57/1989
s. 5(1)(d)(e),
23/1991
s. 6(1),
substituted by
No. 129/1993
s. 7.

464M. Children's Court may order fingerprinting

- (1) If a child referred to in section 464L(2) or his or her parent or guardian refuses to consent to the taking of the child's fingerprints or the parent or guardian cannot be located, a member of the police force may apply to the Children's Court for an order under sub-section (5).
- (2) An application under sub-section (1)—
- (a) must be in writing supported by evidence on oath or by affidavit; and
- (b) if the child is held in a police gaol or is detained in a youth residential centre, must state that fact.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464M

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- (3) Notice of an application under sub-section (1) must be served on—
- (a) a parent or guardian of the child; and
 - (b) if the child is not in custody within the meaning of this Subdivision, the child.
- (4) The court may dispense with the requirement of sub-section (3)(a) if satisfied that it is impracticable for the applicant to comply.
- (5) The Children's Court may make an order directing a child aged 10 years or more but under 15 years to give his or her fingerprints if satisfied on the balance of probabilities that—
- (a) there are reasonable grounds to believe that the child has committed an indictable offence or a summary offence referred to in Schedule 7; and
 - (b) in all the circumstances the making of the order is justified.
- (6) In considering whether the making of the order is justified, the court must take into account amongst other things—
- (a) the seriousness of the circumstances surrounding the commission of the offence; and
 - (b) the alleged degree of participation by the child in the commission of the offence; and
 - (c) the age of the child.
- (7) A child in respect of whom an application under sub-section (1) is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464M

S. 464M(8)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

(c) may not address the court, other than in respect of any matter referred to in sub-section (5)(a) or (b) or sub-section (6).

(8) In exercising the right of address under sub-section (7)(c), a child may be represented by a legal practitioner or, with the leave of the court, a parent or guardian of the child.

(9) If the court makes an order under sub-section (5)—

- (a) a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person must be present during the taking of the child's fingerprints; and
- (b) a member of the police force may use reasonable force to take the fingerprints; and
- (c) the taking of the fingerprints must be recorded by audiovisual recording, if practicable, or otherwise by audio recording.

S. 464M(9)(c)
amended by
No. 27/2006
s. 17(16).

(10) After an order under sub-section (5) is executed—

- (a) the independent person, if any, who witnessed the taking of the fingerprints must endorse on the order his or her name and sign the endorsement; and
- (b) the person who took the fingerprints must endorse on the order the name of the person, if any, who made the audiovisual recording of the taking of the fingerprints; and
- (c) the person who took the fingerprints must give a copy of the order so endorsed to the child.

S. 464M(10)(b)
amended by
No. 27/2006
s. 17(17).

(11) The endorsements required by sub-section (10) to be made on an order under sub-section (5) may be made on a copy of the order transmitted by facsimile machine.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464M

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- (12) If the Children's Court makes an order under sub-section (5), it may issue a warrant authorising the person to whom it is directed—
- (a) to break, enter and search, if necessary, any place where the child named or described in the warrant is suspected to be; and
 - (b) to arrest the child named or described in the warrant; and
 - (c) to take the child without delay to the nearest accessible police station for fingerprinting.
- (13) If the Children's Court makes an order under sub-section (5) or issues a warrant under sub-section (12), it must—
- (a) give reasons for its decision; and
 - (b) cause a note of the reasons to be entered in the records of the court.
- (14) The failure of the court to comply with sub-section (13) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464Q(1)(a).
- (15) If a child is apprehended under a warrant issued under sub-section (12), the warrant ceases to have effect immediately after the child's fingerprints have been taken.
- (16) If the Children's Court makes an order under sub-section (5) in respect of a child who is held in a prison, police gaol, youth training centre or youth residential centre, the court must also order that the officer in charge of the place at which the child is held must take the fingerprints of the child or cause them to be taken and must deliver the fingerprints to the applicant within a period of time specified in the order.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464N

S. 464N
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
ss 11(d),
12(1)(2),
14(c)(d),
56/1989
s. 286(Sch. 2
items 7.8–
7.10),
substituted by
No. 129/1993
s. 7.

464N. Taking of fingerprints

S. 464N(1)
inserted by
No. 41/2004
s. 4(1).

- (1) Fingerprints may be taken by means of a device to obtain a record of the fingerprints (a fingerscan) or by any other means.

S. 464N(2)
amended by
No. 41/2004
s. 4(2).

- (2) If—
- (a) fingerprints are to be taken in accordance with a court order; or
- (b) reasonable force is to be used to take fingerprints—
- a person of the same sex as the person to be fingerprinted must, if practicable, take the fingerprints and a member of the police force involved in investigating the offence for which the fingerprints are required must not, if practicable, take the fingerprints.

S. 464NA
inserted by
No. 35/2002
s. 3.

464NA. Fingerscanning for identification purposes

S. 464NA(1)
repealed by
No. 41/2004
s. 5(1).

* * * * *

- (2) If a person of or above the age of 15 years—
- (a) has been charged with an indictable offence or a summary offence referred to in Schedule 7; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464NA

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- (b) is present in a police station because of the charging or has been remanded in custody in relation to the charge—
- a member of the police force may take a fingerscan of the person for the purpose only of identifying the person.
- (3) Before fingerscanning a person under this section, a member of the police force must inform the person, in language likely to be understood by the person, that the fingerscan—
- (a) is to be taken only for the purpose of identifying the person; and
- (b) is inadmissible as evidence.
- (4) A member of the police force may use reasonable force to take the fingerscan of a person referred to in sub-section (2) who refuses to allow it to be taken voluntarily if—
- (a) the use of reasonable force is authorised by a member in charge of a police station at the relevant time or a member of or above the rank of sergeant; and
- (b) before fingerscanning the person, the member of the police force informs the person, in language likely to be understood by the person, that reasonable force may be used to obtain it.
- (5) A person of the same sex as the person to be fingerscanned must, if practicable, take the fingerscan.
- (6) A fingerscan taken under this section is inadmissible as evidence in any proceeding.

S. 464NA(6)
amended by
No. 41/2004
s. 5(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464O

S. 464NA(7)
amended by
No. 41/2004
s. 5(3).

- (7) A fingerscan taken under this section which is not required to be destroyed under section 464O may be recorded on a computerised database and may be accessed, disclosed, communicated or made use of by a person for the performance of official duties if the recording, accessing, disclosing, communicating or making use of fingerscans on that database by that person, or a person belonging to a class of persons, for that purpose is authorised in writing by the Chief Commissioner of Police.

S. 464O
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
s. 11(e),
56/1989
s. 286(Sch. 2
items 7.11–
7.13), 57/1989
s. 5(1)(f)(i)–(iii),
substituted by
No. 129/1993
s. 7.

464O. Destruction of records

- (1) In this section—

S. 464O(1)
def. of
"destroy"
inserted by
No. 35/2002
s. 4.

"destroy", in relation to a fingerscan, means permanently de-identify information—

- (a) which identifies the person from whom the fingerscan was taken; or
- (b) from which the person's identity may be ascertained;

S. 464O(1)
def. of
"fingerprints"
inserted by
No. 35/2002
s. 4,
amended by
No. 41/2004
s. 6.

"fingerprints" includes fingerscan taken under section 464NA or any other provision of this Subdivision;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464O

"relevant offence" means—

- (a) the offence in respect of which the fingerprints were taken; or
 - (b) any other offence arising out of the same circumstances; or
 - (c) any other offence in respect of which the fingerprints have probative value.
- (2) If a person has been fingerprinted in accordance with this Subdivision and—
- (a) the person has not been charged with a relevant offence at the end of the period of 6 months after the taking of the fingerprints; or
 - (b) the person has been so charged but the charge is not proceeded with or the person is not found guilty of the offence or any other relevant offence, whether on appeal or otherwise, before the end of that period—
- the Chief Commissioner of Police must, subject to sub-section (4), destroy the fingerprints and any record, copy or photograph of them, or cause them to be destroyed at the time specified in sub-section (3).
- (3) For the purposes of sub-section (2), fingerprints taken in accordance with this Subdivision and any record, copy or photograph of them must be destroyed—
- (a) where the person has not been so charged or the charge is not proceeded with, immediately after that period of 6 months; or
 - (b) where the person is not found guilty, within 1 month after the conclusion of the proceedings and the end of any appeal period.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464P

- (4) A member of the police force may, within the period referred to in sub-section (3)(a) or (b) and on one occasion only, apply without notice to any other person to the Magistrates' Court or the Children's Court (as the case requires) for an order extending the period by not more than 6 months within which the fingerprints and any record, copy or photograph of them must be destroyed.
- (5) If a court makes an order under sub-section (4), it must cause a copy of the order to be served on the person from whom the fingerprints were taken.
- (6) If fingerprints or any record, copy or photograph of them are destroyed in accordance with this section, the Chief Commissioner of Police must give notice within 14 days of the destruction to the person from whom the fingerprints were taken.
- (7) A person who—
 - (a) fails to destroy; or
 - (b) uses or makes, or causes or permits to be used or made—any record, copy or photograph of fingerprints required by this section to be destroyed is guilty of a summary offence punishable on conviction by a level 10 fine (10 penalty units maximum).

S. 464O(7)
amended by
No. 69/1997
s. 22(14).

S. 464P
inserted by
No. 38/1988
s. 4,
amended by
No. 25/1989
s. 11(f),
substituted by
No. 129/1993
s. 7.

464P. Records of juvenile

S. 464P(1A)
inserted by
No. 35/2002
s. 5,
amended by
No. 41/2004
s. 7.

- (1A) In this section, "**fingerprints**" includes
fingerscan taken under section 464NA or any
other provision of this Subdivision.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464P

- (1) Subject to sub-section (2), if—
- (a) a person is fingerprinted as a child in accordance with this Subdivision, whether before or after the commencement of section 7 of the **Crimes (Amendment) Act 1993**; and
 - (b) the fingerprints are not required to be destroyed under this Subdivision; and
 - (c) the person is not found guilty of any further offence before attaining the age of 26 years; and
 - (d) in the case of fingerprints taken before the commencement of section 7 of that Act, a request has been made to the Chief Commissioner of Police for their destruction—

the Chief Commissioner must without delay destroy the fingerprints and any record, copy or photograph of them, or cause them to be destroyed.

- (2) Sub-section (1) does not apply to fingerprints retained as a result of a finding of guilt of any of the following offences—
- (a) murder, attempted murder, manslaughter or defensive homicide;
 - (b) an offence or attempt to commit an offence against section 16, 17, 18, 25, 26, 29 or 31;
 - (c) an offence or attempt to commit an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I;
 - (d) an offence or attempt to commit an offence against section 75 or 75A;
 - (e) an offence of arson against section 197.

S. 464P(2)(a)
amended by
No. 77/2005
s. 8(3)(c).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Q

S. 464Q
inserted by
No. 38/1988
s. 4,
amended by
Nos 25/1989
ss 11(g)(h),
13(a)(b),
56/1989
s. 286(Sch. 2
item 7.14),
57/1989
s. 5(1)(g)(i)(ii),
substituted by
No. 129/1993
s. 7.

464Q. Evidence of fingerprints

- (1) Evidence in respect of fingerprints taken from a person is inadmissible as part of the prosecution case in proceedings against that person for an offence if—
 - (a) the requirements of sections 464K to 464N have not been complied with; or
 - (b) the fingerprints or any record, copy or photograph of them should have been but have not been destroyed as required by section 464O or 464P.
- (2) A court may admit evidence in respect of fingerprints otherwise inadmissible by reason of sub-section (1)(a) if—
 - (a) the prosecution satisfies the court on the balance of probabilities that the circumstances are exceptional and justify the reception of the evidence; or
 - (b) the accused consents to the reception of the evidence.
- (3) For the purposes of sub-section (2)(a), the probative value of the fingerprints is not to be regarded as an exceptional circumstance.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464R

Forensic procedures

Heading
inserted by
No. 16/2002
s. 4(b).

464R. Forensic procedure on adult

S. 464R
inserted by
No. 38/1988
s. 4,
amended by
Nos 56/1989
s. 286(Sch. 2
item 7.15),
57/1989
s. 5(1)(h),
49/1991
s. 119(1)
(Sch. 2
item 70),
substituted by
No. 129/1993
s. 7.

- (1) A member of the police force may request a suspect to undergo a forensic procedure only if there are reasonable grounds to believe that the procedure would tend to confirm or disprove the involvement of the suspect in the commission of an indictable offence and the suspect—
- (a) is suspected on reasonable grounds of having committed the indictable offence; or
 - (b) has been charged with the indictable offence; or
 - (c) has been summonsed to answer to a charge for the indictable offence.
- (2) A forensic procedure may be conducted on a suspect if—
- (a) the suspect gives his or her informed consent; or
 - (b) the Magistrates' Court makes an order under section 464T(3) or 464V(5); or
 - (c) a senior police officer gives an authorisation under section 464SA.

S. 464R(2)(b)
amended by
No. 41/2004
s. 10(a).

S. 464R(2)(c)
inserted by
No. 41/2004
s. 10(b).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464S

S. 464S
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 7(a)(b),
substituted by
No. 129/1993
s. 7.

464S. Informed consent⁷⁰

S. 464S(1)(c)
amended by
No. 81/1997
s. 19(1).

S. 464S(1)(ea)
inserted by
No. 16/2002
s. 6.

- (1) A person gives informed consent to a request to undergo a forensic procedure if he or she consents to the request after a member of the police force informs the person in language likely to be understood by the person—
 - (a) of the purpose for which the procedure is required; and
 - (b) of the nature of the procedure sought to be conducted; and
 - (c) that the person may request that the procedure be conducted by or in the presence of a medical practitioner or nurse of his or her choice or, where the procedure is the taking of a dental impression, a dentist of his or her choice; and
 - (d) of the offence which the person is suspected of having committed or with which the person has been charged or for which the person has been summonsed to answer to a charge; and
 - (e) that the procedure could produce evidence to be used in a court; and
- (ea) that information obtained from analysis of forensic material obtained by the procedure will be placed on a DNA database and may be used for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this Subdivision or under a corresponding law of a participating jurisdiction; and
- (f) that the person may refuse to undergo the procedure; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464S

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- (g) where the sample or examination sought may be obtained by a compulsory procedure and the person refuses to undergo the procedure, that an application may be made to the Magistrates' Court for an order authorising the conduct of the procedure; and S. 464S(1)(g) amended by No. 41/2004 s. 11(a).
- (h) where the sample or examination sought may be obtained by a non-intimate compulsory procedure within the meaning of section 464SA and the person refuses to consent to the procedure, that a senior police officer may authorise the conduct of the procedure. S. 464S(1)(h) inserted by No. 41/2004 s. 11(b).
- (2) A member of the police force who informs a person of the matters in sub-section (1)—
- (a) must record the giving of the information and the person's responses, if any, by audio recording or audiovisual recording or in writing signed by the person; and S. 464S(2)(a) amended by No. 27/2006 s. 17(18)(a).
- (b) must give or send by registered post to the person or his or her legal practitioner, without charge—
- (i) if the giving of the information and the responses are recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable, but not more than 7 days after the information is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and S. 464S(2)(b)(i) amended by No. 27/2006 s. 17(18)(b).
- (ii) if the giving of the information and the responses are recorded in writing signed by the person, a copy of the record forthwith.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464SA

(3) If—

- (a) a person is held in a prison, police gaol or youth training centre or in an institution within the meaning of section 56 of the **Corrections Act 1986**; and
- (b) within 24 hours after the giving of the information referred to in sub-section (1) the person refuses or fails to consent to the request to undergo a forensic procedure—

the person is to be taken as having refused consent.

S. 464SA
inserted by
No. 41/2004
s. 12.

464SA. Senior police officer may authorise non-intimate compulsory procedure for certain adults

- (1) In this section and section 464SB, "**non-intimate compulsory procedure**" means the taking of a non-intimate sample or the conduct of a physical examination of a non-intimate part of the body.
- (2) A senior police officer who is not involved in investigating the offence for which the compulsory procedure is required may authorise the conduct of a non-intimate compulsory procedure on a person if the senior police officer is satisfied that—
 - (a) the person is a relevant suspect who is—
 - (i) under lawful arrest by warrant; or
 - (ii) under lawful arrest under section 458 or 459 or a provision of any other Act; or
 - (iii) in the custody of an investigating official in accordance with an order of the Magistrates' Court under section 464B(5) and, at the time of the application for that order, the person was held in a prison or police gaol; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464SA

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- (b) the person is not under the age of 18 years;
and
- (c) the person is not incapable of giving
informed consent by reason of mental
impairment; and
- (d) the person has refused to give consent to a
request under section 464R(1); and
- (e) there are reasonable grounds to believe that
the person has committed the offence in
respect of which the authorisation is sought;
and
- (f) the requirements of section 464T(3)(c), (d),
(e) and (f) are met; and
- (g) in all the circumstances, the giving of the
authorisation is justified.
- (3) A senior police officer must not give an
authorisation for a compulsory procedure on a
person if—
- (a) an application to a court for an order under
this Subdivision in respect of that person has
been made in relation to the same matter and
on the same grounds but has been refused; or
- (b) a previous application for an authorisation
under this section in respect of that person
has been considered in relation to the same
matter and on the same grounds but has not
been given.
- (4) An authorisation given in contravention of sub-
section (3) is void.
- (5) Nothing in sub-section (3) prevents a later
application for an order under this Subdivision or
an authorisation under this section on different or
further grounds.

S. 464SA(2)(b)
amended by
No. 72/2004
s. 29.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464SB

- (6) An authorisation under this section may only be given to a member of the police force.

S. 464SB
inserted by
No. 41/2004
s. 12.

464SB. Making or refusing authorisation

- (1) Before a senior police officer gives or refuses to give an authorisation under section 464SA, the senior police officer must allow the suspect or the suspect's legal practitioner, if any, a reasonable opportunity, if practicable in person, to inform the senior police officer whether there is any reason why the non-intimate compulsory procedure should not be conducted.
- (2) An authorisation under section 464SA must be made in writing signed by the senior police officer giving it and include—
 - (a) the date and time when the authorisation is given; and
 - (b) the grounds for giving the authorisation; and
 - (c) the type of sample or examination authorised.
- (3) The senior police officer must give, or cause another member of the police force to give, to the suspect a copy of the authorisation as soon as practicable after the authorisation is made and, in any event, before the conduct of the compulsory procedure.
- (4) Before the compulsory procedure is conducted, a member of the police force must inform the suspect orally and in person of the following—
 - (a) that an authorisation under section 464SA has been given; and
 - (b) the matters referred to in sub-section (2)(a), (b) and (c); and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464SB

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- (c) that a member of the police force may use reasonable force to enable the compulsory procedure to be conducted; and
- (d) if the authorisation is to take a sample of hair, that the suspect may elect to provide instead a scraping taken by the suspect from his or her mouth, if it is considered appropriate to do so.
- (5) The person who gives the information required to be given by sub-section (4) must—
- (a) record, or cause to be recorded, the giving of that information by audio recording or audiovisual recording; and S. 464SB(5)(a)
amended by
No. 27/2006
s. 17(19)(a).
- (b) give or send by registered post, or cause to be given or sent by registered post, to the suspect or his or her legal practitioner, without charge, a copy of the recording as soon as practicable, but not more than 7 days after the conduct of the compulsory procedure. S. 464SB(5)(b)
amended by
No. 27/2006
s. 17(19)(b).
- (6) If a senior police officer refuses to give an authorisation under section 464SA in respect of a suspect, the senior police officer must—
- (a) inform, or cause another member of the police force to inform, the suspect orally of the decision as soon as practicable after the refusal; and
- (b) give written notice of the decision to the suspect within 7 days after the refusal.
- (7) A failure of the senior police officer or a member of the police force to comply with this section does not invalidate any authorisation made by the senior police officer but constitutes non-compliance for the purposes of section 464ZE(1)(a).
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464T

S. 464T
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 7(c),
substituted by
No. 129/1993
s. 7.

464T. Court may order compulsory procedure

(1) If—

- (a) a person refuses to undergo a forensic procedure after being requested to do so or is incapable of giving informed consent by reason of mental impairment; and
- (b) the sample or examination sought may be obtained by a compulsory procedure; and
- (c) the person is a relevant suspect⁷¹; and
- (d) a member of the police force believes on reasonable grounds that the person has committed the offence in respect of which the procedure was requested—

the member may apply to the Magistrates' Court for an order directing the person to undergo the compulsory procedure.

(2) An application under sub-section (1)—

- (a) must be in writing supported by evidence on oath or by affidavit; and
- (b) if the person is a detained or protected person, must state that fact and identify the place where the person is held or resides; and
- (c) must specify the type of compulsory procedure sought to be conducted.

(3) The Court may make an order directing a person to undergo a compulsory procedure if the Court is satisfied on the balance of probabilities that—

- (a) the person is a relevant suspect; and
- (b) there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464T

- (c) in the case of an application for a sample other than one referred to in paragraph (d), any of the following applies—
- (i) material reasonably believed to be from the body of a person who committed the offence has been found—
 - (A) at the scene of the offence; or
 - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (C) on an object or person reasonably believed to have been associated with the commission of the offence; or
 - (ii) there are reasonable grounds to believe that, because of the nature of the offence or injuries inflicted during the commission of the offence, material from the body or clothing of the victim is present—
 - (A) on the person who committed the offence or on anything reasonably believed to have been worn or carried by that person when the offence was committed; or
 - (B) on an object reasonably believed to have been associated with the commission of the offence; or

S. 464T(3)(c)
amended by
No. 81/1997
s. 17(1).

S. 464T(3)(c)
(ii)(B)
amended by
No. 81/1997
s. 17(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464T

S. 464T(3)
(c)(iii)
inserted by
No. 81/1997
s. 17(3).

(iii) the victim of the offence has not been found, and there are reasonable grounds to believe that material reasonably believed to be from the body of the victim is present on a person suspected of having committed the offence; or

S. 464T(3)
(c)(iv)
inserted by
No. 81/1997
s. 17(3).

(iv) the offence in respect of which the application is made is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I and there are reasonable grounds to believe that the conduct of the procedure on the person may be relevant in determining the paternity of a child that has been conceived allegedly as a result of the offence; and

- (d) in the case of an application to take a sample or washing from the skin to determine the presence of gunshot residue, a firearm was discharged during the commission of the offence; and
- (e) in the case of an application to conduct a physical examination, the person who committed the offence had distinguishing marks or injuries, whether acquired during the commission of the offence or otherwise; and
- (f) there are reasonable grounds to believe that the conduct of the procedure on the person may tend to confirm or disprove his or her involvement in the commission of the offence; and
- (g) the person has refused to give consent to a request under section 464R(1) or the person is incapable of giving informed consent by reason of mental impairment; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464T

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- (h) in all the circumstances, the making of the order is justified.
- (4) Except on an application made in accordance with section 464V or 464W, the Magistrates' Court must not make an order directing a person to undergo a compulsory procedure unless the person is present.
- (5) A relevant suspect in respect of whom an application is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the Court, other than in respect of any matter referred to in sub-section (3)(a) to (h).
- (6) In exercising the right of address under sub-section (5)(c), a relevant suspect may be represented by a legal practitioner.
- (7) If the Magistrates' Court makes an order under sub-section (3), it must—
- (a) give reasons for its decision; and
 - (b) state the evidence on which it is satisfied of the matters referred to in sub-section (3); and
 - (c) cause a note of the reasons to be entered in the records of the Court; and
 - (d) inform the person ordered to undergo a compulsory procedure that a member of the police force may use reasonable force to enable the procedure to be conducted.

S. 464T(6)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464T

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- (8) A failure of the Court to comply with sub-section (7) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (9) If—
- (a) a member of the police force proposes to make an application to the Magistrates' Court under sub-section (1) in respect of a person; and
 - (b) the person is a detained or protected person—the Court may, on the application of a member of the police force, issue a warrant directing the officer-in-charge of the place where the person is held to deliver the person into the custody of the applicant or another member of the police force for the purpose—
 - (c) of attending the hearing of the application under sub-section (1); and
 - (d) if that application is granted, of conducting the procedure on the person.
- (10) A member of the police force into whose custody the person is delivered under a warrant issued under sub-section (9) must return the person to the officer-in-charge of the place where the person was held—
- (a) forthwith after the hearing of the application under sub-section (1); or
 - (b) if the application is granted, within such period after the hearing of the application as reasonably permits the conduct of the procedure on the person.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464U

464U. Forensic procedure on child

- (1) A member of the police force must not request a child to undergo a forensic procedure or request that a compulsory procedure be conducted on the child if the child—

- (a) is under the age of 10 years; and
- (b) is suspected of having done or omitted to have done any act which would have constituted an offence had the child been of the age of criminal responsibility.

- (2) A member of the police force must not request a child aged 10 years or more but under 18 years who—

- (a) is suspected of having committed; or
- (b) has been charged with; or
- (c) has been summonsed to answer to a charge for—

an offence, whether indictable or summary, to undergo a forensic procedure or request that a compulsory procedure be conducted on the child unless the Children's Court has made an order under sub-section (7) or section 464V(5).

- (3) A member of the police force may apply to the Children's Court for an order under sub-section (7) if the child—

- (a) is suspected on reasonable grounds of having committed or attempted to commit an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under

S. 464U
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
s. 7(d)–(h)
(i)(ii), 23/1991
s. 6(2)(3),
substituted by
No. 129/1993
s. 7.

S. 464U(2)
amended by
No. 72/2004
s. 30(1).

S. 464U(3)(a)
amended by
Nos 81/1997
s. 18, 61/2001
s. 16(1)(b)(i),
16/2002
s. 17(2),
35/2002
s. 28(Sch.
item 3.2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464U

S. 464U(3)(b)
amended by
Nos 81/1997
s. 18, 61/2001
s. 16(1)(b)(ii),
16/2002
s. 17(2),
35/2002
s. 28(Sch.
item 3.2).

- section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**; or
- (b) has been charged with an indictable offence against the person at common law or an indictable offence under Division 1 of Part I or under section 75, 75A, 76, 77, 197 (in circumstances where the offence is charged as arson), 197A, 249, 250, 251, 317, 317A or 318 or under section 71, 71AA, 72 or 72A of the **Drugs, Poisons and Controlled Substances Act 1981** or under section 71, 72(1)(ab) or 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**.
- (4) An application under sub-section (3)—
- (a) must be in writing supported by evidence on oath or by affidavit; and
- (b) if the child is a detained or protected person, must state that fact and identify the place where the child is held or resides; and
- (c) must specify the type of compulsory procedure sought to be conducted.
- (5) Notice of an application under sub-section (3) must be served on⁷²—
- (a) a parent or guardian of the child; and
- (b) if the child is not in custody within the meaning of this Subdivision, the child.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464U

- (6) The court may dispense with the requirement of sub-section (5)(a) if satisfied that it is impracticable for the applicant to comply.
- (7) The Children's Court may make an order directing a child aged 10 years or more but under 18 years to undergo a compulsory procedure if satisfied on the balance of probabilities that—
 - (a) the child is a person referred to in sub-section (3)(a) or (b); and
 - (b) there are reasonable grounds to believe that the child has committed the offence in respect of which the application is made; and
 - (c) in the case of an application for a sample other than one referred to in paragraph (d), either—
 - (i) material reasonably believed to be from the body of a person who committed the offence has been found—
 - (A) at the scene of the offence; or
 - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (C) on an object or person reasonably believed to have been associated with the commission of the offence; or
 - (ii) there are reasonable grounds to believe that, because of the nature of the offence or injuries inflicted during the commission of the offence, material from the body or clothing of the victim is present—

S. 464U(7)
amended by
No. 72/2004
s. 30(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464U

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- (A) on the person who committed the offence or on anything reasonably believed to have been worn or carried by that person when the offence was committed; or
 - (B) on an object reasonably believed to have been associated with the commission of the offence; and
 - (d) in the case of an application to take a sample or washing from the skin to determine the presence of gunshot residue, a firearm was discharged during the commission of the offence; and
 - (e) in the case of an application to conduct a physical examination, the person who committed the offence had distinguishing marks or injuries, whether acquired during the commission of the offence or otherwise; and
 - (f) there are reasonable grounds to believe that the conduct of the procedure on the child may tend to confirm or disprove his or her involvement in the commission of the offence; and
 - (g) in all the circumstances, the making of the order is justified.
- (8) In considering whether the making of the order is justified, the court must take into account amongst other things—
- (a) the seriousness of the circumstances surrounding the commission of the offence; and
 - (b) the alleged degree of participation by the child in the commission of the offence; and
 - (c) the age of the child.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464U

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- (9) If the Children's Court makes an order under sub-section (7), it must—
- (a) give reasons for its decision; and
 - (b) state the evidence on which it is satisfied of the matters referred to in sub-section (7); and
 - (c) cause a note of the reasons to be entered in the records of the court; and
 - (d) inform the child ordered to undergo a compulsory procedure that a member of the police force may use reasonable force to enable the procedure to be conducted.
- (10) A failure of the court to comply with sub-section (9) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (11) Except on an application made in accordance with section 464V or 464W, the Children's Court must not make an order under sub-section (7) unless the child is present.
- (12) A child in respect of whom an application is made—
- (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the court, other than in respect of any matter referred to in sub-section (7)(a) to (g) or sub-section (8).
- (13) In exercising the right of address under sub-section (12)(c), a child may be represented by a legal practitioner or, with the leave of the court, a parent or guardian of the child.

S. 464U(13)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.17).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464V

- (14) The provisions of section 464T(9) and (10) apply as if—
- (a) a reference to an application to the Magistrates' Court under sub-section (1) of that section were a reference to an application to the Children's Court under sub-section (3) of this section; and
 - (b) a reference to the person were a reference to the child; and
 - (c) a reference to the Magistrates' Court were a reference to the Children's Court.

S. 464V
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
ss 7(i)(j),
8(a)(i)–(iv),
23/1991
s. 7(1)(2),
substituted by
No. 129/1993
s. 7.

464V. Interim orders

- (1) This section does not apply to an application in respect of a blood sample.
- (2) A member of the police force may apply, with or without notice to any other person, for an interim order directing a person to undergo a compulsory procedure if the member believes on reasonable grounds that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the procedure is delayed until the final determination of the application.
- (3) Section 464T(1), (2), (5), (6), (7) and (8) or section 464U(3), (4), (9), (10), (12) and (13) as the case requires apply to applications for interim orders.
- (4) If a member of the police force believes on reasonable grounds that—
 - (a) it is necessary to obtain an interim order; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464V

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- (b) the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the making of an application for an interim order is delayed until the time when the application could be made in person—
- the member may apply for an interim order by telephone in accordance with the procedure in section 464W.
- (5) The court may make an interim order directing a person to undergo a compulsory procedure if—
- (a) the court is satisfied that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the procedure is delayed until the final determination of the application; and
 - (b) on the evidence, whether sworn or unsworn, before it at that time, it appears to the court that there may be sufficient evidence to satisfy it of the matters set out in section 464T(3) or 464U(7) (as the case requires); and
 - (c) on an application by telephone, the court is satisfied that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the making of the application is delayed until the time when the application could be made in person.
- (6) If the court makes an interim order—
- (a) it must adjourn the further hearing of the application to enable the compulsory procedure to be conducted; and
 - (b) section 464T or 464U (as the case requires) applies to the further hearing; and
 - (c) the further hearing must not be conducted by telephone; and
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464W

- (d) the person on whom the compulsory procedure is conducted must attend the further hearing⁷³.
- (7) On the further hearing of an application—
 - (a) if the court is satisfied of the matters set out in section 464T(3) or 464U(7), it must confirm the order made under this section; or
 - (b) if the court is not so satisfied, it must order the destruction of any sample taken and any other evidence obtained as a result of the compulsory procedure.
- (8) A sample taken in accordance with an interim order must not be analysed before the final determination of the application.

S. 464W
inserted by
No. 84/1989
s. 5,
amended by
Nos 84/1989
ss 7(k), 8(b),
8/1991
s. 22(1)(a)–(d),
substituted by
No. 129/1993
s. 7.

464W. Application by telephone for interim order

- (1) A member of the police force making an application by telephone for an interim order must make the application in accordance with this section.
- (2) Before making the application, the member must prepare an affidavit setting out the grounds on which the order is sought, but may, if necessary, make the application before the affidavit has been sworn.
- (3) If transmission by facsimile machine is available, the member must transmit a copy of the affidavit, whether sworn or unsworn, to the magistrate or Children's Court magistrate constituting the court that is to hear the application by telephone.
- (4) If the person the subject of the application is present with the applicant, the court must, if practicable, hear the person on any matter referred to in section 464T(3)(a) to (h), in the case of a relevant suspect, or section 464U(7)(a) to (g) and section 464U(8), in the case of a child.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464W

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- (5) If the court makes an interim order on an application made by telephone, the court must inform the applicant of the terms of the order, the date on which and the time at which it was made, and the date on which and the venue of the court at which the further hearing of the application will take place.
- (6) If transmission by facsimile machine is available, the court must transmit a copy of its order to the applicant.
- (7) A failure of the court to comply with sub-section (4), (5) or (6) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (8) If an interim order is made on an application made by telephone, the applicant must—
- (a) if a copy of the order has not been transmitted by facsimile machine, complete a form of order in the terms indicated by the court under sub-section (5) and must write on it the name of the magistrate or Children's Court magistrate who constituted the court that made the order and the date on which and the time at which it was made; and
 - (b) if a copy of the order has been transmitted by facsimile machine, serve a copy of the order on the person ordered to undergo the compulsory procedure; and
 - (c) inform the person ordered to undergo the compulsory procedure—
 - (i) of the terms of the order; and
 - (ii) that a member of the police force may use reasonable force to enable the procedure to be conducted; and
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464W

- (d) give notice in writing to the person ordered to undergo the compulsory procedure of the date on which and venue of the court at which the further hearing of the application will take place and that the person is required to be present at that further hearing; and
- (e) not later than the day following the making of the order, send the form of order, if any, completed by the applicant to the magistrate or Children's Court magistrate who constituted the court that made the order.

(9) A member of the police force who informs a person of the matters in sub-section (8)(c)—

- (a) must record the giving of the information by audio recording or audiovisual recording or in writing signed by the person; and
- (b) must give or send by registered post to the person or his or her legal practitioner, without charge—

S. 464W(9)(a)
amended by
No. 27/2006
s. 17(20)(a).

- (i) if the giving of the information is recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and
- (ii) if the giving of the information is recorded in writing, a copy of the record forthwith.

S. 64W(9)(b)(i)
amended by
No. 27/2006
s. 17(20)(b).

(10) If an application is made by telephone, whether or not an interim order is made, the applicant must, not later than the day following the making of the application, send the affidavit duly sworn to the magistrate or Children's Court magistrate who constituted the court that heard the application.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464X

464X. Warrants

S. 464X
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

- (1) If an application is made to⁷⁴—
- (a) the Magistrates' Court under section 464T(1) or 464V(2); or
 - (b) the Children's Court under section 464U(3) or 464V(2)—
- and the person in respect of whom the application is made is not a detained or protected person, the court may issue a warrant authorising the person to whom it is directed, if necessary—
- (c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
 - (d) to arrest the person; and
 - (e) to bring the person before the court for the hearing of the application; and
 - (f) if that application is granted, to detain the person for as long as reasonably permits the conduct of the compulsory procedure.
- (2) If a court issues a warrant under sub-section (1) it must—
- (a) give reasons for its decision; and
 - (b) cause a note of the reasons to be entered in the records of the court.
- (3) A failure of a court to comply with sub-section (2) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).
- (4) If a person is apprehended under a warrant issued under sub-section (1), the warrant ceases to have effect immediately after the procedure is completed or on the expiration of a reasonable time (whichever is the earlier).
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Y

S. 464Y
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
s. 8(c),
substituted by
No. 129/1993
s. 7.

464Y. Caution before forensic procedure

S. 464Y(1)
amended by
Nos 23/1994
s. 118(Sch. 1
item 15.7),
81/1997
s. 20(a)(b),
27/2006 s. 5.

- (1) Immediately before a forensic procedure is conducted in accordance with sections 464R to 464ZA or section 464ZF or 464ZFAAA (as the case may be), a member of the police force must inform the person on whom the procedure is to be conducted that he or she does not have to answer any questions asked by the registered medical practitioner, nurse or other person conducting the procedure but that anything the person does say may be given in evidence.

- (2) A member of the police force who informs a person of the matters in sub-section (1)—

S. 464Y(2)(a)
amended by
No. 27/2006
s. 17(21)(a).

- (a) must record the giving of the information and the person's responses, if any, by audio recording or audiovisual recording or in writing signed by the person or, if the person refuses to sign, by an independent person, if present; and
- (b) must give or send by registered post to the person or his or her legal practitioner, without charge—

S. 464Y(2)(b)(i)
amended by
No. 27/2006
s. 17(21)(b).

- (i) if the giving of the information and the responses are recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the recording is prepared, a

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Z

copy of the transcript as soon as practicable; and

- (ii) if the giving of the information and the responses are recorded in writing, a copy of the record forthwith.

464Z. Procedure for taking samples etc.

S. 464Z
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

- (1) The Chief Commissioner of Police may authorise a person to take non-intimate samples or to conduct physical examinations of a non-intimate part of the body for the purposes of this Subdivision.

- (1A) The Chief Commissioner of Police may authorise a member of the police force, or a class of members of the police force, to supervise the taking of scrapings from the mouth for the purposes of sub-section (3A).

S. 464Z(1A)
inserted by
No. 16/2002
s. 7(1).

- (2) The Chief Commissioner must give a copy of an authority under sub-section (1) or (1A) to the Minister who must cause it to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Council or the Assembly, as the case may be, after it has been received by the Minister.

S. 464Z(2)
amended by
No. 16/2002
s. 7(2).

- (3) For the purposes of a forensic procedure under this Subdivision—

- (a) an intimate sample (other than a dental impression) or a physical examination of an intimate part of the body may only be taken or conducted by a medical practitioner or nurse of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined;

S. 464Z(3)(a)
amended by
No. 81/1997
s. 19(2).

- (b) a dental impression may only be taken by a dentist;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Z

S. 464Z(3)(c)
amended by
Nos 81/1997
s. 19(2),
16/2002
s. 7(3).

(c) a non-intimate sample or a physical examination of a non-intimate part of the body may be taken or conducted by a medical practitioner or nurse or a person authorised in accordance with sub-section (1).

S. 464Z(3AA)
inserted by
No. 41/2004
s. 13(1).

(3AA) Despite sub-section (3), a person from whom a sample of hair, other than pubic hair, is to be taken in accordance with—

(a) an authorisation given under section 464SA;
or

(b) an order made by a court under this Subdivision—

may elect to provide instead a scraping taken by the person from his or her mouth if a member of the police force authorised in accordance with sub-section (1A) considers that—

(c) a scraping is appropriate in the circumstances; and

(d) it is appropriate for the person to take the scraping.

S. 464Z(3AB)
inserted by
No. 41/2004
s. 13(1),
amended by
No. 27/2006
s. 17(22).

(3AB) An election made by a person under sub-section (3AA) must be recorded by audio recording or audiovisual recording or in writing signed by the person.

S. 464Z(3A)
inserted by
No. 16/2002
s. 7(4).

(3A) Nothing in sub-section (3) prevents a person from whom a scraping from the mouth is to be taken from taking the scraping himself or herself under the supervision of a member of the police force authorised in accordance with sub-section (1A) if—

(a) the member considers it appropriate for the person to do so; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Z

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| <p>(b) the person consents to taking the scraping and the consent is recorded by audio recording or audiovisual recording or in writing signed by the person.</p> | <p>S. 464Z(3A)(b)
amended by
No. 27/2006
s. 17(23).</p> |
| <p>(3B) The member of the police force referred to in sub-section (3AA) or (3A) must give or send by registered post to the person from whom a scraping is taken or his or her legal practitioner, without charge—</p> | <p>S. 464Z(3B)
inserted by
No. 16/2002
s. 7(4),
amended by
No. 41/2004
s. 13(2)(a).</p> |
| <p>(a) if the election or consent is recorded by audio recording or audiovisual recording, a copy of the recording as soon as practicable but not more than 7 days after the election is made or the consent is given, and, if a transcript of the recording is prepared, a copy of the transcript as soon as practicable; and</p> | <p>S. 464Z(3B)(a)
amended by
Nos 41/2004
s. 13(2)(b)(i)(ii),
27/2006
s. 17(24).</p> |
| <p>(b) if the election or consent is recorded in writing, a copy of the record forthwith.</p> | <p>S. 464Z(3B)(b)
amended by
No. 41/2004
s. 13(2)(c).</p> |
| <p>(4) A person from whom an intimate sample is to be taken (except a scraping from a person's mouth to be taken by that person) or who is to undergo a physical examination of an intimate part of the body may request that a medical practitioner or nurse or, if a dental impression is to be taken, a dentist of his or her choice take the sample or conduct the examination or be present during the forensic procedure.</p> | <p>S. 464Z(4)
amended by
Nos 81/1997
s. 19(3),
41/2004
s. 13(3).</p> |
| <p>(5) If a medical practitioner, nurse or dentist is chosen by a person under sub-section (4)—</p> | <p>S. 464Z(5)
amended by
No. 81/1997
s. 19(4).</p> |
| <p>(a) if practicable, the forensic procedure is to be conducted by or in the presence of the chosen person; and</p> | |
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464Z

S. 464Z(5)(b)
amended by
No. 81/1997
s. 19(4).

(b) if the chosen person conducts the forensic procedure, a medical practitioner, nurse or dentist (as the case requires) nominated by the police must be present.

(6) A sample must be taken or a physical examination must be conducted—

S. 464Z(6)(a)
amended by
No. 81/1997
s. 21(a).

(a) if taken or conducted by a medical practitioner, nurse or dentist, in a manner consistent with the appropriate medical or dental standards; and

S. 464Z(6)(ab)
inserted by
No. 81/1997
s. 21(b),
amended by
No. 16/2002
s. 7(5)(a).

(ab) in the presence of a member of the police force who is present to witness the taking of the sample or the conduct of the physical examination, subject to sub-section (9), and is of the same sex, if practicable, as the person from whom the sample is to be taken or who is to be examined; and

(b) in circumstances affording reasonable privacy to the person from whom the sample is to be taken or who is to be examined; and

(c) in the presence only of—

S. 464Z(6)(c)(i)
amended by
No. 81/1997
s. 21(c).

(i) a member of the police force required by paragraph (ab) to be present; and

(ii) a person required by section 464ZA to be present; and

S. 464Z(6)(c)(iii)
amended by
No. 16/2002
s. 7(5)(b).

(iii) a person referred to in sub-section (5); and

S. 464Z(6)(c)(iv)
inserted by
No. 16/2002
s. 7(5)(b).

(iv) a member of the police force referred to in sub-section (3A).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZA

(7) A blood sample for the purposes of this Subdivision must not exceed 10 millilitres.

(7A) For the purposes of this Subdivision, a person is authorised to take a sample of hair by removing the root of the hair only if—

S. 464Z(7A)
inserted by
No. 41/2004
s. 13(4).

(a) the person takes only so much hair as the person believes is necessary for analysis of the sample or other examination of the hair; and

(b) strands of hair are taken using the least painful technique known and available to the person.

(8) This Subdivision does not compel any medical practitioner, nurse or dentist to take a sample from a person nor to conduct a physical examination of a person nor to be present when a sample is taken or an examination is conducted.

S. 464Z(8)
amended by
No. 81/1997
s. 19(5).

(9) If a scraping is to be taken from a person's mouth and the person is to take it, the witness required by sub-section (6)(ab) to be present need not be of the same sex as the person.

S. 464Z(9)
inserted by
No. 16/2002
s. 7(6).

464ZA. Execution of authorisation or order

S. 464ZA
(Heading)
inserted by
No. 41/2004
s. 14(1).

S. 464ZA
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

(1) If—

(a) a senior police officer gives an authorisation under section 464SA for the conduct of a non-intimate compulsory procedure; or

S. 464ZA(1)
amended by
No. 81/1997
s. 22(1)(a)(b),
substituted by
No. 41/2004
s. 14(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZA

S. 464ZA(1)(c)
amended by
No. 27/2006
s. 6(a).

(b) a court makes an order under section 464T(3), 464U(7) or 464V(5) for the conduct of a compulsory procedure; or

(c) a court makes an order under section 464ZF or 464ZFAAA for the conduct of a forensic procedure—

a member of the police force, with such assistance as he or she considers necessary, may use reasonable force to assist a medical practitioner, nurse, dentist or person authorised under section 464Z to conduct the procedure.

(2) If practicable, a member of the police force acting in accordance with sub-section (1) and any person assisting the member—

(a) must be of the same sex as the person on whom the procedure is to be conducted; and

(b) must not be involved in investigating the offence for which the procedure is required.

(3) If the Children's Court makes an order under section 464U(7) or 464V(5), a parent or guardian of the child or, if a parent or guardian cannot be located, an independent person of the same sex, if practicable, as the child must be present during the conduct of a compulsory procedure on the child.

S. 464ZA(4)
amended by
No. 16/2002
s. 8(1).

(4) The taking of an intimate sample (other than a blood sample or a scraping from a person's mouth taken by that person) or the examination of an intimate part of the body in accordance with the order of a court—

S. 464ZA(4)(a)
amended by
No. 27/2006
s. 17(25).

(a) must be recorded by audiovisual recording, if practicable and if the person on whom the procedure is to be conducted consents; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZA

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| <p>(b) must be witnessed by an independent medical practitioner or independent nurse or, if a dental impression is to be taken, an independent dentist or the medical practitioner, nurse or dentist chosen by the person to be present at the procedure.</p> | <p>S. 464ZA(4)(b)
amended by
No. 81/1997
s. 19(6)(a)(b).</p> |
| <p>(5) All other compulsory or forensic procedures (except a scraping from a person's mouth taken by that person) conducted in accordance with the authorisation of a senior police officer or the order of a court must be recorded by audiovisual recording, if practicable, or witnessed by an independent person.</p> | <p>S. 464ZA(5)
amended by
Nos 81/1997
s. 22(2),
16/2002
s. 8(2),
41/2004
s. 14(3),
27/2006
s. 17(26).</p> |
| <p>(6) After an authorisation under section 464SA or an order under section 464T(3), 464U(7), 464V(5), 464ZF or 464ZF AAA is executed—</p> | <p>S. 464ZA(6)
substituted by
No. 81/1997
s. 22(3),
amended by
Nos 41/2004
s. 14(4)(a),
27/2006
s. 6(b).</p> |
| <p>(a) if the procedure was recorded by audiovisual recording, the person who recorded the conduct of the procedure, or the member of the police force who witnessed the conduct of the procedure, must endorse on the authorisation or order his or her own name and sign the endorsement; or</p> | <p>S. 464ZA(6)(a)
amended by
No. 41/2004
s. 14(4)(b),
amended by
No. 27/2006
s. 17(27).</p> |
| <p>(b) if an independent medical practitioner, nurse, dentist or other person witnessed the conduct of the procedure, the witness must endorse on the authorisation or order his or her own name and sign the endorsement.</p> | <p>S. 464ZA(6)(b)
amended by
No. 41/2004
s. 14(4)(b).</p> |
| <p>(6A) A member of the police force must give a copy of the authorisation or order so endorsed to the person on whom the procedure was conducted.</p> | <p>S. 464ZA(6A)
inserted by
No. 81/1997
s. 22(3),
amended by
No. 41/2004
s. 14(5).</p> |
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZB

S. 464ZA(7)
amended by
Nos 81/1997
s. 22(4),
41/2004
s. 14(6)(a)(b),
27/2006
s. 17(28).

- (7) If a compulsory or forensic procedure conducted in accordance with an authorisation of a senior police officer or an order of a court is recorded by audiovisual recording, the applicant for the authorisation or order must—

- (a) without charge; and
- (b) as soon as practicable but not more than 7 days after the procedure was conducted—

give or send by registered post a copy of the audiovisual recording to the person on whom the procedure was conducted or his or her legal practitioner.

S. 464ZB
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

464ZB. Analysis of samples

- (1) If a sample taken in accordance with this Subdivision is analysed, it must be analysed—
- (a) in accordance with the prescribed standards, if any; and
 - (b) by an analyst authorised under this section, if the regulations so require.
- (2) The Minister may authorise, by notice published in the Government Gazette, persons whom the Minister considers to be appropriately qualified to carry out analyses for the purposes of this Subdivision.
- (3) An authority given under sub-section (1) may be in respect of a particular type of analysis specified in the authority.
- (4) The Minister must cause the name of a person authorised under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Council or the Assembly, as the case may be, after the date of publication of the notice in the Government Gazette.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZC

464ZC. Analysis of material found at scene of offence etc.

S. 464ZC
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

- (1) If material reasonably believed to be from the body of a person who committed an indictable offence has been found—
- (a) at the scene of the offence; or
 - (b) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (c) on an object or person reasonably believed to have been associated with the commission of the offence—

S. 464ZC(1)
amended by
No. 81/1997
s. 23 (ILA
s. 39B(1)).

and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.

- (2) If material, reasonably believed to be from the body of a victim of an indictable offence which has not been found, has been found on a person reasonably believed to have been associated with the commission of the offence, and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.

S. 464ZC(2)
inserted by
No. 81/1997
s. 23.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZD

S. 464ZC(3)
inserted by
No. 81/1997
s. 23.

(3) If—

- (a) a sample has been taken from a child in connection with an investigation into an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I; and
- (b) that child was conceived allegedly as a result of that offence—

a person suspected of having committed that offence and from whom a sample has been taken in relation to that offence may request a part of the child's sample.

S. 464ZC(4)
inserted by
No. 81/1997
s. 23.

- (4) A part of that child's sample requested by a person under sub-section (3) must be delivered to that person provided that there is sufficient material to be analysed both in the investigation of the offence and on behalf of the person suspected of having committed the offence.

S. 464ZD
inserted by
No. 84/1989
s. 5,
amended by
No. 84/1989
ss 7(l)(m),
8(d),
substituted by
No. 129/1993
s. 7,
amended by
Nos 80/1998
s. 3(a)(i)–(iii),
41/2004 s. 15,
27/2006 s. 7.

464ZD. Forensic reports to be made available

If a forensic procedure has been conducted on a person in accordance with section 464R, 464SA, 464T(3), 464U(7), 464V(5), 464ZF(2) or (3) or 464ZFAAA(2) or sections 464ZGB to 464ZGD or otherwise in accordance with this Subdivision, a copy of every forensic report must be given or sent by registered post as soon as practicable to that person (or, in the case of a forensic procedure conducted in accordance with section 464ZF or 464ZFAAA on a person who is a child within the meaning of that section, to that child and a parent or guardian of that child) or his or her legal practitioner.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZE

464ZE. Evidence relating to forensic procedures⁷⁵

S. 464ZE
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

- (1) Subject to sub-section (4) and section 464ZGO, evidence obtained as a result of a forensic procedure conducted on a person, or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, is inadmissible as part of the prosecution case in proceedings against that person for any offence if—

S. 464ZE(1)
amended by
Nos 81/1997
s. 24(1)(a),
16/2002 s. 9.

- (a) the requirements of sections 464R to 464ZA, sections 464ZF to 464ZFB, sections 464ZGB to 464ZGD or section 464ZGF (as the case may be) have not been complied with; or

S. 464ZE(1)(a)
amended by
No. 81/1997
s. 24(1)(b).

- (ab) a copy of a forensic report relating to the procedure required by section 464ZD to be given or sent by registered post to a person had not been given or sent to that person before the end of the period of 7 days after its receipt by the prosecution; or

S. 464ZE
(1)(ab)
inserted by
No. 80/1998
s. 3(b).

- (b) the procedure was not conducted in accordance with the prescribed standards, if any; or

- (c) any sample taken was not analysed—

- (i) in accordance with the prescribed standards, if any; or
- (ii) if the regulations so require, by an analyst authorised under section 464ZB; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZE

S. 464ZE(1)(d)
amended by
Nos 81/1997
s. 24(1)(c),
27/2006 s. 8.

- (d) any sample taken and any information which may identify the person contained in—
 - (i) any record of or report relating to the forensic procedure; or
 - (ii) any copy of such a record or report—
should have been but has not been destroyed as required by section 464ZF, 464ZFAAA, 464ZFC, 464ZG, 464ZGA or 464ZGE; or
- (e) the evidence was obtained as a result of a procedure conducted in accordance with an interim order which subsequently is not confirmed under section 464V(7).

S. 464ZE(2)
amended by
Nos 81/1997
s. 24(2)(a),
80/1998
s. 3(c).

- (2) A court may admit evidence obtained as a result of a forensic procedure, or from a sample voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, otherwise inadmissible by reason of sub-section (1)(a) or (1)(ab) if—

S. 464ZE(2)(a)
amended by
No. 81/1997
s. 24(2)(b).

- (a) the prosecution satisfies the court on the balance of probabilities that the circumstances justify the reception of the evidence; or
- (b) the accused consents to the reception of the evidence.

S. 464ZE(2A)
inserted by
No. 81/1997
s. 24(3),
amended by
No. 80/1998
s. 3(c).

- (2A) In determining whether the circumstances justify the reception of evidence otherwise inadmissible by reason of sub-section (1)(a) or (1)(ab), the court may have regard to the following—
 - (a) the probative value of the evidence, including whether equivalent evidence or evidence of equivalent probative value could have been obtained by other means;

Part III—Procedure and Punishment

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

- (5) If evidence obtained as a result of a forensic procedure conducted on a person would be admissible in proceedings against that person for an offence, that evidence is admissible in proceedings against that person for a relevant offence within the meaning of section 464ZG.
- (6) Evidence obtained as a result of a physical examination conducted in good faith on a person for the purposes of medical or dental treatment is admissible in proceedings against that person for an offence.

S. 464ZF
inserted by
No. 84/1989
s. 5,
substituted by
Nos 129/1993
s. 7, 81/1997
s. 25.

464ZF. Forensic procedure following the commission of forensic sample offence

- (1) In this section—

S. 464ZF(1)
def. of "child"
amended by
No. 72/2004
s. 31(1).

"**child**" means a child aged 10 years or more but under 18 years;

"**forensic sample offence**" means any offence specified in Schedule 8.

S. 464ZF(2)
amended by
No. 14/2006
s. 13(1)(a).

- (2) If at any time on or after the commencement of section 25 of the **Crimes (Amendment) Act 1997** a court finds a person guilty of—
 - (a) a forensic sample offence; or
 - (b) an offence of conspiracy to commit, incitement to commit or attempting to commit a forensic sample offence—

a member of the police force, at any time following that finding but not later than 6 months after the final determination of an appeal against conviction or sentence or the expiration of any appeal period (whichever is the later), may apply to the court for an order directing the person to

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

(2AA) If the finding of guilt referred to in sub-section (2)—

S. 464ZF(2AA)
inserted by
No. 35/2002
s. 28(Sch.
item 3.3),
amended by
No. 14/2006
s. 13(1)(b).

(a) occurs between 1 January 2002 and the commencement of item 3.4 in the Schedule to the **Criminal Justice Legislation (Miscellaneous Amendments) Act 2002**; and

(b) is in respect of an offence referred to in item 29, 30 or 31 of Schedule 8—

an application under sub-section (2) may be made not later than 12 months after the final determination of an appeal against conviction or sentence or the expiration of any appeal period (whichever is the later).

(2A) An order under sub-section (2) in respect of a person who is not a detained or protected person must include a direction that the person attend—

S. 464ZF(2A)
inserted by
No. 16/2002
s. 10.

(a) at a place; and

(b) within a period, commencing after the expiry of the period referred to in sub-section (6) during which the order must not be executed—

specified in the order to undergo the forensic procedure.

(3) If—

(a) at any time before the commencement of section 25 of the **Crimes (Amendment) Act 1997**, a person has been found guilty by a court of a forensic sample offence; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

- (b) at any time on or after that commencement, that person is serving a term of imprisonment or a period of detention in a prison, police gaol or youth training centre or as a security patient in an approved mental health service for any offence, whether or not a forensic sample offence—

a member of the police force may apply to the Magistrates' Court or the Children's Court (as the case may be) for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

- (4) In any application to a court under sub-section (2) or (3), the member of the police force must specify the type of sample (whether intimate or non-intimate) sought to be taken in the forensic procedure.

- (5) If, on or after the commencement of the **Crimes (Amendment) Act 2004**, an application under sub-section (2) or (3) is made in respect of a person aged 18 years or more—

- (a) the application may be made without notice to any person; and
- (b) the person is not a party to the application; and
- (c) the person may not call or cross-examine any witnesses; and
- (d) the person may not address the court, other than in response to inquiries made by the court under sub-section (8)(c).

S. 464ZF(5)
substituted by
No. 41/2004
s. 16,
amended by
No. 72/2004
s. 31(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

(5A) If, on or after the commencement of the **Crimes (Amendment) Act 2004**, an application under sub-section (2) or (3) is made in respect of a child—

S. 464ZF(5A)
inserted by
No. 41/2004
s. 16.

- (a) notice of the application must be served on the child and a parent or guardian of the child; and
- (b) the child is not a party to the application; and
- (c) the child may not call or cross-examine any witnesses; and
- (d) the child may not address the court, other than in respect of any matter referred to in sub-section (8)(a) or (b) or in response to inquiries made by the court under sub-section (8)(c).

(5B) In exercising the right of address under sub-section (5A)(d), a child may be represented by a legal practitioner, or, with the leave of the court, a parent or guardian of the child.

S. 464ZF(5B)
inserted by
No. 41/2004
s. 16.

(6) An order made by a court under sub-section (2) or (3) before the appeal period in relation to the conviction for the forensic sample offence has expired or an appeal against conviction (if any) has been finally determined (whichever is the later), must not be executed unless—

S. 464ZF(6)
amended by
No. 14/2006
s. 13(1)(c)(i)(ii).

- (a) that appeal period expires; or
- (b) an appeal against conviction (if any) is finally determined and the conviction for the forensic sample offence is upheld—

S. 464ZF(6)(b)
amended by
No. 14/2006
s. 13(1)(c)(ii).

whichever is the later.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

S. 464ZF(6A)
inserted by
No. 14/2006
s. 13(2).

(6A) If leave to appeal against a conviction for a forensic sample offence is sought after the expiry of the appeal period in relation to the conviction, an order made by a court under sub-section (2) before leave to appeal is sought, if not executed before that leave is sought, must not be executed unless—

- (a) leave to appeal against the conviction is refused; or
- (b) leave to appeal against the conviction is granted and the appeal is finally determined and the conviction for the forensic sample offence is upheld.

S. 464ZF(6B)
inserted by
No. 14/2006
s. 13(2).

(6B) If an order made by a court under sub-section (2) has been executed after the expiration of the appeal period in relation to the conviction for the forensic sample offence and leave to appeal against the conviction is granted after the expiry of that period—

- (a) any sample and any related material and information taken may be retained by a member of the police force pending the final determination of the appeal against conviction; and
 - (b) if, on appeal, the conviction for the forensic sample offence is quashed, the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.
- (7) If on appeal a conviction for the forensic sample offence is quashed, an order made by a court under sub-section (2) or (3) ceases to have effect.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZF

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- (8) A court hearing an application under sub-section (2) or (3)—
- (a) must take into account the seriousness of the circumstances of the forensic sample offence in determining whether to make the order under sub-section (2) or (3); and
 - (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
 - (c) may make such inquiries on oath or otherwise as it considers desirable.
- (9) If a court makes an order under sub-section (2) or (3), it must—
- (a) give reasons for its decision and cause a copy of the order and reasons to be served—
 - (i) if the order directs a person (other than a child) to undergo the forensic procedure, on the person; or
 - (ii) if the order directs a child to undergo the forensic procedure, on the child and a parent or guardian of the child; and
 - (b) inform the person ordered to undergo the forensic procedure that a member of the police force may use reasonable force to enable the procedure to be conducted.
- (10) A failure of a court to comply with sub-section (9) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

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S. 464ZF(11)
repealed by
No. 80/1998
s. 3(d).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAAA

S. 464ZFAAA
inserted by
No. 27/2006
s. 9.

464ZFAAA. Forensic procedure following finding of not guilty because of mental impairment

(1) In this section—

"child" means a child aged 10 years or more but under 18 years;

"forensic sample offence" means any offence specified in Schedule 8 other than an offence tried summarily.

(2) If a court finds a person not guilty because of mental impairment of—

(a) a forensic sample offence; or

(b) an offence of conspiracy to commit, incitement to commit or attempting to commit a forensic sample offence—

a member of the police force, at any time following that finding but not later than 6 months after the final determination of an appeal or the expiration of any appeal period (whichever is the later), may apply to the court for an order directing the person to undergo a forensic procedure for the taking of a sample from any part of the body and the court may make an order accordingly.

(3) In an application under sub-section (2), the member of the police force must specify the type of sample (whether intimate or non-intimate) sought to be taken in the forensic procedure.

(4) Notice of an application under sub-section (2)—

(a) must be served on the person in respect of whom the order is sought and, if the person is a child, on a parent or guardian of the child; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAAA

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- (b) must include a requirement that the person in respect of whom the order is sought attend the hearing of the application in person or by his or her legal practitioner.
 - (5) In determining whether to make an order under sub-section (2), a court—
 - (a) must take into account the seriousness of the circumstances of the forensic sample offence of which the person has been found not guilty because of mental impairment; and
 - (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
 - (c) may make such inquiries on oath or otherwise as it considers desirable.
 - (6) An application made under sub-section (2) must be heard in the presence of the person in respect of whom the order is sought or his or her legal practitioner.
 - (7) A person in respect of whom an application under sub-section (2) is made—
 - (a) is not a party to the application; and
 - (b) may not call or cross-examine any witnesses; and
 - (c) may not address the court other than in response to inquiries made by the court under sub-section (5)(c).
 - (8) In exercising the right of address under sub-section (7)(c), a person may be represented by a legal practitioner.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAAA

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- (9) An order under sub-section (2) in respect of a person who is not a forensic patient or a forensic resident within the meaning of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** must include a direction that the person attend—
- (a) at a place; and
 - (b) within a period (commencing after the expiry of the period referred to in sub-section (12) during which the order must not be executed)—
- specified in the order to undergo the forensic procedure.
- (10) If a court makes an order under sub-section (2), it must—
- (a) give reasons for its decision and cause a copy of the order and reasons to be served on the person ordered to undergo the forensic procedure; and
 - (b) inform the person ordered to undergo the forensic procedure that a member of the police force may use reasonable force to enable the procedure to be conducted.
- (11) A failure of a court to comply with sub-section (10) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAAA

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- (12) An order made by a court under sub-section (2) before the appeal period in relation to the verdict of not guilty because of mental impairment has expired or an appeal against the verdict (if any) has been finally determined (whichever is the later), must not be executed unless—
- (a) that appeal period expires; or
 - (b) the appeal against the verdict is dismissed—
- whichever is the later.
- (13) If leave to appeal against a verdict of not guilty because of mental impairment in respect of a forensic sample offence is sought after the expiry of the appeal period in relation to the verdict, an order made by a court under sub-section (2) before leave to appeal is sought, if not executed before that leave is sought, must not be executed unless—
- (a) leave to appeal against the verdict is refused; or
 - (b) leave to appeal against the verdict is granted but the appeal is dismissed.
- (14) If an order made by a court under sub-section (2) has been executed after the expiry of the appeal period in relation to the verdict of not guilty because of mental impairment in respect of a forensic sample offence and leave to appeal against the verdict is granted after the expiry of that period—
- (a) any sample and any related material and information taken may be retained by a member of the police force but may not be used for any purpose pending the final determination of the appeal against the verdict; and
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAA

(b) if, on appeal, the verdict is set aside, the Chief Commissioner of Police must, without delay, destroy or cause to be destroyed any sample taken and any related material and information.

(15) If on appeal a verdict of not guilty because of mental impairment is set aside, an order made by a court under sub-section (2) ceases to have effect.

S. 464ZFAA
inserted by
No. 16/2002
s. 11.

464ZFAA. Notice to attend for forensic procedure

(1) If a member of the police force of or above the rank of senior sergeant is satisfied that—

(a) an order under section 464ZF(2) in respect of a person was made—

(i) before the commencement of section 11 of the **Crimes (DNA Database) Act 2002**; or

(ii) when the person was a detained or protected person and within the period of 6 months immediately preceding the serving of the notice the person ceased to be a detained or protected person; and

(b) the order has not been executed; and

(c) the period referred to in section 464ZF(6) during which the order must not be executed has expired—

the member may serve on the person a notice in accordance with sub-sections (2) and (3).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAA

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- (2) A notice must direct the person to attend at a police station specified in the notice within 28 days after service of the notice to undergo the forensic procedure ordered by the court and must state—
- (a) the date on which the order under section 464ZF(2) was made;
 - (b) the court which made the order;
 - (c) that the person has not undergone the forensic procedure;
 - (d) that if the person fails to comply with the notice, application for a warrant to arrest the person may be made without further notice to the person;
 - (e) that the person may wish to seek legal advice as to the effect of the notice;
 - (f) the name, rank and telephone number of the member serving the notice.
- (3) A copy of the order under section 464ZF(2) must be attached to and served with the notice.
- (4) A notice may be served on a person by—
- (a) delivering a true copy of the notice to the person personally; or
 - (b) leaving a true copy of the notice for the person at the person's last or most usual place of residence or business with a person who apparently resides or works there and who is apparently not less than 16 years of age; or
 - (c) posting the notice to the person at their last known place of residence or business.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFAA

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- (5) If a notice is served by post in accordance with sub-section (4)(c), evidence of service must state the manner of ascertainment of the address to which the notice was posted and the time and place of posting.
- (6) If a person does not comply with a notice served under this section, a member of the police force may apply to a magistrate or a registrar of the Magistrates' Court for a warrant under sub-section (7).
- (7) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affidavit that—
- (a) a notice was served on a person in accordance with this section; and
 - (b) the person has not undergone the forensic procedure—
- the magistrate or registrar may issue a warrant authorising the person to whom it is directed, if necessary—
- (c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
 - (d) to arrest the person; and
 - (e) to detain the person for as long as reasonably permits the conduct of the forensic procedure.
- (8) Section 464ZFA(2), (3), (4), (5), (6) and (7) apply to a warrant issued under sub-section (7) as if it were a warrant issued under section 464ZFA(1B).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFA

**464ZFA. Warrants issued for forensic procedures under
section 464ZF or 464ZFAAA**

**S. 464ZFA
(Heading)
inserted by
No. 27/2006
s. 10(1).
S. 464ZFA
inserted by
No. 81/1997
s. 25.**

(1) If—

**S. 464ZFA(1)
substituted by
No. 27/2006
s. 10(2).**

- (a) before a court makes an order under section 464ZF(3) directing a person to undergo a forensic procedure, that person has been released from the prison, police gaol, youth training centre or approved mental health service where he or she was serving a term of imprisonment or a period of detention at the time the application for the order was made; or
- (b) a person fails to attend the hearing of an application under section 464ZF(2) for an order directing the person to undergo a forensic procedure—

the court may issue a warrant authorising the person to whom it is directed, if necessary—

- (c) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
- (d) to arrest the person; and
- (e) to bring the person before the court for the hearing of the application; and
- (f) if that application is granted, to detain the person for as long as reasonably permits the conduct of the forensic procedure.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFA

S. 464ZFA(1A)
inserted by
No. 16/2002
s. 12(1),
amended by
No. 27/2006
s. 10(3).

(1A) If a court makes an order under section 464ZF(2) or 464ZFAAA(2) directing a person to undergo a forensic procedure and the person does not comply with a direction referred to in section 464ZF(2A) or 464ZFAAA(9), as the case may be,, a member of the police force may apply to a magistrate or a registrar of the Magistrates' Court for a warrant under sub-section (1B).

S. 464ZFA(1B)
inserted by
No. 16/2002
s. 12(1),
amended by
No. 27/2006
s. 10(4).

(1B) If a magistrate or a registrar to whom such an application is made is satisfied by evidence on oath or by affidavit that the person has not complied with a direction referred to in section 464ZF(2A) or 464ZFAAA(9), the magistrate or registrar may issue a warrant authorising the person to whom it is directed, if necessary—

- (a) to break, enter and search by day or by night any place where the person named in the warrant is suspected to be; and
- (b) to arrest the person; and
- (c) to detain the person for as long as reasonably permits the conduct of the forensic procedure.

S. 464ZFA(2)
amended by
No. 16/2002
s. 12(2)(a).

(2) A warrant issued under sub-section (1) or (1B) may be directed to—

- (a) a named member of the police force; or
- (b) generally all members of the police force.

S. 464FA(3)
amended by
No. 16/2002
s. 12(2)(b).

(3) A warrant issued under sub-section (1) or (1B) directed to a named member of the police force may be executed by any member of the police force.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFA

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| <p>(4) If a court issues a warrant under sub-section (1) or a magistrate or registrar issues a warrant under sub-section (1B), the court, magistrate or registrar must—</p> <p style="padding-left: 40px;">(a) give reasons for the decision; and</p> <p style="padding-left: 120px;">(b) cause a note of the reasons to be entered in the records of the court.</p> | <p>S. 464ZFA(4)
amended by
No. 16/2002
s. 12(2)(c)(i).</p> |
| <p>(5) A failure of a court, magistrate or registrar to comply with sub-section (4) does not invalidate any order made by the court, magistrate or registrar but constitutes non-compliance for the purposes of section 464ZE(1)(a).</p> | <p>S. 464ZFA(5)
amended by
No. 16/2002
s. 12(2)(d)(i)(ii).</p> |
| <p>(6) If a person is arrested under a warrant issued under sub-section (1) or (1B), the warrant ceases to have effect immediately after the procedure is completed or on the expiration of a reasonable time (whichever is the earlier).</p> | <p>S. 464ZFA(6)
amended by
No. 16/2002
s. 12(2)(e).</p> |
| <p>(7) A member of the police force who executes a warrant issued under sub-section (1B) must, as soon as practicable after executing the warrant—</p> <p style="padding-left: 40px;">(a) endorse the warrant to that effect; and</p> <p style="padding-left: 40px;">(b) cause to be lodged with a registrar of the Magistrates' Court a report signed by the member and containing particulars of—</p> <p style="padding-left: 80px;">(i) the date and time at which the person was arrested;</p> <p style="padding-left: 80px;">(ii) the date and time at which the person was released from custody;</p> <p style="padding-left: 80px;">(iii) the date, time and place at which the forensic procedure was conducted;</p> | <p>S. 464ZFA(7)
inserted by
No. 16/2002
s. 12(3).</p> |
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFB

- (iv) the name and position of the person who conducted the forensic procedure and every other person present;
- (v) the type of sample taken;
- (vi) whether reasonable force was used to enable the forensic procedure to be conducted.

S. 464ZFB
(Heading)
inserted by
No. 27/2006
s. 11(1).

464ZFB. Retention of information following finding of guilt etc.

S. 464ZFB
inserted by
No. 81/1997
s. 26.

S. 464ZFB(1)
amended by
Nos 16/2002
s. 13(1)(a)(b),
14/2006
s. 14(a).

- (1) If at any time on or after the commencement of section 26 of the **Crimes (Amendment) Act 1997**—

S. 464ZFB
(1)(a)
amended by
No. 41/2004
s. 17.

- (a) a forensic procedure is conducted on a person in accordance with section 464R, 464SA, 464T(3), 464U(7) or 464V(5); and
- (b) a court finds the person guilty of—
 - (i) the offence in respect of which the forensic procedure was conducted; or
 - (ii) any other offence arising out of the same circumstances; or
 - (iii) any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

a member of the police force, at any time after the finding of guilt but not later than 6 months after the final determination of an appeal against conviction or sentence or the expiry of any appeal

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFB

period in respect of the offence (whichever is the later), may apply to the court referred to in paragraph (b) or to the Magistrates' Court or Children's Court (as the case may be) for an order permitting the retention of any sample taken and any related material and information and the court may make an order accordingly.

(1A) If—

S. 464ZFB(1A)
inserted by
No. 27/2006
s. 11(2).

- (a) a forensic procedure is conducted on a person in accordance with section 464R, 464SA, 464T(3), 464U(7) or 464V(5); and
- (b) a court finds the person not guilty because of mental impairment of—
 - (i) the offence in respect of which the forensic procedure was conducted; or
 - (ii) any other offence arising out of the same circumstances; or
 - (iii) any other offence in respect of which evidence obtained as a result of the forensic procedure had probative value—

a member of the police force, at any time after the verdict of not guilty because of mental impairment, but not later than 6 months after the final determination of an appeal against the verdict or the expiry of any appeal period in respect of the verdict (whichever is the later), may apply to the court referred to in paragraph (b) for an order permitting the retention of any sample taken and any related material and information and the court may make an order accordingly.

(1B) Sub-section (1A) does not apply to an offence tried summarily.

S. 464ZFB(1B)
inserted by
No. 27/2006
s. 11(2).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFB

S. 464ZFB(2)
amended by
No. 27/2006
s. 11(3)(a).

- (2) A court hearing an application under sub-section (1) or (1A)—

S. 464ZFB
(2)(a)
amended by
No. 27/2006
s. 11(3)(b).

- (a) must take into account the seriousness of the circumstances of the offence in determining whether to make the order under sub-section (1) or (1A), as the case requires; and
- (b) must be satisfied that, in all the circumstances, the making of the order is justified; and
- (c) may make such inquiries on oath or otherwise as it considers desirable.

S. 464ZFB(2A)
inserted by
No. 16/2002
s. 13(2),
amended by
No. 14/2006
s. 14(b)(i)(ii).

- (2A) An order made under sub-section (1) before the expiry of the appeal period in respect of the conviction for the offence or the final determination of an appeal against conviction (whichever is the later)—

- (a) takes effect on that expiry or final determination; and
- (b) has no effect if, on appeal against conviction, the finding of guilt or conviction is quashed.

S. 464ZFB
(2A)(b)
amended by
No. 14/2006
s. 14(b)(ii).

S. 464ZFB(2B)
inserted by
No. 27/2006
s. 11(4).

- (2B) An order made under sub-section (1A) before the expiry of the appeal period in respect of the verdict of not guilty because of mental impairment or the final determination of an appeal against the verdict (whichever is later)—

- (a) takes effect on that expiry or final determination; and
- (b) has no effect if, on appeal, the verdict of not guilty because of mental impairment is set aside.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFC

- (3) If a court makes an order under sub-section (1) or (1A), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person on whom the forensic procedure was conducted.
- (4) A failure of a court to comply with sub-section (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

S. 464ZFB(3)
amended by
No. 27/2006
s. 11(5).

464ZFC. Destruction of information following finding of guilt etc.

S. 464ZFC
(Heading)
inserted by
No. 27/2006
s. 12(1).

S. 464ZFC
inserted by
No. 81/1997
s. 26.

- (1) Subject to section 464ZFD(2), if—
- (a) a member of the police force does not make an application under section 464ZFB(1) or (1A) within the period specified by that sub-section; or
- (b) a court refuses to make an order under section 464ZFB—

S. 464ZFC
(1)(a)
amended by
No. 27/2006
s. 12(2).

the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.

- (2) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZFD

- (3) A person who knowingly—
- (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
- a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (4) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from, any sample or related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZFD
inserted by
No. 81/1997
s. 26.

464ZFD. Computerised databases

S. 464ZFD(1)
amended by
No. 27/2006
s. 13.

- (1) Information (including information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with sections 464R to 464ZA, section 464ZF or 464ZFAAA or sections 464ZGB to 464ZGD (as the case may be), and which in accordance with this Subdivision may be retained, may be included in a computerised database.

S. 464ZFD(2)
amended by
No. 16/2002
s. 14.

- (2) Information (other than information which may identify the person on whom a forensic procedure was conducted) obtained from the analysis of samples taken or procedures conducted in accordance with this Subdivision may be retained and included in a DNA database for statistical purposes.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZE

464ZFE. Report to Attorney-General

The Chief Commissioner of Police, on or as soon as practicable after 1 January, 1 April, 1 July and 1 October of each year, must submit to the Attorney-General a report that contains—

- (a) a list that identifies by a unique identifying number every sample taken in accordance with this Subdivision within the period to which the report relates; and
- (b) the date on which every sample listed in the report was taken; and
- (c) information on whether any of the samples listed in the report or in any previous report submitted under this section have been destroyed within the period to which the report relates; and
- (d) if a sample has been destroyed, the date of destruction and the name of the person who has destroyed it; and
- (e) the number of authorisations given under section 464SA within the period to which the report relates; and
- (f) the number of authorisations refused to be given under section 464SA within the period to which the report relates.

S. 464ZFE
inserted by
No. 81/1997
s. 26.

S. 464ZFE(d)
amended by
No. 41/2004
s. 18(a).

S. 464ZFE(e)
inserted by
No. 41/2004
s. 18(b).

S. 464ZFE(f)
inserted by
No. 41/2004
s. 18(b).

464ZG. Destruction of identifying information

(1) In this section, "**relevant offence**" means—

- (a) the offence in respect of which the forensic procedure was conducted; or
- (b) any other offence arising out of the same circumstances; or
- (c) any other offence in respect of which the evidence obtained as a result of the forensic procedure has probative value.

S. 464ZG
inserted by
No. 84/1989
s. 5,
substituted by
No. 129/1993
s. 7.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZG

S. 464ZG(2)
repealed by
No. 81/1997
s. 27(1).

* * * *

S. 464ZG(3)
amended by
No. 81/1997
s. 27(2)(a)(c).

- (3) Subject to section 464ZFD(2), if a forensic procedure has been conducted on a person and—

S. 464ZG(3)(a)
amended by
No. 81/1997
s. 27(2)(b).

- (a) the person has not been charged with a relevant offence at the end of the period of 12 months after the conduct of the procedure; or

S. 464ZG(3)(b)
amended by
No. 27/2006
s. 14.

- (b) the person has been so charged but the charge is not proceeded with or the person is not found guilty (except because of mental impairment) of the offence or any other relevant offence, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police, subject to sub-section (5), must destroy, or cause to be destroyed, at the time specified in sub-section (4) any sample taken and any related material and information.

S. 464ZG(4)
amended by
No. 81/1997
s. 27(3)(a).

- (4) A sample and any related material and information referred to in sub-section (3) must be destroyed—

S. 464ZG(4)(a)
amended by
No. 81/1997
s. 27(3)(b).

- (a) in a case to which sub-section (3)(a) applies, immediately after that period of 12 months; or

- (b) in a case to which sub-section (3)(b) applies—

- (i) within 1 month after the conclusion of the proceedings and the end of any appeal period; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZG

- (ii) if the proceedings have been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month of dismissal under that section.
- (5) A member of the police force may, before the end of a period referred to in sub-section (4), apply, without notice to any other person, to the Magistrates' Court or the Children's Court (as the case requires) for an order extending that period and, if the court makes such an order, the reference to the period in sub-section (4) is a reference to that period as so extended.
- (6) If the Magistrates' Court or the Children's Court makes an order under sub-section (5), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the forensic procedure was conducted.
- (7) If a sample or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the procedure was conducted so requests, within 14 days after receiving the request, notify in writing that person of whether the destruction has occurred.
- (8) A person who knowingly—
- (a) fails to destroy; or
- (b) uses, or causes or permits to be used—

S. 464ZG(7)
substituted by
No. 81/1997
s. 27(4).

S. 464ZG(8)
amended by
Nos 69/1997
s. 22(15),
81/1997
s. 27(5)(a)(c).

S. 464ZG(8)(b)
amended by
No. 81/1997
s. 27(5)(b).

a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGA

level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZG(9)
amended by
Nos 69/1997
s. 22(15),
81/1997
s. 27(6)(a)–(c).

- (9) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from, any sample or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence or for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGA
inserted by
No. 81/1997
s. 28.

464ZGA. Forensic information from juveniles

- (1) Subject to section 464ZFD(2), if—
- (a) a person undergoes a forensic procedure as a child in accordance with this Subdivision, whether before or after the commencement of section 28 of the **Crimes (Amendment) Act 1997**; and
 - (b) any sample taken is not required to be destroyed under this Subdivision, other than under this sub-section; and
 - (c) the person is not found guilty of any further offence before attaining the age of 26 years—

the Chief Commissioner of Police must without delay destroy, or cause to be destroyed, any sample taken and any related material and information.

- (2) Sub-section (1) does not apply if the offence in relation to which the forensic procedure was conducted was any of the following—

S. 464ZGA
(2)(a)
amended by
No. 77/2005
s. 8(3)(d).

- (a) murder, attempted murder, manslaughter or defensive homicide;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGB

- (b) an offence or attempt to commit an offence against section 16, 17, 18, 25, 26, 29 or 31;
- (c) an offence or attempt to commit an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I;
- (d) an offence or attempt to commit an offence against section 75 or 75A;
- (e) an offence or attempt to commit an offence against section 197 (in circumstances where the offence is charged as arson);
- (f) an offence or attempt to commit an offence against section 197A—

and the person has been found guilty of that offence.

464ZGB. Samples given voluntarily

S. 464ZGB
inserted by
No. 81/1997
s. 28.

- (1) A person of or above the age of 18 years may volunteer to give a sample (whether an intimate or non-intimate sample) to a member of the police force.
- (2) A sample may only be given under this section if the person volunteering to give it consents in accordance with this section and that consent is not withdrawn prior to the giving of the sample.
- (3) A person consents in accordance with this section only if, in the presence of an independent person, he or she consents after a member of the police force has informed the person in language likely to be understood by the person—
 - (a) that any sample that is given will be analysed;

S. 464ZGB(1)
amended by
No. 72/2004
s. 32.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGB

S. 464ZGB
(3)(b)
substituted by
No. 16/2002
s. 15.

(b) that information obtained from the analysis will be placed on a DNA database and may be used for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this Subdivision or under a corresponding law of a participating jurisdiction;

S. 464ZGB
(3)(ba)
inserted by
No. 16/2002
s. 15.

(ba) that the person may choose whether the information obtained from analysis of the sample may be used—

(i) only for a limited purpose to be specified by the volunteer; or

(ii) for the purpose of a criminal investigation or any other purpose for which the DNA database may be used under this Subdivision or under a corresponding law of a participating jurisdiction;

S. 464ZGB
(3)(bb)
inserted by
No. 16/2002
s. 15.

(bb) that information obtained from the analysis could produce evidence to be used in a court;

(c) that the person is under no obligation to give a sample;

(d) that if the person consents to give a sample, he or she may at any time before the sample is taken, withdraw that consent;

(e) that the person may consult a legal practitioner before deciding whether or not to consent to give a sample;

(f) that the person may at any time (including after he or she has been charged with an offence) withdraw his or her consent to the retention of the sample;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGB

- (g) that where the person withdraws his or her consent to the retention of the sample, a member of the police force may nevertheless apply to a court for an order to retain the sample and any related material and information;
 - (h) that the person may request that the sample be taken by or in the presence of a medical practitioner, nurse or dentist of his or her choice.
- (4) A member of the police force who informs a person of the matters in sub-section (3) must—
- (a) record the giving of the information and the person's responses, if any—
 - (i) in writing signed by both the person and the independent person witnessing the giving of the consent; and
 - (ii) by audiovisual recording, if practicable, or otherwise by audio recording; and
 - (b) give or send by registered post to the person or his or her legal practitioner, without charge—
 - (i) a copy of the audiovisual recording or audio recording as soon as practicable, but not more than 7 days after the information is given; and
 - (ii) a copy of the written record, signed by both the person and the independent person, forthwith.

S. 464ZGB
(4)(a) (ii)
substituted by
No. 27/2006
s. 17(30)(a).

S. 464ZGB
(4)(b) (i)
inserted by
No. 27/2006
s. 17(30)(b).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGC

S. 464ZGC
inserted by
No. 81/1997
s. 28.

464ZGC. Withdrawal of consent prior to giving sample

- (1) A person, at any time prior to giving a sample, may withdraw the consent that was given by him or her in accordance with section 464ZGB either—
 - (a) orally; or
 - (b) in writing—to a member of the police force or to the person authorised to take the sample.
- (2) If, prior to giving a sample, a person withdraws his or her consent orally, a member of the police force or the person authorised to take the sample must, as soon as practicable, record in writing the withdrawal of consent.

S. 464ZGD
inserted by
No. 81/1997
s. 28.

464ZGD. Procedure to take sample

- (1) The procedure to be conducted to take a sample from a person following the giving of consent in accordance with section 464ZGB must—
 - (a) be in accordance with the procedure set out in section 464Z; and
 - (b) be recorded by audiovisual recording, if practicable, and if the person consents.

S. 464ZGD
(1)(b)
amended by
No. 27/2006
s. 17(31)(a).

S. 464ZGD(2)
amended by
No. 27/2006
s. 17(31)(b).

- (2) If the taking of a sample voluntarily given by a person is recorded by audiovisual recording, a member of the police force must—
 - (a) without charge; and
 - (b) as soon as practicable but not more than 7 days after the sample was taken—give or send by registered post a copy of the audiovisual recording to the person who voluntarily gave the sample.

464ZGE. Safeguards after giving sample

**S. 464ZGE
inserted by
No. 81/1997
s. 28.**

- (1) If a person has given his or her consent in accordance with section 464ZGB, and a sample has been taken, that person may at any time after the sample has been taken, by notice in writing to the Chief Commissioner of Police, withdraw his or her consent to the retention of that sample.
- (2) Subject to sub-section (5) and section 464ZFD(2), if a person has voluntarily given a sample in accordance with sections 464ZGB to 464ZGD and either—
 - (a) that person in accordance with sub-section (1) has withdrawn his or her consent to the retention of that sample; or
 - (b) a court has made an order under section 464ZGF for the retention of that sample and any related material and information, and—
 - (i) the person has not been charged with an indictable offence at the end of the period of 12 months after the order of the court; or
 - (ii) the person has been so charged but the charge is not proceeded with, or the person is not found guilty of the indictable offence or any other indictable offence for which the sample and any related material and information had probative value, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police, at the time specified in sub-section (3), must destroy, or cause to be destroyed, any sample given and any related material and information.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGE

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- (3) A sample and any related material and information referred to in sub-section (2) must be destroyed—
- (a) within 28 days after the receipt of the person's notice of withdrawal of consent under sub-section (1); or
 - (b) in a case to which sub-section (2)(b)(i) applies, immediately after that period of 12 months; or
 - (c) in a case to which sub-section (2)(b)(ii) applies—
 - (i) within 1 month after the conclusion of the proceedings and the end of any appeal period; or
 - (ii) if the proceedings have been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.
- (4) The Chief Commissioner of Police is not required to comply with the requirements in sub-sections (2) and (3) to destroy or cause to be destroyed a sample and any related material and information by reason of the person's withdrawal of consent if the Magistrates' Court makes an order under section 464ZGF for the retention of that sample and any related material and information.
- (5) If the Magistrates' Court refuses to make an order under section 464ZGF for the retention of a sample and any related material and information, and a person in accordance with sub-section (1) has withdrawn his or her consent to the retention of that sample, the Chief Commissioner of Police must immediately destroy, or cause to be immediately destroyed, the sample given and any related material and information.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGE

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- (6) A member of the police force may, before the end of a period referred to in sub-section (3)(b) or (3)(c), apply, without notice to any other person, to the Magistrates' Court for an order extending that period and, if the court makes such an order, the reference to the period in sub-section (3)(b) or (3)(c) is a reference to that period as so extended.
- (7) If the Magistrates' Court makes an order under sub-section (6), it must give reasons for its decision and cause a copy of the order to be served on the person who voluntarily gave the sample.
- (8) If a sample or related material and information is destroyed in accordance with this section, the Chief Commissioner of Police must, within 14 days, give notice of the destruction to the person who voluntarily gave the sample.
- (9) A person who knowingly—
- (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
- a sample or related material and information required by this section to be destroyed is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (10) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any sample or related material and information required by this section to be destroyed except in good faith for the purposes of section 464ZFD(2) is guilty of a summary offence punishable on conviction by level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGF

(11) This section does not prevent a member of the police force, in respect of a person who has voluntarily given a sample under sections 464ZGB to 464ZGD—

- (a) requesting, under section 464R, the person to undergo a forensic procedure; or
- (b) making an application under section 464T or 464V for a court order directing the person to undergo a compulsory procedure.

S. 464ZGE(12)
repealed by
No. 80/1998
s. 3(e).

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S. 464ZGF
inserted by
No. 81/1997
s. 28.

464ZGF. Application to court where consent to retention of sample withdrawn

(1) A member of the police force may apply to the Magistrates' Court for an order to retain a sample that has been voluntarily given by a person in accordance with sections 464ZGB to 464ZGD, and any related material and information, and the court may make an order accordingly, if during an investigation into the commission of an indictable offence—

(a) either—

- (i) material reasonably believed to be from the body of a person who committed the indictable offence has been found—
 - (A) at the scene of the offence; or
 - (B) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGF

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- (C) on an object or person reasonably believed to have been associated with the commission of the offence; or
 - (ii) if the offence is an offence against a provision of Subdivision (8A), (8B) or (8C) of Division 1 of Part I, and a member of the police force reasonably believes that a child has been conceived as a result of the commission of the offence and a sample has been taken from that child; and
 - (b) a member of the police force reasonably believes that information obtained from the analysis of the sample voluntarily given by the person, and from any related material and information, has probative value in relation to the indictable offence being investigated; and
 - (c) the person who voluntarily gave that sample has withdrawn his or her consent to the retention of that sample; and
 - (d) the information obtained from the analysis of the voluntary sample, and from any related material and information, has not been destroyed in accordance with section 464ZGE(2)(a) and (3)(a).
- (2) A court hearing an application under subsection (1) must—
- (a) be satisfied on the balance of probabilities that there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and
 - (b) be satisfied that, in all the circumstances, the making of the order is justified.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGG

- (3) If the court makes an order under sub-section (1), it must give reasons for its decision and cause a copy of the order and reasons to be served on the person who voluntarily gave the sample.
- (4) A failure of a court to comply with sub-section (3) does not invalidate any order made by it but constitutes non-compliance for the purposes of section 464ZE(1)(a).

Heading
inserted by
No. 16/2002
s. 16.

DNA database system

S. 464ZGG
inserted by
No. 16/2002
s. 16.

464ZGG. Supply of forensic material for purposes of DNA database

- (1) In this section—

S. 464ZGG(1)
def. of
"excluded
forensic
material"
amended by
No. 27/2006
s. 15.

"excluded forensic material" means forensic material—

- (a) found at a crime scene; or
- (b) taken from a suspect in accordance with this Subdivision or under a corresponding law of a participating jurisdiction; or
- (c) taken from an offender under section 464ZF or 464ZGB or under a corresponding law of a participating jurisdiction; or
- (ca) taken from a person under section 464ZFAAA following a finding of not guilty because of mental impairment; or
- (d) taken from the body of a deceased person; or
- (e) from the body of a missing person; or

- (f) taken from a volunteer who is a relative by blood of a deceased or missing person;

"prohibited analysis" means analysis for the purpose of deriving a DNA profile for inclusion on a DNA database when the forensic material is required to be destroyed by this Subdivision or under a corresponding law of a participating jurisdiction.

(2) A person—

- (a) whose conduct causes the supply of forensic material taken from a person under this Subdivision (or under a corresponding law of a participating jurisdiction) to a person for prohibited analysis; and
- (b) who intends or is reckless as to the supply of material of that kind—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

(3) A person—

- (a) whose conduct causes the supply of forensic material (other than excluded forensic material) to a person for analysis for the purpose of deriving a DNA profile for inclusion on a DNA database; and
- (b) who intends or is reckless as to the supply of material of that kind—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGH
inserted by
No. 16/2002
s. 16.

464ZGH. Use of information on DNA database system

- (1) A person who accesses information stored on the DNA database system except in accordance with this section is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (2) A person may access information stored on the DNA database system for one or more of the following purposes—
 - (a) forensic comparison permitted under section 464ZGI (permissible matching);
 - (b) making the information available, in accordance with the regulations, to the person to whom the information relates;
 - (c) administering the DNA database system;
 - (d) in accordance with an arrangement entered into between Victoria and the Commonwealth, another State or a Territory for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons authorised in writing by the Chief Commissioner of Police;
 - (e) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;
 - (f) a coronial investigation or inquest;

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGI

- (g) an investigation of a complaint by—
 - (i) the Privacy Commissioner appointed under the **Information Privacy Act 2000**; or
 - (ii) the Health Services Commissioner within the meaning of the **Health Records Act 2001** for the purposes of that Act; or
 - (iii) the Ombudsman appointed under the **Ombudsman Act 1973**.
- (3) This section does not apply to information that cannot be used to discover the identity of any person.

464ZGI. Permissible matching of DNA profiles

**S. 464ZGI
inserted by
No. 16/2002
s. 16.**

- (1) A matching of a DNA profile on an index of the DNA database system specified in column 1 of the following Table with a DNA profile on another index of the system specified in column 2, 3, 4, 5, 6, 7 or 8 of the Table is not permitted by this Subdivision if—
 - (a) "no" is shown in relation to the index specified in column 2, 3, 4, 5, 6, 7 or 8 opposite the index specified in column 1; or
 - (b) "only if within purpose" is shown in relation to the index specified in column 2, 3, 4, 5, 6, 7 or 8 opposite the volunteers (limited purposes) index specified in column 1 and the matching is carried out for a purpose other than a purpose for which the DNA profile placed on the volunteers (limited purposes) index specified in column 1 was so placed.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGI

TABLE

Profile to be matched	Is matching permitted?						
<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>	<i>Column 7</i>	<i>Column 8</i>
	<i>Crime Scene</i>	<i>Suspects</i>	<i>Volunteers (limited purposes)</i>	<i>Volunteers (unlimited purposes)</i>	<i>Serious offenders</i>	<i>Missing persons</i>	<i>Unknown deceased persons</i>
1. crime scene	yes	yes	no	yes	yes	yes	yes
2. suspects	yes	no	no	no	yes	no	yes
3. volunteers (limited purposes)	only if within purpose	no	no	no	only if within purpose	only if within purpose	only if within purpose
4. volunteers (unlimited purposes)	yes	no	no	no	yes	yes	yes
5. serious offenders	yes	yes	no	no	yes	yes	yes
6. missing persons	yes	yes	yes	yes	yes	yes	yes
7. unknown deceased persons	yes	yes	yes	yes	yes	yes	no

(2) A person—

(a) whose conduct causes the matching that is not permitted by this Subdivision of a DNA profile on an index of the DNA database system with a DNA profile on the same or another index of the DNA database system; and

(b) who intends or is reckless as to any such matching of profiles—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

(3) A person is not guilty of an offence against subsection (2) if the person's conduct causes a matching that is not permitted by this Subdivision but the matching is solely for the purpose of administering the DNA database system.

464ZGJ. Recording, retention and removal of identifying information on DNA database system

**S. 464ZGJ
inserted by
No. 16/2002
s. 16.**

(1) In this section—

"identifying information" means any information that could be used—

- (a) to discover the identity of the person from whose forensic material the DNA profile was derived; or
- (b) to get information about an identifiable person;

"identifying period" for a DNA profile means—

- (a) except as provided by paragraphs (b) and (c), the period of 12 months after the DNA profile is placed on the DNA database system;
- (b) if the DNA profile is derived from forensic material taken from a volunteer—the period after the DNA profile is placed on the DNA database system that is agreed by the Chief Commissioner of Police and the volunteer;
- (c) if the DNA profile is derived from forensic material taken from a deceased person (not being a person who was a volunteer) whose identity is known—the period for which the Chief Commissioner of Police orders the responsible person to retain identifying information relating to the profile;

"responsible person", in relation to the DNA database system, means the person responsible for the care, control and management of the system.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGK

- (2) A person who intentionally or recklessly causes any identifying information obtained from forensic material to be recorded or retained in a DNA database system at any time after this Subdivision requires the forensic material to be destroyed is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (3) A responsible person who does not ensure that any identifying information relating to a DNA profile on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the DNA database system is removed from the system as soon as practicable after the end of the identifying period for the profile is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).
- (4) A responsible person who does not ensure that any identifying information relating to a DNA profile of an offender on the serious offenders index of the DNA database system is removed from the system as soon as practicable after becoming aware that the offender has been pardoned or acquitted of the offence concerned or if the conviction has been quashed is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

S. 464ZGK
inserted by
No. 16/2002
s. 16.

464ZGK. Disclosure of information

- (1) A person who—
 - (a) has access to any information stored on the DNA database system or to any other information revealed by a forensic procedure carried out on a suspect, offender or volunteer; and

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGK

- (b) intentionally or recklessly causes the disclosure of information other than as provided by this section—

is guilty of a summary offence and liable to level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum).

- (2) A person may only disclose information stored on the DNA database system for one or more of the following purposes—
 - (a) forensic comparison in the course of a criminal investigation by a member of the police force or any other person authorised in writing by the Chief Commissioner of Police;
 - (b) making the information available, in accordance with the regulations, to the person to whom the information relates;
 - (c) administering the DNA database system;
 - (d) in accordance with any arrangement entered into between Victoria and the Commonwealth, another State or a Territory for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons authorised in writing by the Chief Commissioner of Police;
 - (e) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;
 - (f) a coronial investigation or inquest;
 - (g) an investigation of a complaint by—
 - (i) the Privacy Commissioner appointed under the **Information Privacy Act 2000**; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGK

-
- (ii) the Health Services Commissioner within the meaning of the **Health Records Act 2001** for the purposes of that Act; or
- (iii) the Ombudsman appointed under the **Ombudsman Act 1973**.
- (3) A person may only disclose information revealed by the carrying out of a forensic procedure as follows—
- (a) if the person is the suspect, offender or volunteer to whom the information relates;
 - (b) if the information is already publicly available;
 - (c) in accordance with any other provision of this Subdivision;
 - (d) in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth or the Extradition Act 1988 of the Commonwealth;
 - (e) for the purposes of the investigation of an offence or offences generally;
 - (f) for the purpose of a decision whether to institute proceedings for an offence;
 - (g) for the purpose of proceedings for an offence;
 - (h) for the purpose of a coronial investigation or inquest;
 - (i) for the purpose of civil proceedings (including disciplinary proceedings) that relate to the way in which the procedure is carried out;
 - (j) for the purpose of the suspect's, offender's or volunteer's medical treatment;
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZGL

- (k) for the purpose of the medical treatment of a person if necessary to prevent or lessen a serious threat to that person's life or health;
 - (l) if necessary to prevent or lessen a serious threat to public health;
 - (m) if the suspect, offender or volunteer consents in writing to the disclosure.
- (4) This section does not apply to information that cannot be used to discover the identity of any person.

Inter-jurisdictional enforcement

Heading
inserted by
No. 16/2002
s. 16.

464ZGL. Registration of orders

S. 464ZGL
inserted by
No. 16/2002
s. 16.

- (1) The Minister may enter into arrangements with the responsible Ministers of the participating jurisdictions for the establishment and maintenance, in one or more of those jurisdictions, of a register of orders for the carrying out of forensic procedures made under this Subdivision or corresponding laws of participating jurisdictions.
- (2) An order is registered when a copy of the order (being a copy certified by the person who made it) is registered in accordance with the law of the participating jurisdiction in which the register is kept.
- (3) An application for registration of an order, or for cancellation of registration of an order, may be made by an appropriate authority.

S. 464ZGM
inserted by
No. 16/2002
s. 16.

464ZGM. Carrying out of registered orders

- (1) A person is authorised to carry out the forensic procedure authorised by an order that is registered in accordance with an arrangement referred to in section 464ZGL(1) anywhere in Victoria. The person is authorised to carry out the procedure in accordance with sections 464Y, 464Z and 464ZA and not otherwise.
- (2) A member of the police force, or other person assisting a member in accordance with this Subdivision or a corresponding law of a participating jurisdiction, is not compelled by this Subdivision, or an arrangement referred to in section 464ZGL(1), to execute an order registered under such an arrangement.

S. 464ZGN
inserted by
No. 16/2002
s. 16.

464ZGN. Database information

- (1) The Minister may enter into arrangements with a responsible Minister of a participating jurisdiction under which—
 - (a) information from the DNA database system of Victoria that may be relevant to the investigation of an offence against the law of the participating jurisdiction is to be transmitted to the appropriate authority in that jurisdiction for the purpose of the investigation of, or proceedings in respect of, that offence; and
 - (b) information from a DNA database system of the participating jurisdiction that may be relevant to the investigation of an offence against the law of Victoria is to be transmitted to the Chief Commissioner of Police for the purposes of the investigation of, or proceedings in respect of, that offence.

-
- (2) Information that is transmitted under this section must not be recorded or maintained in any database of information that may be used to discover the identity of a person or to obtain information about an identifiable person at any time after this Subdivision or a corresponding law of a participating jurisdiction requires the forensic material to which it relates to be destroyed.

464ZGO. Taking, retention and use of forensic material authorised by laws of other jurisdictions

S. 464ZGO
inserted by
No. 16/2002
s. 16.

- (1) Subject to section 464ZGM and this section, nothing in this Subdivision affects the taking, retention or use of forensic material, or information obtained from forensic material, if the taking, retention or use of the material is authorised by or under a corresponding law of the Commonwealth, another State or a Territory.
- (2) Forensic material taken, or information obtained from it, in accordance with a corresponding law of the Commonwealth, another State or a Territory may be retained or used for investigative, evidentiary or statistical purposes even if its retention or use would, but for this sub-section, constitute a contravention of a provision of this Subdivision relating to the carrying out of forensic procedures.
- (3) Forensic material taken, or information obtained from it, in accordance with a law of the Commonwealth, another State or a Territory as in force immediately before the commencement of section 16 of the **Crimes (DNA Database) Act 2002**, may be retained or used for investigative, evidentiary or statistical purposes even if its retention or use would, but for this sub-section, constitute a contravention of a provision of this Subdivision relating to the carrying out of forensic procedures.
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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZH

Heading
inserted by
No. 16/2002
s. 4(c).

General

S. 464ZH
inserted by
No. 129/1993
s. 7,
amended by
No. 81/1997
s. 29(1)(a)–(d).

**464ZH. Immunity of medical practitioners, nurses, dentists
and other persons**

No action lies against a medical practitioner or nurse or dentist or a person authorised under section 464Z or a person assisting the medical practitioner, nurse, dentist or person in respect of anything properly and necessarily done by the medical practitioner, nurse, dentist or person in the course of conducting any forensic procedure which the medical practitioner, nurse, dentist or person believes on reasonable grounds—

S. 464ZH(a)
inserted by
No. 81/1997
s. 29(1)(d),
substituted by
No. 41/2004
s. 19.

(a) was requested to be conducted on another person under this Subdivision in accordance with—

- (i) a request of a member of the police force given under section 464R; or
- (ii) an authorisation given by a senior police officer under section 464SA; or
- (iii) an order made by a court under this Subdivision; or

S. 464ZH(b)
inserted by
No. 81/1997
s. 29(1)(d).

(b) was consented to by a person in accordance with sections 464ZGB to 464ZGD.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZI

464ZI. Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary—
 - (a) to prevent the bringing before the Supreme Court of an action seeking to permit an application under section 464M(1), 464T(1), 464U(3) or 464V(2) being conducted otherwise than in accordance with the procedure expressed to be required by this Act; and
 - (b) to prevent the bringing before the Supreme Court of an action of a kind referred to in section 464ZH.
- (2) It is the intention of section 464ZH as amended by section 19 of the **Crimes (Amendment) Act 2004** to alter or vary section 85 of the **Constitution Act 1975**.

S. 464ZI
inserted by
No. 129/1993
s. 7,
amended by
No. 41/2004
s. 20 (ILA
s. 39B(1)).

S. 464ZI(2)
inserted by
No. 41/2004
s. 20.

464ZJ. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) accreditation of experts giving forensic evidence in a court; and
 - (b) testing of the proficiency of experts in conducting procedures about which an expert gives forensic evidence; and
 - (c) the application and use of statistical analysis to data the subject of forensic evidence; and
 - (d) standards for conducting forensic procedures in accordance with this Subdivision and the analysis of any samples taken; and

S. 464ZJ
inserted by
No. 129/1993
s. 7.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZJ

- (e) generally prescribing any other matter or thing required or permitted by this Subdivision to be prescribed or necessary to be prescribed to give effect to this Subdivision.

(2) The regulations—

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstance; and
- (c) may confer a discretionary authority or impose a duty on a specified person or class of persons.

S. 464ZJ(3)(4)
repealed by
No. 10/1999
s. 31(5)(c).

* * * * *

S. 464ZJ(5)
substituted by
No. 10/1999
s. 31(5)(d).

- (5) If a regulation made under sub-section (1) is disallowed by the Parliament or a House of the Parliament, no regulation which is the same in substance as the disallowed regulation may be made within 6 months after the date of the disallowance, unless—

- (a) if the regulation was disallowed by one House of the Parliament, that House approves the making of a regulation the same in substance as the disallowed regulation; or
- (b) if the regulation was disallowed by both Houses of the Parliament, each House approves the making of a regulation the same in substance as the disallowed regulation.

- (6) Any regulation made in contravention of sub-section (5) is void.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 464ZK

464ZK. Operation of other Acts

Nothing in this Subdivision affects the operation of any other Act or enactment with respect to the taking of samples or the conduct of forensic procedures.

S. 464ZK
inserted by
No. 129/1993
s. 7.

464ZL. Validation of certain orders

- (1) If, on or before 22 December 2000, an order under section 464ZF(3) is purported to have been made by—

- (a) the Magistrates' Court not sitting in open court; or
- (b) a magistrate not constituting the Magistrates' Court—

the order is deemed to have, and always to have had, the same force and effect as it would have had if the order had been made by the Magistrates' Court sitting in open court.

- (2) Sub-section (1) does not affect the rights of the parties in the proceeding known as *Lednar, O'Brien and Hill v. The Magistrates' Court and The Chief Commissioner of Police (Victoria)* (No. 6292 of 2000) in the Supreme Court of Victoria.

- (3) An order purporting to have been made under section 464ZF(2) before the commencement of the **Crimes (Amendment) Act 2004** in respect of a person is not invalid only because the person was not given—

- (a) notice of the application for the order; or
- (b) an opportunity to be heard on the application.

S. 464ZL
inserted by
No. 58/2001
s. 3.

S. 464ZL(3)
inserted by
No. 41/2004
s. 21.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 465

S. 464ZL(4)
inserted by
No. 41/2004
s. 21.

- (4) An order purporting to have been made under section 464ZF(3) before the commencement of the **Crimes (Amendment) Act 2004** in respect of a person aged 17 years or more is not invalid only because the person was not given—

- (a) notice of the application for the order; or
- (b) an opportunity to be heard on the application.

S. 464ZL(5)
inserted by
No. 41/2004
s. 21.

- (5) Sub-section (4) does not affect the rights of the parties in the proceeding known as *Pavic v. Magistrates' Court of Victoria and Chief Commissioner of Police* (No. 1001 of 2002) in the Supreme Court of Victoria.

(31) Search Warrants for and Seizure of Things

No. 6103
s. 465.

465. Issue of search warrant by magistrate

S. 465(1)
amended by
Nos 7184 s. 7,
8179 s. 4,
16/1986 s. 30,
57/1989
s. 3(Sch. item
42.56(a)–(d)),
22/1996
s. 6(1)(a).

- (1) Any magistrate who is satisfied by the evidence on oath or by affidavit of any member of the police force of or above the rank of senior sergeant that there is reasonable ground for believing that there is, or will be within the next 72 hours, in any building, receptacle or place—

S. 465(1)(a)
amended by
No. 22/1996
s. 6(1)(b).

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed or is being or is likely to be committed within the next 72 hours; or
- (b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any indictable offence against

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 465

the person for which the offender may be
arrested without warrant—

may at any time issue a warrant authorizing some
member of the police force or other person named
therein to search such building receptacle or place
for any such thing and to seize and carry it before
the Magistrates' Court to be dealt with according
to law.

- (1A) This section applies to and in respect of an offence
against section 68 or 70 as if it were an indictable
offence.
- (1B) A magistrate who issues a warrant under sub-
section (1), if satisfied on reasonable grounds by
the evidence given under that sub-section that the
thing to which the warrant relates is also tainted
property within the meaning of the **Confiscation
Act 1997**, may, in that warrant, direct that the
applicant hold or retain that thing as if it were
tainted property seized under a warrant under
section 79 of that Act as and from the date when
that thing is no longer required for evidentiary
purposes under this Act.
- (2) Subject to this section the rules to be observed
with regard to search warrants mentioned in the
Magistrates' Court Act 1989 shall extend and
apply to warrants under this section.
- (3) The provisions of this section shall be read and
construed as in aid of and not in derogation of the
provisions with regard to warrants to search
contained in this or any other Act.
- (4) The Governor in Council may make regulations
prescribing the form of any warrant to be issued
under this section and any such regulations shall
be published in the Government Gazette and shall
be laid before both Houses of Parliament within

S. 465(1A)
inserted by
No. 22/1996
s. 6(2).

S. 465(1B)
inserted by
No. 63/2003
s. 43.

S. 465(2)
amended by
Nos 9427
s. 6(1)(Sch. 5
item 40),
57/1989
s. 3(Sch. item
42.57(a)(b)).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 465A

fourteen days after the making thereof if
Parliament is then sitting, and if not then within
fourteen days after the next meeting of
Parliament.

S. 465(5)
inserted by
No. 22/1996
s. 6(3),
repealed by
No. 48/1997
s. 61.

* * * * *

S. 465A
inserted by
No. 63/2003
s. 44.

**465A. Notice that seized thing is being held for purposes of
Confiscation Act 1997**

- (1) If a thing seized under a warrant issued under section 465 to which a direction under section 465(1B) applies is no longer required for evidentiary purposes under this Act, the person to whom that warrant was issued must give notice to all persons known to have an interest in that thing that the thing is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997**.
- (2) A notice under sub-section (1) must be—
 - (a) given within 7 days after the thing is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

S. 465B
inserted by
No. 63/2003
s. 44.

**465B. Application for tainted property to be held or
retained—return of warrant to court**

- (1) When a thing is brought before the Magistrates' Court to be dealt with according to law in accordance with the warrant issued under section 465 under which that thing was seized, the member of the police force named in the warrant or another member of the police force may apply to the Court for a direction that the thing so seized be held or retained as if it were tainted property

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 465C

seized under a warrant under section 79 of the
Confiscation Act 1997.

- (2) An application may only be made under sub-section (1) if a direction under section 465(1B) was not made in relation to the warrant when it was issued.

465C. Court may make direction

S. 465C
inserted by
No. 63/2003
s. 44.

- (1) On an application under section 465B, if the Court is satisfied on reasonable grounds that the thing seized under the warrant issued under section 465 is tainted property within the meaning of the **Confiscation Act 1997**, the Court may direct that the thing be held or retained by the member of the police force or other person named in the warrant as if it were tainted property seized under a warrant under section 79 of that Act.
- (2) A direction under this section takes effect on and from the date that the thing is no longer required for evidentiary purposes under this Act.
- (3) In determining whether the thing which is the subject of the application is in fact tainted property within the meaning of the **Confiscation Act 1997**, the Court may require the applicant to provide any information that the Court considers necessary.
- (4) The power of the Court under this section is in addition to its powers under section 78 of the **Magistrates' Court Act 1989** in relation to seized property.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 465D

S. 465D
inserted by
No. 63/2003
s. 44.

465D. Notice of direction under section 465C

- (1) If the Magistrates' Court makes a direction under section 465C, the applicant for the direction must give notice to all persons known to have an interest in the thing to which the direction applies that the thing is being held or retained as if it were tainted property seized under a warrant under section 79 of the **Confiscation Act 1997** by virtue of a direction made under section 465C.
- (2) A notice under sub-section (1) must be—
 - (a) given within 7 days after the thing is no longer required for evidentiary purposes under this Act; and
 - (b) in the prescribed form.

S. 465E
inserted by
No. 63/2003
s. 44.

465E. Effect of directions under sections 465(1B) and 465C

If a direction has been made under section 465(1B) or 465C, the thing to which the direction applies—

- (a) is deemed, on and from the date on which the thing is no longer required for evidentiary purposes under this Act, to have been seized as tainted property under a warrant under section 79 of the **Confiscation Act 1997**; and
- (b) is to be dealt with under that Act accordingly.

No. 6103
s. 466.
S. 466
amended by
Nos 25/1989
s. 15(a)(b),
57/1989
s. 3(Sch. item
42.58(a)(b)).

**466. Justice may issue warrant to search for
gunpowder⁷⁶**

Where any credible person on oath before a magistrate shows reasonable cause to suspect that a person named or described has in his possession or on his premises any machine or implement or gunpowder or other explosive dangerous or noxious substance or things suspected to be made or kept or carried for the purpose of committing

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 469AA

any of the felonies in Division one or three of Part I, the magistrate may grant a warrant to search for the same by day or by night.

*	*	*	*	*	S. 467 repealed by No. 25/1989 s. 16.
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*	*	*	*	*	Ss 468, 469 repealed by No. 25/1989 s. 9.
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469AA. Seizure and destruction of documents containing libel

- (1) Upon the conviction of any person for—
- (a) publishing a blasphemous libel; or
 - (b) publishing a seditious libel—

the Court by which such conviction is recorded may order the seizure and destruction of any documents proved to exist and to contain any such libel or to have been written, printed or published in breach of the said section.

- (2) Any such order shall be carried into execution not earlier than thirty days from the making thereof or at such time as a court of competent jurisdiction may order.
- (3) If the conviction is quashed on appeal, the order for seizure and destruction shall be ipso facto vacated.

cf. [1819] 60
George III,
and 1 George
IV, c. VIII ss 1,
2, 4, 8.
(Criminal Libel
Act 1819.)
S. 469AA
inserted by
No. 9407
s. 2(f).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 469A

S. 469A
inserted by
No. 7088
s. 2(f),
amended by
No. 57/1989
s. 3(Sch.
item 42.62).

469A. Power of persons to search aircraft

- (1) If, the person in command of the aircraft or any person authorized in writing in a particular case by a magistrate reasonably suspects that an offence involving the safety of an aircraft has been, is being or may be committed on board or in relation to an aircraft, he may, with such assistance as is necessary, search or cause to be searched—
 - (a) the aircraft and any person, luggage or freight on board the aircraft; and
 - (b) any person who is about to board the aircraft and any luggage or freight that is about to be placed on board the aircraft.
- (2) A female shall not be searched under the last preceding sub-section except by a female.

(32) *Search Warrants for Women and Girls*

No. 6103
s. 470.

470. Power of search when female unlawfully detained for immoral purposes

S. 470(1)
amended by
No. 57/1989
s. 3(Sch. item
42.63(a)–(d)).

- (1) If it appears to a magistrate, on the evidence on oath or by affidavit of any parent relative or guardian of any woman or girl or by any other person who in the opinion of the magistrate is bona fide acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place, he may issue a warrant authorizing any person named therein to search for and when found to take to and detain in a place of safety such woman or girl until she can be brought before the Magistrates' Court.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 470

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- (2) The Magistrates' Court on the woman or girl being brought before it may cause her to be delivered up to her parent or guardian or otherwise dealt with as circumstances may permit and require. S. 470(2) amended by No. 57/1989 s. 3(Sch. item 42.64).
- (3) The magistrate at the time of or after issuing such warrant may issue another warrant for the arrest of any person accused of so unlawfully detaining such woman or girl and may order proceedings to be taken for prosecuting such person according to law. S. 470(3) amended by No. 57/1989 s. 3(Sch. item 42.65).
- (4) A woman or girl shall be deemed to be unlawfully detained for an immoral purpose if she is so detained for the purpose of being unlawfully and carnally known by any man whether any particular man or generally, and—
- (a) is under the age of sixteen years; or
 - (b) if of or above the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or of any other person having the lawful care or charge of her; or
 - (c) if of or above the age of eighteen years is so detained against her will.
- (5) Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house building or other place specified in such warrant, and may remove such woman or girl therefrom.
- (6) Every warrant issued under this section shall be addressed to and executed by a member of the police force of or above the rank of sergeant, who shall be accompanied by the parent relative or guardian or other person referred to in subsection (1) if such person so desire unless the magistrate otherwise directs. S. 470(6) amended by Nos 8179 s. 4, 57/1989 s. 3(Sch. item 42.66(a)(b)).
-

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 476B

Pt 3 Div. 1
Subdiv. (33)
(Heading)
repealed by
No. 23/1991
s. 8(2).

* * * *

S. 471
amended by
Nos 9427
s. 6(1)(Sch. 5
item 41),
110/1986
s. 140(2),
repealed by
No. 124/1986
s. 74(e).

* * * *

Division 2—Punishment

Pt 3 Div. 2
Subdiv. (1)
(Heading)
amended by
No. 10084
s. 15(b).

(1) *Sentences for Offences*

Ss 472–476A
repealed.⁷⁷

* * * *

S. 476B
inserted by
No. 9242 s. 3,
amended by
Nos 16/1987
ss 4(3)(Sch. 1
item 8(b)),
12(Sch. 2
item 6(b)),
46/1998
s. 7(Sch. 1).

476B. Young person sentenced to life imprisonment

Where a person under the age of 21 years is sentenced to be imprisoned for the term of his natural life he shall be kept in safe custody in such place as is directed by the Minister administering the **Community Services Act 1970** from time to time upon the recommendation of the Secretary within the meaning of the **Children and Young Persons Act 1989** and if the place at which he is at any time being so kept is a youth training centre, remand centre, or other institution which is not a prison established under the **Community Services Act 1970**, shall be deemed to be serving that sentence of imprisonment by way of detention in such centre or institution.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 479A

* * * * *

Ss 477–479
repealed.⁷⁸

479A. Rescuing of prisoner from lawful custody

Any person who, by force, rescues or attempts to rescue from lawful custody any prisoner shall be guilty of an indictable offence and shall be liable to level 5 imprisonment (10 years maximum).

cf. [1742–3]
16 George II,
c. XXXI
ss 3, 4.
[1751–2] 25
George II,
c. XXXVII s. 9.

S. 479A
inserted by
No. 9407
s. 2(g),
amended by
Nos 49/1991
s. 119(1)
(Sch. 2
item 49),
48/1997
s. 60(1)(Sch. 1
item 100).

479B. Aiding a prisoner in escaping

Any person who—

S. 479B
inserted by
No. 9407
s. 2(g),
amended by
Nos 117/1986
s. 6(Sch. 1
item 1(8)(c)),
129/1993
s. 9(1),
48/1997
s. 60(1)(Sch. 1
item 101).

- (a) aids or abets the commission of an offence under section 479C; or

S. 479B(a)
substituted by
No. 117/1986
s. 6(Sch. 1
item 1(8)(b)),
amended by
No. 25/1989
s. 20(k).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 479C

- (b) conveys anything or causes anything to be conveyed into a prison or to a prisoner with intent to facilitate the escape of any prisoner—

shall be guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C
inserted by
No. 117/1986
s. 6(Sch. 1
item 1(8)(d)).

479C. Escape and related offences

S. 479C(1)
amended by
Nos 129/1993
s. 9(2),
45/1996
s. 18(Sch. 2
item 6.1),
26/1997
s. 52(1),
48/1997
s. 60(1)(Sch. 1
item 101),
substituted by
No. 45/2001
s. 40(3).

- (1) A person who, whether by force or not, escapes or attempts to escape—
- (a) from a prison or police gaol; or
- (b) if the person is in the legal custody of the Secretary to the Department of Justice or the Chief Commissioner of Police, from the physical custody of—
- (i) an officer within the meaning of Part 5 of the **Corrections Act 1986** or an escort officer under that Act; or
- (ii) a member of the police force; or
- (iii) a person acting on lawful authority on behalf of the Secretary or the Chief Commissioner—

is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C(2)
amended by
Nos 129/1993
s. 9(2),
48/1997
s. 60(1)(Sch. 1
item 101).

- (2) A prisoner who is authorized to be absent from a prison under the **Corrections Act 1986** and who—
- (a) does not return to prison when the instrument of authority expires or when otherwise required by the instrument to do so; or

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 479C

- (b) is required by the instrument authorizing the absence to be under the supervision of another person and wilfully ceases to be under that supervision; or
- (c) does not return to prison upon being informed by an officer of the Office of Corrections or a member of the police force that the instrument authorizing the absence has been revoked—

is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

- (3) A prisoner who is outside a prison or a police gaol but in custody and who wilfully ceases to be in custody is guilty of an indictable offence punishable on conviction by level 6 imprisonment (5 years maximum).

S. 479C(3)
amended by
Nos 129/1993
s. 9(2),
48/1997
s. 60(1)(Sch. 1
item 101).

- (4) For the purposes of sub-section (3), "**prisoner**" includes a person who is in the custody of a court.

S. 479C(4)
amended by
Nos 45/1996
s. 18(Sch. 2
item 6.2),
26/1997
s. 52(2),
substituted by
No. 45/2001
s. 40(4).

- (5) Evidence that a prisoner has, without reasonable excuse, left a cell, or attempted to avoid detection by officers at a prison or police gaol is evidence that the prisoner is attempting to escape from the prison or police gaol.
- (6) Sections 325, 459 and 459A apply to offences under this section and section 479B as if the offences were serious indictable offences.

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 493

Pt 3 Div. 2
Subdiv. (2)
(Heading)
repealed by
No. 25/1989
s. 20(l)(i).

* * * *

Ss 480–484
repealed.⁷⁹

* * * *

Pt 3 Div. 2
Subdiv. (3)
(Heading)
amended by
No. 8679
s. 3(1)(c).

(3) *Execution of Sentences*

Ss 485–492
repealed⁸⁰.

* * * *

No. 6103
s. 493.
S. 493
amended by
Nos 8338
s. 7(b), 8426
s. 9(2)(a)(b)
(as amended
by No. 8701
s. 7(f)), 8870
s. 7(b), 8998
s. 4, 9554
s. 2(1)(Sch. 1
item 9), 9945
s. 3(3)(Sch. 2
item 12),
10087
s. 3(1)(Sch. 1
item 28),
16/1987
s. 4(3)(Sch. 1
item 8(c)).

**493. Sentences of imprisonment etc. to be carried out
according to law relating to prisons**

Every sentence of imprisonment which is passed for any indictable offence every sentence of attendance at an attendance centre, every award of imprisonment or attendance at an attendance centre, and every direction for detention in a youth training centre within the meaning of Part IV of the **Community Services Act 1970** for any offence punishable on summary conviction, shall be carried out in the manner for the time being provided by any Acts in force relating to prisons or penal establishments in that behalf according to the tenor of every such sentence.

S. 494
repealed by
No. 9554
s. 2(1)(Sch. 1
item 7).

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Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 495

*	*	*	*	*	Pt 3 Div. 2 Subdiv. (4) (Heading) repealed by No. 65/1997 s. 82(2)(c).
*	*	*	*	*	Ss 495–497 repealed. ⁸¹
*	*	*	*	*	S. 498 substituted by No. 6884 s. 3, amended by No. 117/1986 s. 6(Sch. 1 item 2(5)), repealed by No. 65/1997 s. 82(2)(c). ⁸²
*	*	*	*	*	Ss 499–502 repealed. ⁸³
*	*	*	*	*	S. 503 amended by No. 7332 s. 2(Sch. 1 item 20), repealed by No. 65/1997 s. 82(2)(c).
*	*	*	*	*	Pt 3 Div. 2 Subdiv. (5) (Heading and s. 504) amended by No. 7705 s. 10, repealed by No. 10084 s. 9.
*	*	*	*	*	Pt 3 Div. 2 Subdiv. (6) (Heading) repealed by No. 25/1989 s. 20(l)(ii).

Crimes Act 1958
Act No. 6231/1958

Part III—Procedure and Punishment

s. 505A

S. 505
repealed by
No. 10260
s. 114(Sch. 4
item 4).

Pt 3 Div. 3
(Heading and
s. 505A)
inserted by
No. 10026 s. 7.

* * * * *

Division 3—Regulations

S. 505A
inserted by
No. 10026 s. 7.

505A. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing which by this Part is authorized or required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Part.

Crimes Act 1958
Act No. 6231/1958

Part IV—Probation and Parole Provisions

s. 506

PART IV—PROBATION AND PAROLE PROVISIONS

506. Definitions

No. 6103
s. 506.
S. 506
amended by
No. 6651
s. 57(b).

- (1) In this Part unless inconsistent with the context or subject-matter—

S. 506(1)
amended by
No. 46/1998
s. 7(Sch. 1)
(ILA s. 39B(1)).

"Board" means the Parole Board under this Part;

"child" has the same meaning that it has in the
Children and Young Persons Act 1989;

S. 506(1)
def. of "child"
inserted by
No. 9966
s. 21(1)(a),
amended by
No. 56/1989
s. 286(Sch. 2
item 7.16).

* * * * *

S. 506(1)
def. of
"Director-
General"
amended by
No. 9902
s. 2(1)(Sch.
item 55),
substituted by
No. 9966
s. 21(1)(b),
repealed by
No. 45/1996
s. 18(Sch. 2
item 6.4).

* * * * *

S. 506(1)
def. of
"Director-
General of
Community
Welfare
Services"
inserted by
No. 9966
s. 21(1)(b),
repealed by
No. 46/1998
s. 7(Sch. 1).

Crimes Act 1958
Act No. 6231/1958

Part IV—Probation and Parole Provisions

s. 507

"prescribed" means prescribed by this Part or the regulations thereunder;

S. 506(1)
def. of
"Secretary"
inserted by
No. 46/1998
s. 7(Sch. 1).

"Secretary" means the Secretary to the Department of Justice;

"term", in relation to imprisonment, includes the aggregate of two or more terms, whether cumulative or concurrent.

S. 506(2)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 48).

- (2) If under the **Public Administration Act 2004** the name of the Department of Justice is changed, a reference in the definition of "Secretary" in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

Division 1—Probation

(1) *Probation Officers*

No. 6103
s. 507.

507. Probation officers

S. 507(1)
amended by
Nos 6651
s. 57(c), 9427
s. 3(Sch. 2
item 6), 9966
s. 21(2)(a),
10260
s. 114(Sch. 4
item 5),
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 48).

- (1) Subject to the **Public Administration Act 2004** there may from time to time be appointed such stipendiary probation officers as the Governor in Council thinks necessary for the purposes of Part 5 of the **Penalties and Sentences Act 1985**.

Crimes Act 1958
Act No. 6231/1958

Part IV—Probation and Parole Provisions

s. 507

(2) The Governor in Council may from time to time appoint fit persons to be honorary probation officers for the purposes of Part 5 of the **Penalties and Sentences Act 1985** and may at any time remove any person so appointed.

S. 507(2)
amended by
No. 10260
s. 114(Sch. 4
item 5).

(3) All persons who immediately before the commencement of the **Penal Reform Act 1956** were probation officers by virtue of appointment pursuant to section five hundred and thirty-six of the **Crimes Act 1928** are declared to have been as on and from the said commencement honorary probation officers as if appointed under the last preceding sub-section.

* * * * *

S. 507(4)
amended by
No. 9966
s. 21(2)(b)(i)(ii),
repealed by
No. 10260
s. 114(Sch. 4
item 5).

(4A) All stipendiary and honorary probation officers appointed under this section shall be under the control of the Secretary to the Department of Justice.

S. 507(4A)
inserted by
No. 9966
s. 21(2)(c),
amended by
No. 45/1996
s. 18(Sch. 2
item 6.5).

* * * * *

S. 507(5)
amended by
No. 9966
s. 21(2)(d),
repealed by
No. 10260
s. 114(Sch. 4
item 5).

(6) The Secretary to the Department of Justice or, in the case of a convicted person who is a child, the Secretary to the Department of Human Services shall when so required by any court cause to be prepared and submitted to that court such reports upon and information with respect to the convicted person as the court requires.

S. 507(6)
amended by
Nos 9966
s. 21(2)(e)(i)(ii),
45/1996
s. 18(Sch. 2
item 6.6),
46/1998
s. 7(Sch. 1).

Crimes Act 1958
Act No. 6231/1958

Part IV—Probation and Parole Provisions

s. 507

S. 507(7)
amended by
No. 9966
s. 21(2)(f),
repealed by
No. 10260
s. 114(Sch. 4
item 5).

* * * * *

Pt 4 Div. 1
Subdiv. (2)
(Heading)
repealed by
No. 25/1989
s. 20(m)(i).

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Ss 508, 509
repealed.⁸⁴

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Pt 4 Div. 1
Subdiv. (3)
(Heading)
repealed by
No. 25/1989
s. 20(m)(ii).

* * * * *

Ss 510–515A
repealed.⁸⁵

* * * * *

Pt 4 Div. 1
Subdiv. (4)
(Heading)
repealed by
No. 25/1989
s. 20(m)(iii).

* * * * *

Ss 516–519A
repealed.⁸⁶

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Pt 4 Div. 1
Subdiv. (5)
(Heading)
repealed by
No. 25/1989
s. 20(m)(iv).

* * * * *

Crimes Act 1958
Act No. 6231/1958

Part IV—Probation and Parole Provisions

s. 542

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S. 520
amended by
Nos 7876
s. 8(3), 10084
s. 10(a)–(c),
repealed by
No. 10260
s. 114(Sch. 4
item 5).

Pt 4 Div. 2
(Heading and
ss 521–541)
amended by
Nos 6572
ss 2–4, 6651
s. 57(d)(e),
6884 s. 4, 6994
s. 2, 7184
ss 10, 11, 7269
ss 2–4, 7332
s. 2(Sch. 1
item 21), 7705
s. 10, 7876
s. 2(3), 8338
s. 7(a)(b)(i),
repealed by
No. 8493
s. 33(e).

Division 3—Regulations

542. Regulations

No. 6103
s. 538.

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing by this Part authorized or directed to be prescribed or necessary or expedient to be prescribed for the purposes of this Part.

* * * * *

S. 542(2)
repealed by
No. 6888 s. 3.

Crimes Act 1958
Act No. 6231/1958

Part V—Property of Persons Convicted of Treason or an Indictable Offence.
Orders as to Costs

s. 545

Pt 5 (Heading)
amended by
No. 9576
s. 11(1).

**PART V—PROPERTY OF PERSONS CONVICTED OF
TREASON OR AN INDICTABLE OFFENCE. ORDERS AS TO
COSTS**

Ss 543, 544
repealed.⁸⁷

* * * * *

No. 6103
s. 541.

**545. Persons convicted of treason or indictable offence
may pay costs**

S. 545
amended by
Nos 9576
s. 11(1),
19/1989
s. 16(Sch.
item 16.11),
25/1989
s. 20(n).

The court by which judgment is pronounced or recorded upon the conviction of any person for treason or an indictable offence in addition to such sentence as may otherwise by law be passed may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, and the payments of such costs and expenses or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner (subject to the provisions of this Part) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil proceeding may for the time being be enforced:

Provided that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid or from his estate the same shall be paid and provided for in the same manner as if this Part of this Act had not been passed, and any money which may be recovered in respect thereof from the person so convicted or from his estate shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

Crimes Act 1958
Act No. 6231/1958

Part V—Property of Persons Convicted of Treason or an Indictable Offence.
Orders as to Costs

s. 547

* * * * *

S. 546
amended by
No. 7705 s. 10,
substituted by
No. 7994 s. 4,
amended by
No. 8280
s. 18(a)(i)(ii)(b),
repealed by
No. 10260
s. 114(Sch. 4
item 4).

547. Definition of "forfeiture" and "convict"

No. 6103
s. 543.

The word "**forfeiture**" in the construction of this Part shall not include any fine or penalty imposed on any convict by virtue of his sentence, and the expression "**convict**"⁸⁸ shall be deemed to mean any person against whom after the passing of this Act judgment of imprisonment has been pronounced or recorded by any court of competent jurisdiction in Victoria upon any charge of treason or indictable offence.

S. 547
amended by
Nos 8679
s. 3(1)(e), 9576
s. 11(1), 9945
s. 3(3)(Sch. 2
item 14).

548. When convict shall cease to be subject to operation of this Part

No. 6103
s. 544.

When any convict dies or is adjudicated bankrupt, or has undergone the full term of imprisonment for which judgment has been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or has received a pardon for the treason or indictable offence of which he has been convicted, he shall thenceforth so far as relates to the provisions hereinafter contained cease to be subject to the operation of this Part.

S. 548
amended by
Nos 8679
s. 3(1)(f), 9576
s. 11(1), 9945
s. 3(3)(Sch. 2
item 15).

* * * * *

Ss 549–561
repealed by
No. 8410
s. 5(1).

Crimes Act 1958
Act No. 6231/1958

Part V—Property of Persons Convicted of Treason or an Indictable Offence.
Orders as to Costs

s. 562

No. 6103
s. 558.

S. 562
amended by
No. 8410
s. 5(2).

562. Execution of judgments against convict provided for

All judgments or orders for the payment of money of any court of law or equity against such convict which have been duly recovered or made either before or after his conviction may be executed against any property of such convict in the hands of any person who may have taken upon himself the possession or management thereof without legal authority in the same manner as if such property were in the possession or power of such convict.

No. 6103
s. 559.
S. 563
amended by
Nos 8410
s. 5(3)(a)(b),
19/1989
s. 16(Sch.
item
16.12(a)(b)).

563. Proceedings to recover property of convict from third person

The Attorney-General or any person who (if such convict were dead intestate) would be entitled to his real or personal estate or any share thereof or any person authorized by the Attorney-General in that behalf may apply in a summary way to any court which (if such convict were dead) would have jurisdiction to entertain a proceeding for the administration of his real or personal estate to issue a writ calling upon any person who without legal authority has possessed himself of any part of the property of such convict to account for his receipts and payments in respect of the property of such convict in such manner as such court directs, and such court thereupon may issue such writ rule or other process and may enforce obedience thereto and to all orders and proceedings of such court consequent thereon in the same manner as in any other case of process lawfully issuing out of such court, and such court shall thereupon have full power jurisdiction and authority to take all such accounts and to make and give all such orders and directions as to it seems proper or necessary for the purpose of securing the due and proper care administration and management of the property of such convict and the due and proper

Crimes Act 1958
Act No. 6231/1958

Part V—Property of Persons Convicted of Treason or an Indictable Offence.
Orders as to Costs

s. 564

application of the same and of the income thereof and the accumulation and investment of such balances (if any) as may from time to time remain in the hands of any such other person as aforesaid in respect of such property.

564. Third person etc. accountable to convict when property reverts

Subject to the provisions of this Part every such person as aforesaid shall from and after the time when such convict shall cease to be subject to the operation of this Part be accountable to such convict for all property of such convict which has been by him possessed or received and not duly administered in the same manner in which any guardian or trustee is so accountable to his ward or cestui que trust.

No. 6103
s. 560.
S. 564
amended by
No. 8410
s. 5(4)(a)(b).

565. Saving of general law as to indictable offence

Nothing in this Part shall be deemed to alter or in anywise affect the law relating to indictable offences in Victoria except as in this Part is expressly enacted.

No. 6103
s. 561.
S. 565
amended by
No. 9576
s. 11(1).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 566

**PART VI—APPEALS IN CRIMINAL CASES. REFERENCES
ON PETITIONS FOR MERCY**

Division 1—Interpretation

No. 6103
s. 562.

566. Definitions

In the construction of this Part unless inconsistent
with the context or subject-matter—

"appellant" includes a person who has been
convicted and desires to appeal under this
Part;

S. 566 def. of
"Full Court"
repealed by
No. 109/1994
s. 26(a).⁸⁹

* * * *

S. 566 def. of
"indictment"
amended by
No. 9576
s. 11(1).

"indictment" includes presentment;

"prothonotary" means the prothonotary of the
Supreme Court;

S. 566 def. of
"Registrar"
inserted by
No. 10084
s. 11.

"Registrar" means the Registrar of Criminal
Appeals of the Supreme Court;

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 567

"sentence" includes—

- (a) any order made under Part 3, 3A, 4 or 5 of the **Sentencing Act 1991**; and
- (ab) any order made under section 84S or 84T of the **Road Safety Act 1986**; and
- (b) the recording of a conviction; and
- (c) any order made under section 11 of the **Sex Offenders Registration Act 2004**; and

- * * * * *
- (f) an order under section 142, 144, 150, 158 or 163 of the **Children and Young Persons Act 1989** made by the Supreme Court or the County Court in its original jurisdiction.

S. 566 def. of "sentence" amended by No. 7705 s. 10, substituted by No. 25/1989 s. 17(1), amended by Nos 19/1989 s. 16(Sch. item 16.13), 49/1991 s. 119(7) (Sch. 4 item 4.3), 56/2004 s. 79, 65/2004 s. 4(1), 93/2005 s. 9.

Division 2—Right of Appeal and Determination of Appeals

567. Right of appeal in criminal cases

A person convicted on indictment or for a relevant summary offence heard and determined by the County Court pursuant to section 359AA may appeal under this Part to the Court of Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone: Provided that the Court of Appeal in any such case may if it thinks fit decide that the procedure with relation to Crown cases reserved under Part III of this Act should be followed and require a case to be stated accordingly under that Part in the same manner as if a question of law had been reserved and thereupon the provisions of the said Part shall with the necessary modifications apply accordingly;

No. 6103 s. 563.

S. 567 amended by Nos 10026 s. 8(1), 109/1994 s. 26(b).

S. 567(a) amended by No. 109/1994 s. 26(b).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 567A

S. 567(b)
amended by
Nos 7705
s. 10, 109/1994
s. 26(c).

(b) upon the certificate of the judge of the Trial Division of the Supreme Court or the County Court before whom he was tried that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact⁹⁰;

S. 567(c)
amended by
No. 109/1994
s. 26(b).

(c) with the leave of the Court of Appeal upon any such ground as is mentioned in paragraph (b) or any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and

S. 567(d)
amended by
No. 109/1994
s. 26(b).

(d) with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

S. 567A
inserted by
No. 8063 s. 2.

567A. Appeal by Director of Public Prosecutions against sentence passed⁹¹

S. 567A(1)
amended by
Nos 9848
s. 18(1), 10026
s. 8(1),
109/1994
s. 26(d).

(1) Where a sentence is passed on a person convicted on indictment or for a relevant summary offence heard and determined by the County Court pursuant to section 359AA and the Director of Public Prosecutions considers that a different sentence should have been passed and is satisfied that an appeal should be brought in the public interest the Director of Public Prosecutions, on behalf of Her Majesty, may appeal to the Court of Appeal against the sentence passed on the conviction unless the sentence is one fixed by law.

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 567A

(1A) Without limiting any right of appeal under sub-section (1), the Director of Public Prosecutions, on behalf of Her Majesty, may appeal to the Court of Appeal against the sentence passed on a person convicted on indictment or of an indictable offence heard and determined summarily by the Magistrates' Court under section 53(1) of the **Magistrates' Court Act 1989** if—

S. 567A(1A)
inserted by
No. 8280 s. 19,
amended by
Nos 10026
s. 8(1), 10084
s. 12(a), 10260
s. 114(Sch. 4
item 5),
repealed by
No. 25/1989
s. 17(4),
new
S. 567A(1A)
inserted by
No. 69/1997
s. 24(1).

(a) that sentence was of lesser severity because of an undertaking given by that person to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, whether or not proceedings for that offence had been commenced at the time of sentencing; and

(b) the Director of Public Prosecutions considers that that person has failed wholly or partly to fulfil the undertaking.

(1B) An appeal under sub-section (1A) may be brought at any time and whether or not the sentence has been served.

S. 567A(1B)
inserted by
No. 69/1997
s. 24(1).

(2) Where the Director of Public Prosecutions desires to appeal to the Court of Appeal under sub-section (1) or (1A) he shall cause notice of appeal setting forth the grounds thereof to be given to the respondent by serving upon him notice in writing signed by the Director of Public Prosecutions personally of his intention to appeal to the Court of Appeal pursuant to the provisions of this section and setting forth the grounds of the appeal.

S. 567A(2)
amended by
Nos 9848
s. 18(1),
109/1994
s. 26(d),
69/1997
s. 24(2).

(3) Notice of appeal under sub-section (1) against a sentence shall not be given under sub-section (2) more than one month after the passing of the sentence without first obtaining the leave of the Court of Appeal so to do.

S. 567A(3)
amended by
Nos 109/1994
s. 26(d),
69/1997
s. 24(3).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 568

S. 567A(4)
amended by
Nos 10084
s. 12(b),
109/1994
s. 26(d),
69/1997
s. 24(4).

(4) Upon an appeal under sub-section (1) the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe and including a sentence within the meaning of this section) in substitution therefor as it thinks ought to have been passed.

S. 567A(4A)
inserted by
No. 69/1997
s. 24(5).

(4A) On an appeal under sub-section (1A) the Court of Appeal may, if it thinks that the respondent has failed wholly or partly to fulfil the undertaking, quash the sentence passed and pass such other sentence warranted in law as it thinks fit.

S. 567A(5)
amended by
Nos 9848
s. 18(1),
35/1996
s. 453(Sch. 1
item 16.18).

(5) The Director of Public Prosecutions or a legal practitioner on his behalf may appear on behalf of Her Majesty on any proceedings under this section and the provisions of sections 573, 574, 576, sub-section (5) of section 579, and sections 580, 581 and 583 with respect to procedure shall so far as those provisions are applicable and with such modifications and adaptations as are necessary extend and apply to appeals under this section and in particular with the modifications that any reference in those provisions to "appellant" shall be read and construed as if it were a reference to "respondent" and any reference to "Part" were a reference to "section 567A".

No. 6103
s. 564.

568. Determination of appeals in ordinary cases⁹²

S. 568(1)
amended by
No. 109/1994
s. 26(d).

(1) The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 568

or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal:

Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

S. 568(1)
Proviso
amended by
No. 109/1994
s. 26(d).

- (2) Subject to the special provisions of this Part the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or direct a new trial to be had.

S. 568(2)
amended by
No. 109/1994
s. 26(d).

* * * * *

S. 568(3)
amended by
No. 109/1994
s. 26(d),
repealed by
No. 48/1997
s. 59(1).

- (4) On an appeal against sentence the Court of Appeal shall, if it thinks that a different sentence should have been passed or a different order made, quash the sentence passed at the trial and pass such other sentence or make such other order warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed or made, and in any other case shall dismiss the appeal.

S. 568(4)
substituted by
No. 7546 s. 12,
amended by
Nos 10260
s. 114(Sch. 4
item 5),
109/1994
s. 26(d).

- (5) Despite sub-section (4), on an appeal against sentence the Court of Appeal may, if it thinks that it is appropriate and in the interests of justice to do so, quash the sentence passed at the trial and remit the matter to the trial court.

S. 568(5)
inserted by
No. 48/1997
s. 59(2).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 569

S. 568(6)
inserted by
No. 48/1997
s. 59(2).

- (6) If the Court of Appeal remits a matter to the trial court under sub-section (5)—
- (a) it may give any directions that it thinks fit concerning the manner and scope of the further hearing by the trial court, including a direction as to whether that hearing is to be conducted by the same or a different judge; and
 - (b) the trial court must hear and determine the matter in accordance with law and any such directions.

S. 568(7)
inserted by
No. 48/1997
s. 59(2).

- (7) Where a new trial is directed or a matter is remitted under sub-section (5), the Court of Appeal may make such order as to it seems fit for the safe custody of the appellant or for admitting him or her to bail.

No. 6103
s. 565.

569. Powers of Court in special cases⁹³

S. 569
amended by
No. 10026
s. 8(2)(a)(b).

S. 569(1)
amended by
Nos 57/1989
s. 3(Sch.
item 42.70),
109/1994
s. 26(d).

- (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the indictment or of the charge with respect to a relevant summary offence heard and determined by the County Court pursuant to section 359AA has been properly convicted on some other count or part of the indictment, or charge the Court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the indictment or charge on which the Court considers that the appellant has been properly convicted.

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 569

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- (2) Where an appellant has been convicted of an offence and the jury could on the indictment or charge have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence the Court may instead of allowing or dismissing the appeal substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence not being a sentence of greater severity.
- (3) Where on the conviction of the appellant the jury has found a special verdict and the Court of Appeal considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict the Court of Appeal may instead of allowing the appeal order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.
- (4) If it appears to the Court of Appeal that the defence of mental impairment (within the meaning of section 20(1) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**) is established in relation to an appellant who was found guilty of an offence, the Court may quash the sentence passed at the trial and make an order or declaration under section 23 of that Act as if the appellant had been found not guilty because of mental impairment at the trial.

S. 569(2)
amended by
Nos 57/1989
s. 3(Sch.
item 42.70),
109/1994
s. 26(d).

S. 569(3)
amended by
No. 109/1994
s. 26(d).

S. 569(4)
amended by
No. 109/1994
s. 26(d),
substituted by
No. 65/1997
s. 82(3).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 570

No. 6103
s. 566.

S. 570(1)
amended by
Nos 8425
s. 2(1)(n),
10026 s. 8(1),
109/1994
s. 26(d).

570. Re-vesting and restitution of property on conviction⁹⁴

- (1) The operation of any order for the restitution of any property to any person or with reference to any property or the payment of money made on or in connexion with a conviction on indictment or for a relevant summary offence heard and determined by the County Court pursuant to section 359AA shall (unless the court before which the conviction takes place direct to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended—
- (a) in any case until the expiration of ten days after the date of the conviction; and
 - (b) in a case where notice of appeal or leave to appeal is given within ten days after the date of conviction until the determination of the appeal—

and in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal the order or provisions (as the case may be) shall not take effect as to the property in question if the conviction is quashed on appeal except by the special order of the Court of Appeal. Provision may be made by Rules of Court for securing the safe custody of any property pending the suspension of the operation of any such order or of the said provisions.

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 570A

- (2) The Court of Appeal may by order annul or vary or refuse to annul or vary any order made on or in connexion with a conviction for the restitution of any property to any person or with reference to any property or the payment of money whether the conviction or sentence is or is not quashed; and the order if annulled shall not take effect and if varied shall take effect as so varied.

S. 570(2)
amended by
No. 109/1994
s. 26(d).

570A. Appeals in relation to mental impairment verdicts⁹⁵

S. 570A
inserted by
No. 8870 s. 8.

- (1) A person in whose case a verdict of not guilty because of mental impairment is returned in the Supreme Court or the County Court may appeal to the Court of Appeal under this Part against the verdict—

S. 570A(1)
amended by
Nos 109/1994
s. 26(d),
65/1997
s. 82(4)(a)(i).

(a) upon—

- (i) any ground of appeal which involves a question of law alone; and
- (ii) the certificate of the Judge before whom he came for trial that it is a fit case for appeal, on any ground which involves a question of fact alone or a question of mixed law and fact; or

- (b) with the leave of the Court of Appeal on such a ground or other ground which appears to the Court of Appeal to be a sufficient ground of appeal.

S. 570A(1)(b)
amended by
No. 109/1994
s. 26(d).

- (2) The Court of Appeal on any such appeal shall, subject as hereinafter provided, allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the order of the Court giving effect to the verdict should be set aside on the ground of a wrong decision of any question of law or that on any

S. 570A(2)
amended by
No. 109/1994
s. 26(d).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 570B

ground there was a miscarriage of justice, and shall in any other case dismiss the appeal.

S. 570A(3)
amended by
No. 109/1994
s. 26(d).

- (3) The Court of Appeal may dismiss the appeal against the verdict if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the applicant, no substantial miscarriage of justice has actually occurred.

S. 570A(4)
amended by
Nos 109/1994
s. 26(d),
65/1997
s. 82(4)(a)(ii).

- (4) Where apart from this sub-section—

- (a) the appeal against the verdict would fall to be allowed; and

S. 570A(4)(b)
amended by
No. 65/1997
s. 82(4)(a)(ii).

- (b) none of the grounds for allowing it relates to the question of the mental impairment of the accused—

the Court of Appeal may dismiss the appeal if of opinion that but for the mental impairment of the accused the proper verdict would have been that he was guilty of an offence other than the offence charged.

S. 570B
inserted by
No. 8870 s. 8.

570B. Provision applicable where appeals against mental impairment verdicts are allowed⁹⁶

S. 570B(1)
amended by
No. 65/1997
s. 82(4)(b)(i).

- (1) Where in accordance with section 570A an appeal against a verdict of not guilty because of mental impairment is allowed—

S. 570B(1)(a)
amended by
Nos 109/1994
s. 26(d),
65/1997
s. 82(4)(b)(ii).

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the mental impairment of the accused ought not to stand and the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty) the Court shall substitute for the verdict a verdict of guilty of that

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 570C

offence and shall have the like powers of punishing or otherwise dealing with the accused and other powers as the Court before which he was tried would have had if the jury had come to the substituted verdict;

(b) in any case not within paragraph (a) the Court of Appeal shall set aside the verdict of the jury and either direct a judgment and verdict of acquittal to be entered or direct a new trial to be held;

S. 570B(1)(b)
amended by
No. 109/1994
s. 26(d).

(c) where a new trial is directed the Court of Appeal may make such orders as to it seem fit for the safe custody of the appellant or for admitting him to bail.

S. 570B(1)(c)
amended by
No. 109/1994
s. 26(d).

(2) The term of any sentence passed by the Court of Appeal in exercise of the powers conferred by sub-section (1) shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in the Court before which the accused was tried.

S. 570B(2)
amended by
No. 109/1994
s. 26(d).

570C. Appeals in relation to fitness to plead⁹⁷

S. 570C
inserted by
No. 8870 s. 8.

(1) Where the question has arisen in the Trial Division of the Supreme Court or the County Court at the instance of the defence or otherwise whether an accused person is unfit to stand his trial and a jury has returned a finding that he is unfit, he may appeal to the Court of Appeal against the finding upon the grounds and subject to the conditions upon which an appeal may be brought under sub-section (1) of section 570A against a verdict of not guilty because of mental impairment, and section 570A shall apply as if references therein to such a verdict included references to such a finding of unfitness.

S. 570C(1)
amended by
Nos 109/1994
s. 26(d)(e),
65/1997
s. 82(4)(c)(i)–
(iv).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 570D

S. 570C(2)
amended by
No. 109/1994
s. 26(d).

- (2) Where an appeal under this section is allowed the accused may be tried accordingly for the offence with which he was charged and the Court of Appeal may make such orders as to it seem fit for his safe custody or for admitting him to bail.

S. 570D
inserted by
No. 8870 s. 8.

570D. Definitions

S. 570D(1)
amended by
No. 65/1997
s. 82(4)(d).

- (1) References in sections 572, 573, 580, 583 and 584, and in the definition of "appellant" in section 566 to a person having been convicted, or having been convicted and sentenced, shall include references to his having been found not guilty because of mental impairment or found unfit to stand his trial and references to a conviction include references to such findings.
- (2) References in sections 573, 580 and 581 to the trial of a person include references to the trying of an issue as to fitness to stand trial.

No. 6103
s. 567.

571. Jurisdiction of Court of Appeal⁹⁸

S. 571
amended by
No. 57/1989
s. 3(Sch.
item 42.71),
substituted by
No. 109/1994
s. 27.

All jurisdiction and authority under this or any other Act in relation to questions of law arising in criminal trials are vested in the Court of Appeal.

Division 3—Procedure

No. 6103
s. 568.

572. Time and manner for appealing⁹⁹

S. 572(1)
amended by
Nos 7184
s. 12, 8679
s. 3(1)(g)(i),
109/1994
s. 28(a).

- (1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of that Court to appeal he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by Rules of Court not later than fourteen days after

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 573

he has been convicted and sentenced. Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Court of Appeal.

The time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.

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S. 572(2)
amended by
No. 8679
s. 3(1)(g)(ii),
repealed by
No. 25/1989
s. 20(o).

573. Judge's notes and report to be furnished on appeal¹⁰⁰

No. 6103
s. 569.
S. 573
amended by
Nos 7705
s. 10, 9242
s. 4, 57/1989
s. 3(Sch.
item 42.72),
109/1994
s. 28(b).

The judge of the Trial Division of the Supreme Court or the County Court before whom a person is convicted shall in the case of an appeal under this Part against the conviction or against the sentence or in the case of an application for leave to appeal under this Part furnish to the Registrar in accordance with Rules of Court his notes of the trial and may also be required to furnish to the Registrar in accordance with Rules of Court a report giving his opinion upon the case or upon any point arising in the case.

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 574

No. 6103
s. 570.
S. 574
amended by
No. 109/1994
s. 28(c).

574. Supplemental powers of Court¹⁰¹

For the purposes of this Act the Court of Appeal may if it thinks necessary or expedient in the interest of justice—

S. 574(b)
amended by
No. 109/1994
s. 28(c)(d).

- (a) order the production of any document exhibit or other thing connected with the proceedings the production of which appears to it necessary for the determination of the case;
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court whether they were or were not called at the trial or order the examination of any such witnesses to be conducted in manner provided by Rules of Court before any judge of the Trial Division of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Court of Appeal for the purpose and allow the admission of any depositions so taken as evidence before the Court of Appeal¹⁰²;
- (c) receive the evidence if tendered of any witness (including the appellant) who is a competent but not compellable witness and if the appellant consents of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except with such consent;
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot in the opinion of the Court of Appeal conveniently be conducted before the Court order the reference of the question in manner provided by Rules of Court for inquiry and report to a

S. 574(d)
amended by
No. 109/1994
s. 28(c).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 576

special commissioner appointed by the Court and act upon the report of any such commissioner so far as it thinks fit to adopt it;

- (e) appoint any person with special expert knowledge to act as assessor to the Court of Appeal in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;

S. 574(e) amended by No. 109/1994 s. 28(c).

* * * * *

S. 574(f) repealed by No. 109/1994 s. 28(e).¹⁰³

- (g) issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

* * * * *

S. 575 repealed by No. 7919 s. 2(1).

576. Right of appellant to be present¹⁰⁴

No. 6103
s. 572.

- (1) An appellant if he so desires shall notwithstanding that he is in custody be entitled to be present on the hearing of his appeal except where the appeal is on some ground involving a question of law alone but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present except where Rules of Court provide that he shall have the right to be present or where the Court of Appeal gives him leave to be present.

S. 576(1) amended by No. 109/1994 s. 28(f).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 577

S. 576(2)
amended by
No. 109/1994
s. 28(f).

- (2) The power of the Court of Appeal to pass any sentence under this Part may be exercised notwithstanding that the appellant is for any reason not present.

No. 6103
s. 573.
S. 577
amended by
Nos 9848
s. 18(1),
109/1994
s. 28(f),
35/1996
s. 453(Sch. 1
item 16.18).

577. Appearance for prosecution¹⁰⁵

The Director of Public Prosecutions or a legal practitioner on his behalf may appear for the Crown on every appeal or application to the Court of Appeal under this Part and a private prosecutor in the case of a private prosecution may undertake the defence of the appeal, and provision shall be made by Rules of Court for the transmission to the Director of Public Prosecutions of all such documents exhibits and other things connected with the proceedings as he may require for the purpose of his duties under this section.

No. 6103
s. 574.

578. Cost of appeals¹⁰⁶

- (1) On the hearing and determination of an appeal or new trial or any proceedings preliminary or incidental thereto under this Part no costs shall be allowed on either side.

S. 578(2)
amended by
Nos 109/1994
s. 28(f),
35/1996
s. 453(Sch. 1
item 16.19).

- (2) The expenses of any legal practitioner assigned to an appellant under this Part, and the expenses of any witnesses attending on the order of the Court of Appeal or examined in any proceedings incidental to the appeal or new trial and of the appearance of an appellant on the hearing of his appeal or new trial or on any proceedings preliminary or incidental to the appeal or new trial, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court of Appeal for the purpose, or any reference of a question to a special commissioner appointed by the Court of Appeal or of any person appointed as assessor to the Court of Appeal shall by the Attorney-General out of moneys provided by Parliament be defrayed

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 579

up to an amount allowed by the taxing master of the Supreme Court and approved by any judge who was a member of the Court of Appeal on the hearing of the appeal; but subject to any regulations as to rates and scales of payment made by the Governor in Council.

579. Admission of appellant to bail and custody when attending Court¹⁰⁷

No. 6103
s. 575.

- (1) An appellant who is not admitted to bail shall pending the determination of his appeal be treated in such manner as may be directed by rules and regulations under section 203 of the **Community Services Act 1970**.

S. 579(1)
amended by
Nos 8338
s. 7(p), 10084
s. 13(a),
16/1987
s. 4(3)(Sch. 1
item 8(d)).

- (2) The Court of Appeal may if it thinks fit on the application of an appellant admit the appellant to bail pending the determination of his appeal, or where a new trial is directed until the termination of the new trial.

S. 579(2)
amended by
No. 109/1994
s. 28(f).

- (3) The time during which an appellant pending the determination of his appeal or pending a new trial is admitted to bail shall not count as part of any term of imprisonment under his sentence¹⁰⁸.

S. 579(3)
amended by
Nos 109/1994
s. 28(f),
10/1999
s. 18(4)(a)(b).

- (4) Where a case is reserved under subdivision (25) of Division one of Part III of this Act this section shall apply to the person in relation to whose conviction the case is stated as it applies to an appellant.

- (5) Provision shall be made by rules and regulations under section 203 of the **Community Services Act 1970** for the manner in which an appellant when in custody is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Court of Appeal, the Trial Division of the Supreme Court or the Registrar may order him to be taken for the

S. 579(5)
amended by
Nos 8338
s. 7(p), 10084
s. 13(a)(b),
110/1986
s. 140(2),
16/1987
s. 4(3)(Sch. 1
item 8(d)),
109/1994
s. 28(f)(g).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 580

purpose of any proceedings of the Court of Appeal and for the manner in which he is to be kept in custody while absent from prison for the purpose, and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody¹⁰⁹.

No. 6103
s. 576.

580. Duties of prothonotary with respect to notices of appeal etc.¹¹⁰

S. 580(1)
amended by
Nos 57/1989
s. 3(Sch.
item 42.73),
109/1994
s. 28(h).

(1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of any appeals or applications notice of which is given to him under this Act, and shall obtain and lay before the Court of Appeal in proper form all documents exhibits and other things relating to the proceedings in the Court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

S. 580(2)
amended by
Nos 57/1989
s. 3(Sch.
item 42.73),
109/1994
s. 28(h).

- (2) If it appears to the Registrar that any notice of an appeal against a conviction does not show any substantial ground of appeal the Registrar may refer the appeal to the Court of Appeal for summary determination and where the case is so referred the Court may if it considers that the appeal is frivolous or vexatious and can be determined without adjourning the same for a full hearing dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the Crown thereon.
- (3) Any documents exhibits or other things connected with the proceedings on the trial of any person on indictment shall be kept in the custody of the court of trial in accordance with Rules of Court made for the purpose for such time as may be provided by the Rules and subject to such power as may be given by the Rules for the conditional release of

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 581

any such documents exhibits or things from that custody.

- (4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part to any person who demands the same and to officers of courts governors of gaols and such other officers or person as he thinks fit and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

S. 580(4)
amended by
Nos 8338
s. 7(a),
57/1989
s. 3(Sch.
item 42.73).

* * * * *

S. 580(5)
repealed by
No. 8280 s. 20.

581. Notes of evidence on trial¹¹¹

No. 6103
s. 577.

- (1) On any appeal or application for leave to appeal a transcript of the notes of the judge of the court of trial or where shorthand notes have been taken in accordance with any Act a transcript of such notes or any part thereof shall be made if the Registrar so requests and furnished to the Registrar for the use of the Court of Appeal:

S. 581(1)
amended by
Nos 7705
s. 10, 110/1986
s. 140(2),
57/1989
s. 3(Sch.
item 42.74),
109/1994
s. 28(h).

Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Attorney-General may fix.

- (2) The Director of Public Prosecutions may, if he thinks fit in any case, request a transcript of the notes to be made and furnished to him for his use.

S. 581(2)
amended by
No. 9848
s. 18(1).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 582

S. 581(3)
amended by
Nos 9848
s. 18(1),
57/1989
s. 3(Sch.
item 42.74).

- (3) The cost of making any such transcript where a transcript is requested to be made by the Registrar or by the Director of Public Prosecutions shall be defrayed in accordance with scales of payment fixed for the time being by the Attorney-General out of moneys provided by Parliament.
- (4) Rules of Court may make such provision as is necessary for the verification of the transcript.

No. 6103
s. 578.
S. 582
amended by
Nos 110/1986
s. 140(2),
109/1994
s. 28(h)(i).

582. Powers which may be exercised by a judge of the Court¹¹²

The powers of the Court of Appeal under this Part to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by a Judge of Appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions; but, if a Judge of Appeal constituted by a judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court of Appeal.

S. 582A
inserted by
No. 10084
s. 14.

582A. Registrar may give leave etc.¹¹³

S. 582A(1)
amended by
No. 109/1994
s. 28(j).

- (1) The powers of the Court of Appeal under this Part to give leave to extend the time within which notice of appeal or notice of application for leave to appeal may be given, may be exercised by the Registrar in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions.

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 583

- (2) Where the Registrar refuses an application on the part of an appellant to exercise the power conferred by sub-section (1), the appellant shall be entitled to have the application determined by the Court of Appeal.

S. 582A(2)
amended by
No. 109/1994
s. 28(j).

583. Rules of Court¹¹⁴

Rules of Court for the purposes of this Part shall be made by the judges of the Supreme Court. Rules so made may make provision with respect to any matter for which provision is to be made under this Part by Rules of Court, and may regulate generally the practice and procedure under this Part, and the officers of any court before whom an appellant has been convicted, and the governor or other officers of any prison or other officer having the custody of an appellant and any other officers or persons, shall comply with any requirements of those Rules so far as they affect those officers or persons, and compliance with those Rules may be enforced by order of the Court of Appeal or the Trial Division of the Supreme Court.

No. 6103
s. 579.
S. 583
amended by
Nos 8338
s. 7(a),
110/1986
s. 140(2),
109/1994
s. 28(k).

Division 4—References on Petitions for Mercy

584. References by Attorney-General

Nothing in this Part shall affect the prerogative of mercy, but the Attorney-General on the consideration of any petition for the exercise of Her Majesty's mercy, having reference to the conviction of a person on indictment or to the sentence passed on a person so convicted, may, if he thinks fit, at any time either—

No. 6103
s. 580.
S. 584
amended by
No. 9019
s. 2(1)(Sch.
item 47).

- (a) refer the whole case to the Court of Appeal and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted¹¹⁵; or

S. 584(a)
amended by
No. 109/1994
s. 28(l).

Crimes Act 1958
Act No. 6231/1958

Part VI—Appeals in Criminal Cases. References on Petitions for Mercy

s. 584

S. 584(b)
amended by
No. 109/1994
s. 28(m).

- (b) if he desires the assistance of the judges of the Trial Division of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to such judges for their opinion thereon, and such judges or any three of them shall consider the point so referred and furnish the Attorney-General with their opinion thereon accordingly¹¹⁶.
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PART 7—GENERAL

Pt 7 (Heading
and s. 585)
inserted by
No. 26/1997
s. 53.

585. Supreme Court—limitation of jurisdiction

S. 585
inserted by
No. 26/1997
s. 53,
amended by
No. 65/1997
s. 82(4)(e).

- (1) It is the intention of section 361 as amended by the **Police and Corrections (Amendment) Act 1997** and the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 464ZH, as amended by section 29(1) of the **Crimes (Amendment) Act 1997**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 585(1)
amended by
No. 81/1997
s. 29(2) (ILA
s. 39B(1)).

S. 585(2)
inserted by
No. 81/1997
s. 29(2).

585A. Transitional provisions—(Crimes (Sexual Offences) Act 1991)

S. 585A
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) The amendments made by the following provisions of the **Crimes (Sexual Offences) Act 1991** apply to a proceeding that occurs on or after the commencement of the provision, irrespective of when the offence to which the proceeding relates is alleged to have been committed—
 - (a) section 3 to the extent that it—
 - (i) abolishes the requirement of corroboration in sections 51(5), 54(2) and 55(2) of this Act by repealing those sections;
 - (ii) inserts a new section 61 in this Act;

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 585A

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- (b) section 6(c);
 - (c) any provision of Part 3;
 - (d) any provision of section 13, 15, 16(1)(a), (b), (c), (d) or (e) or 19.
- (2) Subject to sub-section (1)(a), the amendments made by section 3, 6(a), 6(b), 6(d) or 6(e) of the **Crimes (Sexual Offences) Act 1991** apply only to offences alleged to have been committed after the commencement of that section.
 - (3) The amendments made by any provision of section 4, 5, 14, 16(1)(f) or 16(2) of the **Crimes (Sexual Offences) Act 1991** apply only to proceedings relating to offences alleged to have been committed after the commencement of the provision.
 - (4) For the purposes of this section an offence is not alleged to have been committed after the commencement of a provision if it is alleged to have been committed between two dates, one before and one after that commencement.
 - (5) This section adds to, and does not take away from, the provisions of the **Interpretation of Legislation Act 1984**.
 - (6) The re-enactment by this section of section 21(2) of, and the Schedule to, the **Crimes (Sexual Offences) Act 1991** does not affect the operation of any Act enacted after the **Crimes (Sexual Offences) Act 1991**.
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585B. Transitional provisions—(Crimes (Amendment) Act 1993)

S. 585B
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) This Act, as amended by section 7 of the **Crimes (Amendment) Act 1993**, does not apply to an application to a court for fingerprints or a blood sample—
 - (a) made before the commencement of section 7 of that Act; or
 - (b) made after that commencement arising from a refusal to give fingerprints or a blood sample before the commencement.
- (2) Subject to section 464P of this Act (as inserted by the **Crimes (Amendment) Act 1993**) this Act as in force immediately before the commencement of section 7 of the **Crimes (Amendment) Act 1993** continues to apply to fingerprints and blood samples taken before that commencement.
- (3) The re-enactment by this section of section 11 of the **Crimes (Amendment) Act 1993** does not affect the operation of any Act enacted after the **Crimes (Amendment) Act 1993**.

585C. Transitional provisions—(Miscellaneous Acts (Omnibus Amendments) Act 1996)

S. 585C
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

- (1) This Act as amended by sections 6(1) and 6(3) of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies only with respect to applications for warrants made on or after the commencement of section 6 of that 1996 Act under section 465 of this Act or section 81 of the **Drugs, Poisons and Controlled Substances Act 1981**.
- (2) This Act as amended by section 8 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies to any child pornography, film, photograph, publication or computer game seized,

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 585D

whether before or after the commencement of section 8 of that 1996 Act.

- (3) The expressions used in sub-section (2) have the same meaning as in section 67A of this Act.
- (4) The re-enactment by this section of sections 6(4) and 9 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** does not affect the operation of any Act enacted after the **Miscellaneous Acts (Omnibus Amendments) Act 1996**.

S. 585D
inserted by
No. 10/2005
s. 4(Sch. 2
item 1).

585D. Transitional provisions—(Sentencing and Other Acts (Amendment) Act 1997)

- (1) The amendment of this Act made by section 54 or 56 of the **Sentencing and Other Acts (Amendment) Act 1997** applies only to offences alleged to have been committed after the commencement of that amendment.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates and an amendment of this Act by section 54 or 56 of the **Sentencing and Other Acts (Amendment) Act 1997** commenced on a date between those two dates, the offence is alleged to have been committed before the commencement of that amendment.
- (3) The amendments of section 568 of this Act made by section 59 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to appeals heard and determined by the Court of Appeal after the commencement of section 59 of the **Sentencing and Other Acts (Amendment) Act 1997**, irrespective of when the notice of appeal or notice of application for leave to appeal was given.

- (4) The re-enactment by this section of section 63 of the **Sentencing and Other Acts (Amendment) Act 1997** does not affect the operation of any Act enacted after the **Sentencing and Other Acts (Amendment) Act 1997**.

586. Transitional provisions (Sentencing (Amendment) Act 1997)

S. 586
inserted by
No. 69/1997
s. 25.

- (1) The amendment of section 443A(3) made by section 22(12) of the **Sentencing (Amendment) Act 1997** effecting a change from indictable to summary in the nature of an offence against that section applies to a proceeding for an offence that is commenced after the commencement of section 22(12) of that Act, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
- (2) The amendments of section 567A made by section 24 of the **Sentencing (Amendment) Act 1997** apply to appeals against sentences passed after the commencement of section 24 of that Act, irrespective of when the offence was committed.
- (3) For the purposes of sub-section (2) a sentence passed by an appellate court on setting aside a sentencing order must be taken to have been passed at the time the original sentencing order was made.

587. Transitional provisions (Crimes (Amendment) Act 1997—Part 2)

S. 587
inserted by
No. 81/1997
s. 8.

- (1) The amendments of this Act made by sections 4, 6 and 7 of the **Crimes (Amendment) Act 1997** apply to any trial that commences on or after 1 January 1998, irrespective of when the offence to which the trial relates is alleged to have been committed.

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 588

- (2) For the purposes of sub-section (1), a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (3) The amendments of section 47A of this Act made by section 5(1) of the **Crimes (Amendment) Act 1997** apply only to offences against section 47A(1) alleged to have been committed on or after 1 January 1998.
- (4) For the purposes of sub-section (3), if an offence is alleged to have been committed between two dates of which one is before and one is on or after 1 January 1998, the offence is alleged to have been committed before 1 January 1998.
- (5) The amendments of section 47A of this Act made by section 5(2), (3), (4) and (5) of the **Crimes (Amendment) Act 1997** apply to offences against section 47A(1) for which a charge is filed on or after 1 January 1998, irrespective of when the offence is alleged to have been committed.

S. 588
inserted by
No. 81/1997
s. 15.

588. Transitional provisions (Crimes (Amendment) Act 1997—Part 3)

- (1) Section 398A applies to any trial, committal proceeding or hearing of a charge for an offence that commences on or after 1 January 1998, irrespective of when the offence to which the trial, committal proceeding or hearing relates is alleged to have been committed.
- (2) For the purposes of sub-section (1)—
 - (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
 - (b) a committal proceeding commences on the committal mention date; and

- (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

589. Transitional provisions (Crimes (Amendment) Act 1997—Part 4)

S. 589
inserted by
No. 81/1997
s. 30.

- (1) The amendment of this Act made by section 16(f), 17 or 18 of the **Crimes (Amendment) Act 1997** applies to applications made under section 464T(1), 464U(3) or 464V (as the case requires) irrespective of when the offence in respect of which the application is made is alleged to have been committed.
- (2) The amendment of this Act made by section 22 of the **Crimes (Amendment) Act 1997** only applies with respect to orders made by a court on or after the commencement of that section.
- (3) The amendments of this Act made by section 24 of the **Crimes (Amendment) Act 1997** apply to any proceedings that commence on or after the commencement of that section of that Act, irrespective of when the offence to which the proceedings relate is alleged to have been committed.
- (4) For the purposes of sub-section (3)—
 - (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III; and
 - (b) a committal proceeding commences on the committal mention date; and
 - (c) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 590

- (5) The first report submitted to the Attorney-General in accordance with section 464ZFE must relate to the period beginning with the day on which section 26 of the **Crimes (Amendment) Act 1997** comes into operation.
- (6) The amendments of section 464ZG(3)(a) and (4)(a) made by section 27(2)(b) and (3)(b) of the **Crimes (Amendment) Act 1997** apply only to samples taken in forensic procedures conducted on or after the commencement of section 27 of that Act and any related material and information within the meaning of Subdivision (30A) of Division 1 of Part III in relation to such samples.
- (7) The amendments of section 464ZG(8) and (9) made by section 27(5) and (6) of the **Crimes (Amendment) Act 1997** apply only to offences alleged to have been committed after the commencement of section 27 of that Act.
- (8) For the purposes of sub-section (7), if an offence is alleged to have been committed between two dates and section 27 of the **Crimes (Amendment) Act 1997** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that section.

S. 590
inserted by
No. 80/1998
s. 4.

590. Transitional provision—Crimes, Confiscation and Evidence Acts (Amendment) Act 1998

The amendments to this Act made by section 3 of the **Crimes, Confiscation and Evidence Acts (Amendment) Act 1998** apply only with respect to forensic procedures within the meaning of Subdivision (30A) of Division 1 of Part III conducted after the commencement of that section.

591. Transitional provision—Crimes (Amendment) Act 1998

- (1) The amendments of section 60B of this Act made by section 3 of the **Crimes (Amendment) Act 1998** apply only to offences alleged to have been committed after the commencement of section 3.
- (2) If an offence is alleged to have been committed between two dates and section 3 of the **Crimes (Amendment) Act 1998** commences on a date between those two dates, for the purposes of subsection (1) the offence must be taken to have been alleged to have been committed before the commencement of that section.

S. 590
inserted by
No. 65/1998
s. 4,
re-numbered
as s. 591 by
No. 10/1999
s. 31(5)(e).

592. Transitional provisions—Magistrates' Court (Amendment) Act 1999

The amendments of this Act made by section 18(4) of the **Magistrates' Court (Amendment) Act 1999** apply only in relation to appeals to the Court of Appeal for which the notice of appeal or notice of application for leave to appeal is given on or after 1 July 1999.

S. 592
inserted by
No. 10/1999
s. 20.

593. Transitional provisions—Crimes (Amendment) Act 2000

- (1) In this section "**commencement day**" means the day on which the **Crimes (Amendment) Act 2000** comes into operation.
- (2) The amendment of section 38 of this Act made by section 4 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.
- (3) The amendment of section 70 of this Act made by section 6 of the **Crimes (Amendment) Act 2000** applies only to offences alleged to have been committed after the commencement day.

S. 593
inserted by
No. 67/2000
s. 8.

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 593

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- (4) For the purposes of sub-sections (2) and (3), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement day, the offence is alleged to have been committed before the commencement day.
 - (5) From any time on or after the commencement day a charge or presentment may be filed against a person for an offence against section 45 of this Act, as substituted by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the offence is alleged to have been committed before, on or after the commencement day provided it is not alleged to have been committed before 5 August 1991.
 - (6) For the purposes of sub-section (5), if an offence is alleged to have been committed between two dates, one before and one on or after 5 August 1991, the offence is alleged to have been committed before 5 August 1991.
 - (7) Section 359A(1) of this Act, as in force before the commencement day, continues to apply to an alleged offence against section 45 or 46 (as in force before the commencement day) or an attempt to commit any such offence or an assault with intent to commit any such offence for which a person is directed to be tried, or with which a person is charged on indictment or presentment, before the commencement day.
 - (8) The amendments of section 425(1) of this Act made by section 7 of the **Crimes (Amendment) Act 2000** apply to any trial that commences on or after the commencement day and an accused may be found guilty in such a trial of an offence against section 45 of this Act, as substituted by section 5 of the **Crimes (Amendment) Act 2000**, irrespective of whether the conduct constituting
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Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 593A

the offence is alleged to have occurred before, on or after the commencement day provided it is not alleged to have occurred before 5 August 1991.

(9) For the purposes of sub-section (8)—

- (a) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of this Act; and
- (b) if conduct constituting an offence is alleged to have occurred between two dates, one before and one on or after 5 August 1991, the conduct is alleged to have occurred before 5 August 1991.

(10) Section 425(3) of this Act, as in force before the commencement day, continues to apply to any trial of an offence against section 45(1) or 46(1) (as in force before the commencement day) that occurs on or after the commencement day, irrespective of whether that trial commenced before, on or after the commencement day.

593A. Transitional provision—Crimes (Questioning of Suspects) Act 2000

S. 593A
inserted by
No. 86/2000
s. 7.

The amendments of this Act made by the **Crimes (Questioning of Suspects) Act 2000** applies to any person who is, at any time on or after the commencement of that Act, a person of a kind referred to in section 464B(1)(a), irrespective of when the offence to which the questioning or investigation relates was committed or alleged to have been committed.

s. 594

S. 594
inserted by
No. 92/2000
s. 12.

**594. Transitional provision—Magistrates' Court
(Committal Proceedings) Act 2000**

The amendments of section 359AA of this Act made by section 11 of the **Magistrates' Court (Committal Proceedings) Act 2000** apply to applications made under that section on or after the commencement of that section of that Act irrespective of when the charge for the summary offence was filed under section 26 of the **Magistrates' Court Act 1989**.

S. 596
inserted by
No. 16/2002
s. 19.

**596. Transitional provisions—Crimes (DNA Database)
Act 2002**

- (1) The amendments of section 464Z of this Act made by section 7 of the **Crimes (DNA Database) Act 2002** apply to the taking of a scraping of the mouth on or after the commencement of section 7 of that Act.
- (2) The amendment of section 464ZFB of this Act made by section 13 of the **Crimes (DNA Database) Act 2002** applies to a person found guilty of an offence on or after the commencement of section 13 of that Act.
- (3) The amendment of this Act made by section 16 of the **Crimes (DNA Database) Act 2002** applies to any offence or suspected offence, irrespective of when the offence is alleged to have been committed.
- (4) The amendments of this Act made by section 17 of the **Crimes (DNA Database) Act 2002** only apply to offences alleged to have been committed on or after the commencement of section 17 of that Act.

- (5) The amendments of this Act made by section 18(1) of the **Crimes (DNA Database) Act 2002** only apply to offences alleged to have been committed on or after the commencement of section 18(1) of that Act.
- (6) For the purposes of sub-sections (4) and (5), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 17 or 18(1) (as the case requires) of the **Crimes (DNA Database) Act 2002**, the offence is alleged to have been committed before that commencement.

597. Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003

S. 597
inserted by
No. 10/2003
s. 9.

- (1) The amendments of this Act made by the **Crimes (Property Damage and Computer Offences) Act 2003** apply only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Property Damage and Computer Offences) Act 2003**, the offence is alleged to have been committed before that commencement.

598. Transitional provision—Crimes (Stalking) Act 2003

S. 598
inserted by
No. 105/2003
s. 6.

- (1) The amendments of section 21A of this Act made by Part 2 of the **Crimes (Stalking) Act 2003** apply to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Stalking) Act**

2003, the offence is alleged to have been committed before that commencement.

- (3) The amendments of section 21A of this Act made by Part 2 of the **Crimes (Stalking) Act 2003** do not affect the rights of the parties in the proceeding known as *DPP v Sutcliffe* (No. 6562 of 2000) in the Supreme Court.

S. 599
inserted by
No. 104/2003
s. 4.

599. Transitional provision—Crimes (Money Laundering) Act 2003

- (1) The amendments of this Act made by the **Crimes (Money Laundering) Act 2003** apply only to offences alleged to have been committed on or after the commencement of section 3 of that Act.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 3 of the **Crimes (Money Laundering) Act 2003**, the offence is alleged to have been committed before that commencement.

S. 600
inserted by
No. 59/2004
s. 8.

600. Transitional provisions—Crimes (Dangerous Driving) Act 2004

- (1) Section 88 (as amended by section 3 of the **Crimes (Dangerous Driving) Act 2004**) applies only to offences alleged to have been committed on or after the commencement of that Act.
- (2) Section 88A (as inserted by section 4 of the **Crimes (Dangerous Driving) Act 2004**) applies to any trial that commences on or after the commencement of that Act regardless of when the offences are alleged to have been committed.
- (3) Section 319 (as inserted by section 6 of the **Crimes (Dangerous Driving) Act 2004**) applies only to offences alleged to have been committed on or after the commencement of that Act.

-
- (4) For the purposes of this section—
- (a) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Dangerous Driving) Act 2004**, the offence is alleged to have been committed before that commencement; and
 - (b) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III of this Act.

601. Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004

S. 601
inserted by
No. 72/2004
s. 33.

- (1) An amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** applies to all persons on and after the commencement of that provision regardless of whether or not immediately before that commencement—
- (a) the person was in custody within the meaning of Subdivision (30A) of Division 1 of Part III; or
 - (b) the person had consented to undergo a forensic procedure under section 464R but the procedure had not yet been conducted; or
 - (c) the conduct of a non-intimate compulsory procedure was authorised under section 464SA but the procedure had not yet been conducted; or
 - (d) the person had consented to give a sample in accordance with section 464ZGB but the sample had not yet been taken.
-

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 602

- (2) Without limiting sub-section (1) or section 14(2) of the **Interpretation of Legislation Act 1984**, an amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** does not affect any order made by a court under Subdivision (30A) of Division 1 of Part III before the commencement of that provision and any such order may be executed or enforced, and any period of custody specified in it may be extended, as if this Act had not been amended by that provision.

S. 602
inserted by
No. 66/2005
s. 7.

602. Transitional provision—Crimes (Contamination of Goods) Act 2005

- (1) The amendments of this Act made by the **Crimes (Contamination of Goods) Act 2005** apply only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Contamination of Goods) Act 2005**, the offence is alleged to have been committed before that commencement.

S. 603
inserted by
No. 77/2005
s. 7.

603. Transitional provision—Crimes (Homicide) Act 2005

- (1) An amendment of this Act made by section 3, 4, 5 or 6 of the **Crimes (Homicide) Act 2005** applies only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of sub-section (1) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Homicide) Act 2005**, the offence is alleged to have been committed before that commencement.

604. Transitional provision—Justice Legislation (Miscellaneous Amendments) Act 2006

S. 604
inserted by
No. 14/2006
s. 15.

The amendments made to this Act by sections 13 and 14 of the **Justice Legislation (Miscellaneous Amendments) Act 2006** only apply to appeals for which the notice of appeal or notice of application for leave to appeal is given after the commencement of those sections.

605. Transitional provision—Justice Legislation (Further Miscellaneous Amendments) Act 2006

S. 605
inserted by
No. 27/2006
s. 18.

- (1) The amendments made to this Act by sections 3(b), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the **Justice Legislation (Further Miscellaneous Amendments) Act 2006** only apply with respect to findings of not guilty because of mental impairment on or after the commencement of that Act.
- (2) The amendments made to this Act by sections 3(c) and 17 of the **Justice Legislation (Further Miscellaneous Amendments) Act 2006** only apply to recordings made on or after the commencement of that Act.

606. Transitional provision—Courts Legislation (Jurisdiction) Act 2006

S. 606
inserted by
No. 50/2006
s. 11.

- (1) Section 353(2B) applies with respect to an offence for which a presentment is served on or after the commencement of section 6 of the **Courts Legislation (Jurisdiction) Act 2006**, irrespective of when the offence is alleged to have been committed.
- (2) The amendments made to this Act by section 7 of the **Courts Legislation (Jurisdiction) Act 2006** apply to a proceeding that occurs on or after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

Crimes Act 1958
Act No. 6231/1958

Part 7—General

s. 606

-
- (3) Section 359B applies to any trial or summary hearing that commences on or after the commencement of section 8 of the **Courts Legislation (Jurisdiction) Act 2006**, irrespective of when the offence to which the trial or summary hearing relates is alleged to have been committed.
- (4) For the purposes of sub-section (3) a trial commences on arraignment of the accused in accordance with Subdivision (12) of Division 1 of Part III.
- (5) The amendments made to this Act by section 10 of the **Courts Legislation (Jurisdiction) Act 2006** apply in relation to appeals heard by the Court of Appeal on or after the commencement of that section irrespective of when—
- (a) the notice of appeal or notice of application for leave to appeal was given; or
 - (b) the offence is alleged to have been committed.
-

Crimes Act 1958
Act No. 6231/1958

Sch. 1

SCHEDULES

FIRST SCHEDULE

S. 2.

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
6103	Crimes Act 1957	The whole
6166	Crimes (Amendment) Act 1957	The whole
6167	Crimes (Parole Board) Act 1957	The whole

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**Sch. 2
repealed by
No. 6958
s. 8(4)(d).**

Crimes Act 1958
Act No. 6231/1958

Sch. 3

S. 353.

Sch. 3

substituted by
No. 9848

s. 18(1),
amended by

No. 43/1994

s. 56(Sch.
item 1.8).

THIRD SCHEDULE

The Director of Public Prosecutions presents that, &c.

[*Subsequent counts may commence as follows:*]

And the Director of Public Prosecutions further presents, &c.

(Signed) A.B. Director of
Public Prosecutions.
[or C.D. Crown Prosecutor].

S. 357.

Sch. 4

amended by
Nos 8338

s. 7(m), 9576

s. 11(1), 9848

s. 18(1),

110/1986

s. 140(2),

repealed by

No. 25/1989

s. 18(1),

new Sch. 4

inserted by

No. 49/1991

s. 119(7)

(Sch. 4

item 4.4).

SCHEDULE 4

Section 357(1)

CERTIFICATE

To the Judges of the Supreme Court of Victoria or any one of them.

This is to certify that I decline to file any presentment against A.B. detained
in the custody of the sheriff or the officer in charge of the prison at _____
under _____ on a
charge of _____

Given under my hand this _____ day of _____

C.D. Attorney-General
(or Director of Public Prosecutions)

Crimes Act 1958
Act No. 6231/1958

Sch. 5

SCHEDULE 5

WARRANT

To the Sheriff or Officer in charge of the Prison at
in Victoria

Whereas A.B. is detained in your custody under

on a charge of _____ and whereas it has been certified to me by
C.D. Her Majesty's Attorney-General (*or* Director of Public Prosecutions)
that he or she declines to file any presentment against A.B. for that offence
you are therefore hereby authorised and required forthwith to discharge A.B.
from your custody on that warrant.

Given under our (*or* my) hand this _____ day of

E.F. Judges (*or* Judge) of the Supreme Court

G.H.

S. 357.
Sch. 5
amended by
Nos 8338
s. 7(n), 9576
s. 11(1), 9848
s. 18(1),
110/1986
s. 140(2),
repealed by
No. 25/1989
s. 18(1),
new Sch. 5
inserted by
No. 49/1991
s. 119(7)
(Sch. 4
item 4.4).

Crimes Act 1958
Act No. 6231/1958

Sch. 6

Ss 366, 367.

SIXTH SCHEDULE

RULES

1. General provision as to presentments

- (1) A presentment may be either written or printed or partly written and partly printed.
- (2) Figures and abbreviations may be used in a presentment for expressing anything which is commonly expressed thereby.

Sch. 6 rule 2
amended by
No. 9576
s. 11(1).

2. Joining of charges in one presentment

Charges for any offences may be joined in the same presentment if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

3. Statement of particulars

- (1) Particulars of the offence charged shall be set out in ordinary language in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any statute limits the particulars of an offence which are required to be given in a presentment nothing in this rule shall require any more particulars to be given than those so required.

- (2) Where more than one offence is charged in a presentment the particulars of each offence so charged shall be set out in a separate paragraph called a count.
- (3) Such counts shall be numbered consecutively.
- (4) The forms set out in the Appendix to these rules or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect conforming thereto as nearly as may be shall be used, the particulars of offence being varied according to the circumstances in each case.

Crimes Act 1958
Act No. 6231/1958

Sch. 6

4. Endorsement of presentment

- (1) There shall be endorsed on the back of a presentment the name of every witness whose evidence was received at the committal proceeding and an indication as to which of those witnesses, and the names of any other witnesses, the Crown proposes to call at the trial.

Sch. 6
rule 4(1)
amended by
Nos 10233
s. 9(e)(f),
57/1989
s. 3(Sch.
item 42.77).

- (2) The endorsement on the back of a presentment shall be in the following form or to the like effect:

Sch. 6
rule 4(2)
amended by
No. 7705 s. 10.

(Supreme) (County) Court
(Melbourne)

195

The Queen
V.

PRESENTMENT

for

- (2A) There shall be endorsed on a presentment—

Sch. 6
rule 4(2A)
inserted by
No. 10233
s. 9(g).

- (a) a note to the effect that the accused person should take the presentment to the legal practitioner acting on behalf of the accused person or, if the accused person has not yet engaged a legal practitioner, to a legal practitioner or to Victoria Legal Aid; and

Sch. 6
rule 4(2A)(a)
amended by
Nos 48/1995
s. 11(3)(b),
35/1996
s. 453(Sch. 1
item 16.20(a)).

- (b) a note to legal practitioners requesting them to inform the Criminal Trial Listing Directorate of their interest in the matter.

Sch. 6 rule
4(2A)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 16.20(b)).

- (3) A presentment shall not be open to objection by reason only of any failure to comply with this rule.

5. Provision as to statutory offences

- (1) Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative or the doing or the omission to do any act in any one of any different capacities or with any one of any different intentions or states any part of the

Crimes Act 1958
Act No. 6231/1958

Sch. 6

offence in the alternative the acts omissions capacities or intentions or other matters stated in the alternative in the enactment may be stated in the alternative in the count charging the offence.

- (2) It shall not be necessary in any count charging a statutory offence to negative any exception or exemption from or qualification to the operation of the statute creating the offence.

6. Description of property

- (1) The description of property in a count in a presentment shall be in ordinary language and such as to indicate with reasonable clearness the property referred to and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.
- (2) Where property is vested in more than one person and the owners of the property are referred to in a presentment it shall be sufficient to describe the property as owned by one of those persons by name with others and if the persons owning the property are a body of persons with a collective name such as "Board" "Mayor Councillors and Burgesses" "Authority" "Trust" "Trustees" "Commission" "Commissioners" or "Club" or other such name it shall be sufficient to use the collective name without naming any individual.

7. Description of persons

The description or designation in a presentment of the accused person or of any other person to whom reference is made therein shall be such as is reasonably sufficient to identify him without necessarily stating his correct name or his abode style degree or occupation; and if owing to the name of the person not being known or for any other reason it is impracticable to give such a description or designation such description or designation shall be given as is reasonably practicable in the circumstances or such person may be described as "a person unknown."

8. Description of document

Where it is necessary to refer to any document or instrument in a presentment it shall be sufficient to describe it by any name or designation by which it is usually known or by the purport thereof without setting out any copy thereof.

9. General rule as to description

Subject to any other provisions of these rules it shall be sufficient to describe any place time thing matter act or omission whatsoever to which it is necessary to refer in any presentment in ordinary language in such a manner as to indicate with reasonable clearness the place time thing matter act or omission referred to.

10. Statement of intent

It shall not be necessary in stating any intent to defraud deceive or injure to state an intent to defraud deceive or injure any particular person where the statute creating the offence does not make an intent to defraud deceive or injure a particular person an essential ingredient of the offence.

11. Charge of previous conviction

In any charge of a previous conviction of an offence it shall be sufficient to charge the same by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

12. Copy of statement etc. of offences to be supplied to accused in certain cases

- (1) In any case where the statement of an offence charged in the information laid against an accused person materially differs from the statement of the offence charged in the presentment the Director of Public Prosecutions after the presentment has been signed and not later than two days before the day of the arraignment of such accused person shall supply to him free of charge a copy of the statement and particulars of the offence charged in the presentment.
- (2) In the event of non-compliance with this rule the court unless of opinion that no substantial injustice has been done to the accused by reason of such non-compliance may adjourn the trial for such time as the court thinks proper.

Sch. 6
rule 12(1)
amended by
No. 9848
s. 18(1).

13. Interpretation of rules

The **Interpretation of Legislation Act 1984** applies for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

Sch. 6 rule 13
amended by
No. 25/1989
s. 20(p).

Crimes Act 1958
Act No. 6231/1958

Sch. 6

14. Short title of rules

These rules may be cited as the Presentment Rules 1958 and these rules together with any rules made under this Act may be cited together by such collective title as is prescribed by the last-mentioned rules.

APPENDIX TO RULES

FORMS

—
1

STATEMENT OF OFFENCE

Murder

PARTICULARS OF OFFENCE

A.B. on the day of 19 at
murdered C.D.

—
2

STATEMENT OF OFFENCE

Accessory after the fact to murder.

PARTICULARS OF OFFENCE

A.B. well knowing that C.D. on the day of at
murdered E.F. did on the day of at
and on other days thereafter receive comfort harbour assist and
maintain the said C.D.

Crimes Act 1958
Act No. 6231/1958

Sch. 6

3

STATEMENT OF OFFENCE

Manslaughter

PARTICULARS OF OFFENCE

A.B. on the day of at
killed C.D.

4

STATEMENT OF OFFENCE

Rape

PARTICULARS OF OFFENCE

A.B. on the day of at
raped C.D. by introducing his penis into her vagina without her consent.

5

STATEMENT OF OFFENCE

Taking part in an act of sexual penetration with a child aged between 10 and 16, contrary to section 46(1) of the **Crimes Act 1958**.

PARTICULARS OF OFFENCE

A.B. at on the day of 19
took part in an act of sexual penetration with C.D. a person who was aged
between 10 and 16 and to whom A.B. was not married in that he introduced
his penis into the mouth of C.D.

Sch. 6 Form 4
substituted by
S.R. No.
144/1965
Order 7 (as
amended by
S.R. No.
75/1987 cl. 5).

Sch. 6 Form 5
substituted by
No. 8/1991
s. 6(e).

Crimes Act 1958
Act No. 6231/1958

Sch. 6

Sch. 6 Form 6
substituted by
No. 8/1991
s. 6(e).

6

STATEMENT OF OFFENCE

Incest, contrary to section 44(1) of the **Crimes Act 1958**.

PARTICULARS OF OFFENCE

A.B. at on the day of 19
took part in an act of sexual penetration with C.D. a person whom he knew to
be his child in that he introduced his penis into the mouth of C.D.

7

STATEMENT OF OFFENCE

Bigamy, contrary to section 64 of the **Crimes Act 1958**.

PARTICULARS OF OFFENCE

A.B. on the day of at
married C.D. and the said A.B. on the day of
at (being married to the said C.D.) went through the form or ceremony of
marriage with E.F. the said C.D. his wife being then alive.

Sch. 6
Forms 8–11
repealed by
No. 8425
s. 2(1)(o).

* * * * *

Sch. 6
Form 12
amended by
S.R. No.
372/1973
reg. 2(a),
repealed by
No. 8425
s. 2(1)(o).

* * * * *

Crimes Act 1958
Act No. 6231/1958

Sch. 6

* * * * *

Sch. 6
Form 13
repealed by
No. 8425
s. 2(1)(o).

* * * * *

Sch. 6
Form 14
amended by
No. 8181
s. 2(1)(Sch.
item 32),
repealed by
No. 8425
s. 2(1)(o).

15

STATEMENT OF OFFENCE

Wounding with intent to do grievous bodily harm, &c., contrary to section 17
of the **Crimes Act 1958**.

PARTICULARS OF OFFENCE

A.B. on the day of at
wounded C.D. with intent to do him grievous bodily harm or to resist the
lawful apprehension of him the said A.B.

STATEMENT OF OFFENCE

Maliciously wounding, contrary to section 19 of the **Crimes Act 1958**.

PARTICULARS OF OFFENCE

A.B. on the day of at
maliciously wounded C.D.

Crimes Act 1958
Act No. 6231/1958

Sch. 6

16

STATEMENT OF OFFENCE

Common assault.

A.B. on the _____ day of _____ at _____
assaulted C.D.

Sch. 6
Form 17
repealed by
No. 9576
s. 11(1).

* * * * *

Sch. 6
Form 18
amended by
S.R. No.
372/1973
reg. 2(b),
repealed by
No. 8425
s. 2(1)(o).

* * * * *

19

STATEMENT OF OFFENCE

Conspiracy to defraud.

PARTICULARS OF OFFENCE

A.B. and C.D. on the _____ day of _____ and
on diverse days between that day and the _____ day
of _____ at _____ conspired together to defraud by
means of an advertisement inserted by them in the _____ newspaper falsely
representing that they were then carrying on a genuine business as jewellers
at _____ and that they were then able to supply certain
articles of jewellery to whomsoever would remit to them the sum of \$4.

Crimes Act 1958
Act No. 6231/1958

Sch. 6

* * * * *

Sch. 6
Form 20
repealed by
No. 9228
s. 2(1)(k).

21

Sch. 6
Form 21
amended by
Nos 9019
s. 2(1)(Sch.
item 48), 9427
s. 6(1)(Sch. 5
item 42), 9921
s. 255, 44/1989
s. 41(Sch. 2
item 7),
104/1997 s. 42.

STATEMENT OF OFFENCE

Placing things on railway with intent, &c., contrary to section 232 of the
Crimes Act 1958.

PARTICULARS OF OFFENCE

A.B. on the day of at
displaced a sleeper belonging to a railway of C.D. with intent to obstruct
upset overthrow injure or destroy any engine tender carriage or truck on the
said railway.

STATEMENT OF OFFENCE

Obstructing railway, contrary to section 233 of the **Crimes Act 1958.**

PARTICULARS OF OFFENCE

A.B. on the day of at
by unlawfully displacing a sleeper belonging to a railway of C.D. obstructed
or caused to be obstructed an engine or carriage on the said railway.

* * * * *

Sch. 6
Forms 22-24
repealed.¹¹⁷

Crimes Act 1958
Act No. 6231/1958

Sch. 6

25

STATEMENT OF OFFENCE

Perjury.

PARTICULARS OF OFFENCE

A.B. on the day of at
being a witness upon the trial of an action in the Supreme Court in which
one was plaintiff and one was
defendant knowingly falsely swore that he saw C.D. in the street called
Collins-street, Melbourne, on the day of

26

STATEMENT OF OFFENCE

Libel.

PARTICULARS OF OFFENCE

A.B. on the day of at
published a defamatory libel concerning C.D. in the form of a letter (book
pamphlet picture or as the case may be).
(Innuendo should be stated where necessary.)

Sch. 6
Forms 27, 28
repealed by
No. 8425
s. 2(1)(o).

* * * * *

Crimes Act 1958
Act No. 6231/1958

Sch. 7

SCHEDULE 7

Sections 464K, 464L, 464M

**SUMMARY OFFENCES FOR WHICH A PERSON MAY BE
FINGERPRINTED**

Sch. 7
repealed by
No. 8143 s. 11,
new Sch. 7
inserted by
No. 129/1993
s. 8.

1. A summary offence where the maximum penalty (whether for a first or subsequent offence) is or includes a period of imprisonment.
2. An offence under section 3(2) or 3(4) of the **Court Security Act 1980**.
3. An offence under section 6(2) of the **Control of Weapons Act 1990**.
4. An offence under section 36A of the **Drugs, Poisons and Controlled Substances Act 1981**.
5. An offence under section 97 of the **Police Regulation Act 1958**.
6. An offence under section 20, 23 or 35(6) of the **Prevention of Cruelty to Animals Act 1986**.

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Sch. 7A
inserted by
No. 7546 s. 13,
substituted by
No. 7782 s. 14,
repealed by
No. 8143 s. 11.

Crimes Act 1958
Act No. 6231/1958

Sch. 8

Sch. 8
repealed by
No. 8143 s. 11,
new Sch. 8
inserted by
No. 8870
s. 6(2),
amended by
Nos 9848
s. 18(1),
16/1986 s. 30,
repealed by
No. 25/1989
s. 18(1),
new Sch. 8
inserted by
No. 81/1997
s. 31,
amended by
Nos 67/2000
s. 7(7)–(9),
61/2001
s. 16(1)(c),
16/2002
s. 18(1)(2),
35/2002
s. 28(Sch.
item 3.4),
10/2003
s. 8(a)(b),
77/2005
s. 8(3)(e),
27/2006 s. 16.

SCHEDULE 8

Sections 464ZF, 464ZFAAA

FORENSIC SAMPLE OFFENCES

A forensic sample offence is:

Offences against the person—Non-Sexual Offences

1. Murder.
2. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 4 (conspiracy to murder) (as amended) of the **Crimes Act 1958** repealed on 1 June 1984 by section 8(b) of the **Crimes (Conspiracy and Incitement) Act 1984**.
3. Manslaughter.
- 3A. Defensive homicide.
4. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
 - (a) section 16 (causing serious injury intentionally);
 - (b) section 17 (causing serious injury recklessly);
 - (c) section 19A (intentionally causing a very serious disease);
 - (d) section 63 (child stealing);
 - (e) section 63A (kidnapping).
5. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:
 - (a) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);
 - (b) section 19 (inflicting bodily injury);
 - (c) section 19A (inflicting grievous bodily harm);
 - (d) section 20 (attempting to choke, etc. in order to commit an indictable offence).
6. The common law offence of kidnapping.
- 6A. The common law offence of false imprisonment.

Offences against the person—Sexual Offences

7. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
- (a) section 38 (rape);
 - (b) section 39 (indecent assault) if—
 - (i) immediately before or during or immediately after the commission of the offence and at, or in the vicinity of, the place where the offence was committed, the offender inflicted serious personal violence on the victim or did an act which was likely seriously and substantially to degrade or humiliate the victim, whether or not the serious personal violence or that act constituted or formed part of the indecent assault; or
 - (ii) the offender was aided or abetted by another person who was present; or
 - (iii) the victim was under 16 years of age at the time of the commission of the offence;
 - (c) section 40 (assault with intent to rape);
 - (d) section 44(1), (2) or (4) (incest) but not section 44(4) if both people are aged 18 or older and each consented (as defined in section 36 of the **Crimes Act 1958**) to engage in the sexual act;
 - (e) section 45(1) (sexual penetration of child under the age of 16);
* * * * *
 - (g) section 47(1) (indecent act with child under the age of 16);
 - (h) section 47A(1) (sexual relationship with child under the age of 16);
 - (i) section 49A(1) (facilitating sexual offences against children);
 - (j) section 51 (sexual offences against people with impaired mental functioning);
 - (k) section 52 (sexual offences against residents of residential facilities);
 - (l) section 53 (administration of drugs, etc.);
 - (m) section 55 (abduction or detention);
 - (n) section 56 (abduction of child under the age of 16);
 - (o) section 57 (procuring sexual penetration by threats or fraud);

Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
- (p) section 58 (procuring sexual penetration of child under the age of 16);
 - (q) section 76 (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;
 - (r) section 77 (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault.
- 7A. An offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.
- 7B. An offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**.
8. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**:
- (a) section 40 (rape);
 - (b) section 41 (rape with aggravating circumstances);
 - (c) section 43 (indecent assault with aggravating circumstances).
9. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**:
- (a) section 44(1) (indecent assault);
 - (b) section 44(2) (indecent assault with aggravating circumstances);
 - (c) section 45(1) (rape);
 - (d) section 45(2) (attempted rape);
 - (e) section 45(2) (assault with intent to commit rape);
 - (f) section 45(3) (rape with aggravating circumstances);
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Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
- (g) section 45(4) (attempted rape with aggravating circumstances);
 - (h) section 45(4) (assault with intent to commit rape with aggravating circumstances);
 - (i) section 47(1) (sexual penetration of child under the age of 10);
 - (j) section 47(2) (attempted sexual penetration of child under the age of 10);
 - (k) section 47(2) (assault with intent to take part in act of sexual penetration with child under the age of 10);
 - (l) section 48(1) (sexual penetration of child aged between 10 and 16);
 - (m) section 48(2) (attempted sexual penetration of child aged between 10 and 16);
 - (n) section 48(2) (assault with intent to take part in act of sexual penetration with child aged between 10 and 16);
 - (o) section 50(1) (gross indecency with child under the age of 16);
 - (p) section 51 (sexual penetration of mentally ill or intellectually defective person);
 - (q) section 51 (attempted sexual penetration of mentally ill or intellectually defective person);
 - (r) section 51 (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);
 - (s) section 52 (incest) but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration;
 - (t) section 54 (procuring persons by threats or fraud);
 - (u) section 55 (administration of drugs, etc.);
 - (v) section 56 (abduction and detention);
 - (w) section 61 (unlawful detention for purposes of sexual penetration).
10. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**:
- (a) section 44(1) (rape);
 - (b) section 44(2) (rape with mitigating circumstances);
 - (c) section 45 (attempted rape);
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Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
- (d) section 45 (assault with intent to rape);
 - (e) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);
 - (f) section 47 (attempting to unlawfully and carnally know and abuse girl under the age of 10);
 - (g) section 47 (assault with intent to unlawfully and carnally know and abuse girl under the age of 10);
 - (h) section 48(1) (unlawfully and carnally knowing and abusing girl aged between 10 and 16);
 - (i) section 48(2) (attempting to unlawfully and carnally know and abuse girl aged between 10 and 16);
 - (j) section 48(2) (assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16);
 - (k) section 52 (incest) but not section 52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister;
 - (l) section 54 (carnal knowledge of female mentally ill or intellectually defective person);
 - (m) section 54 (attempted carnal knowledge of female mentally ill or intellectually defective person);
 - (n) section 54 (assault with intent to carnally know female mentally ill or intellectually defective person);
 - (o) section 55(1) (indecent assault);
 - (p) section 55(3) (felonious indecent assault);
 - (q) section 57(1) or (2) (procuring defilement of woman by threats or fraud or administering drugs);
 - (r) section 59 (abduction of girl under eighteen with intent to have carnal knowledge);
 - (s) section 60 (unlawful detention with intent to have carnal knowledge);
 - (t) section 62 (forcible abduction of woman);
 - (u) section 68(1) (buggery);
 - (v) section 68(3A) or (3B) (indecent assault on male person);
 - (w) section 69(1) (act of gross indecency with girl under the age of 16).
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Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
11. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, section 61 (abduction of woman from motives of lucre) of the **Crimes Act 1958** repealed on 1 March 1980 by section 5 of the **Crimes (Sexual Offences) Act 1980**.
 12. Any of the following common law offences:
 - (a) rape;
 - (b) attempted rape;
 - (c) assault with intent to rape.

Property Offences

13. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
 - (a) section 75 (robbery);
 - (b) section 75A (armed robbery);
 - (c) section 76 (burglary);
 - (d) section 77 (aggravated burglary).
 14. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed on 1 October 1974 by section 2(1)(b) of the **Crimes (Theft) Act 1973**:
 - (a) section 117 (robbery; larceny from the person);
 - (b) section 118 (assault with intent to rob);
 - (c) section 119 (robbery with wounding);
 - (d) section 120 (robbery under arms or company);
 - (e) section 128 (burglary by breaking out);
 - (f) section 130 (burglary with wounding);
 - (g) section 132 (entering house at night with intent to commit a felony);
 - (h) section 133 (breaking into etc., building within curtilage);
 - (i) section 134 (house-breaking);
 - (j) section 135 (house-breaking etc., with intent etc.);
 - (k) section 138 (larceny in the house);
 - (l) section 139 (larceny with menaces).
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Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
15. The common law offence of robbery abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.
 16. The common law offence of burglary abolished on 1 October 1974 by section 3(1) of the **Crimes (Theft) Act 1973**.
 17. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:
 - (a) section 197 (destroying or damaging property) in circumstances where the offence is charged as arson;
 - (b) section 197A (arson causing death);
 - (c) section 201A (intentionally or recklessly causing a bushfire);
 - (d) section 247K (sabotage);
 - (e) section 247L (threats to sabotage).
 18. An offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions of the **Crimes Act 1958** repealed on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**:
 - (a) section 196 (setting fire to church etc.);
 - (b) section 197 (setting fire to house anyone being in it);
 - (c) section 199 (setting fire to railway buildings etc.);
 - (d) section 200 (setting fire to public buildings);
 - (e) section 201 (setting fire to other buildings);
 - (f) section 202 (setting fire to goods in buildings);
 - (g) section 203 (attempting to set fire to buildings).
 19. An offence against section 203A (placing inflammable substance with intent to destroy, damage, etc.) (as amended) of the **Crimes Act 1958** repealed on 1 July 1979 by section 2(1)(c) of the **Crimes (Criminal Damage) Act 1978**.
 20. The common law offence of arson.
 21. An offence against section 249, 250 or 251 (contamination of goods) of the **Crimes Act 1958**.

Explosive Substances

- 21A. An offence against section 317 (offences connected with explosive substances) of the **Crimes Act 1958**.
 - 21B. An offence against section 317A (bomb hoaxes) of the **Crimes Act 1958**.
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Parties to Offence

- 21C. An offence against section 325(1) (assisting offender) of the **Crimes Act 1958** if the principal offence was any other forensic sample offence.

Drug Offences

22. An offence against section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs).
23. An offence against section 71AA of the **Drugs, Poisons and Controlled Substances Act 1981** (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs).
24. An offence against section 71AB of the **Drugs, Poisons and Controlled Substances Act 1981** (trafficking in a drug of dependence to a child).
25. An offence against section 71AC of the **Drugs, Poisons and Controlled Substances Act 1981** (trafficking in a drug of dependence).
26. An offence against section 72 of the **Drugs, Poisons and Controlled Substances Act 1981** (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant).
27. An offence against section 72A of the **Drugs, Poisons and Controlled Substances Act 1981** (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant).
28. An offence against section 72B of the **Drugs, Poisons and Controlled Substances Act 1981** (cultivation of a narcotic plant for a purpose related to trafficking in that narcotic plant).
29. An offence against section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** (trafficking in a drug of dependence).

Crimes Act 1958
Act No. 6231/1958

Sch. 8

-
30. An offence against section 72(1)(ab) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** (cultivation of a narcotic plant in circumstances where the offence is committed in relation to a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant).
31. An offence against section 72(1)(b) of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001** (cultivation of a narcotic plant for a purpose related to trafficking in that narcotic plant).

Schs 8A–11
repealed.¹¹⁸

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ENDNOTES

1. General Information

The **Crimes Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

Crimes Act 1958
Act No. 6231/1958

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Crimes Act 1958** by Acts and subordinate instruments.

Companies Act 1958, No. 6455/1958

Assent Date: 2.12.58
Commencement Date: 1.4.59: Government Gazette 4.3.59 p. 496
Current State: All of Act in operation

Statute Law Revision Act 1959, No. 6505/1959

Assent Date: 5.5.59
Commencement Date: 1.4.59: s. 1(2)
Current State: All of Act in operation

Crimes (Penalties) Act 1959, No. 6561/1959

Assent Date: 17.11.59
Commencement Date: 17.11.59
Current State: All of Act in operation

Crimes (Sentences and Parole) Act 1959, No. 6572/1959

Assent Date: 1.12.59
Commencement Date: 1.1.60: Government Gazette 16.12.59 p. 3638
Current State: All of Act in operation

Social Welfare Act 1960, No. 6651/1960

Assent Date: 15.6.60
Commencement Date: S. 57(b)–(e) on 11.7.60: Government Gazette 6.7.60 p. 2210; s. 57(a) on 1.7.65: Government Gazette 30.6.65 p. 2016
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Motor Car (Driving) Act 1960, No. 6658/1960

Assent Date: 15.6.60
Commencement Date: 15.8.60: Government Gazette 27.7.60 p. 2565
Current State: All of Act in operation

Statute Law Revision Act 1960, No. 6716/1960

Assent Date: 21.12.60
Commencement Date: Sch. 1 on 1.4.59: s. 3
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Kidnapping) Act 1960, No. 6731/1960

Assent Date: 21.12.60
Commencement Date: 21.12.60
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Evidence (Children) Act 1961, No. 6758/1961

Assent Date: 26.4.61
Commencement Date: 26.4.61
Current State: All of Act in operation

Prostitution Act 1961, No. 6761/1961

Assent Date: 26.4.61
Commencement Date: 26.4.61
Current State: All of Act in operation

Motor Car (Amendment) Act 1961, No. 6762/1961

Assent Date: 26.4.61
Commencement Date: S. 13 on 5.6.61: Government Gazette 31.5.61 p. 1850
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Breath Test Evidence) Act 1961, No. 6806/1961

Assent Date: 5.12.61
Commencement Date: 20.12.61: Government Gazette 20.12.61 p. 4335
Current State: All of Act in operation

Companies Act 1961, No. 6839/1961

Assent Date: 19.12.61
Commencement Date: 1.7.62: Government Gazette 21.2.62 p. 392
Current State: All of Act in operation

Crimes (Detention) Act 1962, No. 6884/1962

Assent Date: 2.5.62
Commencement Date: 17.9.62: Government Gazette 12.9.62 p. 3228
Current State: All of Act in operation

Subordinate Legislation Act 1962, No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Justices (Amendment) Act 1962, No. 6958/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62
Current State: All of Act in operation

Parole Board Membership Act 1963, No. 6994/1963

Assent Date: 7.5.63
Commencement Date: 7.5.63
Current State: All of Act in operation

Crimes (Aircraft) Act 1963, No. 7088/1963 (as amended by No. 7142/1964)

Assent Date: 10.12.63
Commencement Date: 10.12.63
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Amendment) Act 1964, No. 7184/1964

Assent Date: 2.12.64
Commencement Date: 15.2.65: Government Gazette 10.2.65 p. 279
Current State: All of Act in operation

Crimes (Illegal Use of Motor Cars) Act 1965, No. 7263/1965

Assent Date: 18.5.65
Commencement Date: 18.5.65
Current State: All of Act in operation

Crimes (Parole) Act 1965, No. 7269/1965

Assent Date: 25.5.65
Commencement Date: 25.5.65
Current State: All of Act in operation

Motor Car (Driving Offences) Act 1965, No. 7327/1965

Assent Date: 7.12.65
Commencement Date: 1.2.66: Government Gazette 19.1.66 p. 209
Current State: All of Act in operation

Statute Law Revision Act 1965, No. 7332/1965

Assent Date: 14.12.65
Commencement Date: 14.12.65: subject to s. 3
Current State: All of Act in operation

Crimes (Dangerous Driving) Act 1966, No. 7407/1966

Assent Date: 17.5.66
Commencement Date: 1.7.66: Government Gazette 22.6.66 p. 2205
Current State: All of Act in operation

Crimes Act 1967, No. 7546/1967

Assent Date: 17.3.67
Commencement Date: 17.3.67
Current State: All of Act in operation

Crimes (Amendment) Act 1967, No. 7577/1967

Assent Date: 8.11.67
Commencement Date: 8.11.67
Current State: All of Act in operation

Crimes (Driving Offences) Act 1967, No. 7645/1967 (as amended by No. 7696/1968)

Assent Date: 19.12.67
Commencement Date: 1.3.68: Government Gazette 1.3.68 p. 577
Current State: All of Act in operation

Juries Act 1967, No. 7651/1967 (as amended by No. 7725/1968)

Assent Date: 19.12.67
Commencement Date: S. 2(1)(Sch. 1 Pt 2 item 3) on 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Amendment) Act 1968, No. 7696/1968

Assent Date: 7.5.68
Commencement Date: 7.5.68
Current State: All of Act in operation

Abolition of Bailiwicks Act 1968, No. 7703/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3930
Current State: All of Act in operation

County Court (Jurisdiction) Act 1968, No. 7705/1968

Assent Date: 15.10.68
Commencement Date: 1.1.69: Government Gazette 4.12.68 p. 3919
Current State: All of Act in operation

Crimes (Evidence) Act 1968, No. 7782/1968

Assent Date: 18.12.68
Commencement Date: 18.12.68
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: All of Act (*except* ss 3, 5–7(k)(m)–(o)) on 1.4.70;
ss 3, 5–7(k)(m)–(o) on 1.7.70: Government Gazette
25.2.70 p. 463
Current State: All of Act in operation

Abolition of Obsolete Offences Act 1969, No. 7884/1969

Assent Date: 2.12.69
Commencement Date: 2.12.69
Current State: All of Act in operation

Legal Aid Act 1969, No. 7919/1969

Assent Date: 16.12.69
Commencement Date: All of Act (*except* Pt 1) on 1.6.70: Government
Gazette 6.5.70 p. 1210; Pt 1 on 1.10.70:
Government Gazette 16.9.70 p. 3073
Current State: All of Act in operation

Crimes (Amendment) Act 1970, No. 7994/1970

Assent Date: 4.11.70
Commencement Date: 4.11.70
Current State: All of Act in operation

Criminal Appeals Act 1970, No. 8063/1970

Assent Date: 22.12.70
Commencement Date: 15.4.71: Government Gazette 7.4.71 p. 830
Current State: All of Act in operation

Motor Car (Driving Offences) Act 1971, No. 8143/1971

Assent Date: 4.5.71
Commencement Date: 1.8.71: Government Gazette 28.7.71 p. 2502
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Police Regulation (Amendment) (No. 2) Act 1971, No. 8179/1971

Assent Date: 23.11.71
Commencement Date: 15.12.71: Government Gazette 15.12.71 p. 3845
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71: subject to s. 2(2)
Current State: All of Act in operation

Crimes (Powers of Arrest) Act 1972, No. 8247/1972

Assent Date: 6.4.72
Commencement Date: 1.7.72: Government Gazette 28.6.72 p. 2360
Current State: All of Act in operation

Justices Act 1972, No. 8275/1972

Assent Date: 13.5.72
Commencement Date: 15.1.73: Government Gazette 10.1.73 p. 45
Current State: All of Act in operation

Crimes (Amendment) Act 1972, No. 8280/1972

Assent Date: 13.5.72
Commencement Date: 13.5.72
Current State: All of Act in operation

Crimes Act 1972, No. 8338/1972

Assent Date: 5.12.72
Commencement Date: 29.1.73: Government Gazette 24.1.73 p. 164
Current State: All of Act in operation

Crimes (Amendment) Act 1973, No. 8410/1973

Assent Date: 17.4.73
Commencement Date: Ss 1–4 on 9.5.73: Government Gazette 9.5.73 p. 1014; s. 5 on 1.7.73: Government Gazette 20.6.73 p. 2064
Current State: All of Act in operation

Crimes (Theft) Act 1973, No. 8425/1973 (as amended by No. 9019/1977)

Assent Date: 17.4.73
Commencement Date: 1.10.74: Government Gazette 3.4.74 p. 790
Current State: All of Act in operation

Social Welfare (Amendment) Act 1973, No. 8426/1973 (as amended by No. 8701/1975)

Assent Date: 17.4.73
Commencement Date: S. 9 on 7.6.76: Government Gazette 19.5.76 p. 1388
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Magistrates' Courts (Jurisdiction) Act 1973, No. 8427/1973

Assent Date: 17.4.73
Commencement Date: Ss 3, 6, 8(b), 10(1) (*except* (k)), 11 on 3.2.75: Government Gazette 22.1.75 p. 122; rest of Act on 1.9.75: Government Gazette 30.7.75 p. 2705
Current State: All of Act in operation

Social Welfare Act 1973, No. 8493/1973

Assent Date: 4.12.73
Commencement Date: S. 33 on 2.7.74: Government Gazette 22.5.74 p. 1712
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Capital Offences) Act 1975, No. 8679/1975

Assent Date: 29.4.75
Commencement Date: 29.4.75
Current State: All of Act in operation

Magistrates (Summary Proceedings) Act 1975, No. 8731/1975

Assent Date: 16.5.75
Commencement Date: S. 173(Sch. 3) on 1.7.76: Government Gazette 24.3.76 p. 848
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Constitution Act 1975, No. 8750/1975

Assent Date: 19.11.75
Commencement Date: 1.12.75: Government Gazette 26.11.75 p. 3888
Current State: All of Act in operation

Crimes Act 1976, No. 8870/1976

Assent Date: 16.6.76
Commencement Date: Ss 1–3, 5, 7, 8 on 1.3.77: Government Gazette 26.1.77 p. 177; s. 4 on 1.7.76: s. 4(5); s. 6 on 1.7.77: Government Gazette 22.6.77 p. 1712
Current State: All of Act in operation

Rape Offences (Proceedings) Act 1976, No. 8950/1976

Assent Date: 14.12.76
Commencement Date: 1.7.77: Government Gazette 22.6.77 p. 1712
Current State: All of Act in operation

Magistrates' Courts (Commitment) Act 1977, No. 8998/1977

Assent Date: 10.5.77
Commencement Date: 10.5.77
Current State: All of Act in operation

Bail Act 1977, No. 9008/1977

Assent Date: 10.5.77
Commencement Date: 1.9.77: Government Gazette 17.8.77 p. 2654
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2
Current State: All of Act in operation

Crimes (Armed Robbery) Act 1977, No. 9048/1977

Assent Date: 22.11.77
Commencement Date: 22.11.77
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77: subject to s. 2(2)
Current State: All of Act in operation

Crimes (Married Persons' Liability) Act 1977, No. 9073/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 25.1.78 p. 201
Current State: All of Act in operation

Crimes (Hijackings and Other Offences) Act 1978, No. 9155/1978

Assent Date: 30.5.78
Commencement Date: 1.10.78: Government Gazette 6.9.78 p. 2869
Current State: All of Act in operation

Crimes (Criminal Damage) Act 1978, No. 9228/1978 (as amended by No. 9427/1980)

Assent Date: 19.12.78
Commencement Date: 1.7.79: Government Gazette 4.4.79 p. 901
Current State: All of Act in operation

Crimes (Competence and Compellability of Spouse Witnesses) Act 1978, No. 9230/1978

Assent Date: 19.12.78
Commencement Date: 1.7.79: Government Gazette 4.4.79 p. 901
Current State: All of Act in operation

Crimes (Amendment) Act 1978, No. 9242/1978

Assent Date: 19.12.78
Commencement Date: Ss 1, 3 on 19.12.78: s. 1(3); ss 2, 4 on 1.4.79: Government Gazette 21.3.79 p. 729
Current State: All of Act in operation

Crimes (Amendment) Act 1979, No. 9323/1979

Assent Date: 18.12.79
Commencement Date: 1.7.80: Government Gazette 25.6.80 p. 2121
Current State: All of Act in operation

Imperial Law Re-enactment Act 1980, No. 9407/1980

Assent Date: 20.5.80
Commencement Date: 2.7.80: Government Gazette 2.7.80 p. 2257
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80 (except as otherwise provided in s. 6(2)):
s. 1(2)
Current State: All of Act in operation

Community Welfare Services (Extradition) Act 1980, No. 9498/1980

Assent Date: 23.12.80
Commencement Date: 23.12.80
Current State: All of Act in operation

Crimes (Sexual Offences) Act 1980, No. 9509/1980

Assent Date: 23.12.80
Commencement Date: 1.3.81: Government Gazette 4.2.81 p. 338
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 44 on 26.9.80: s. 1(3); ss 36–46 on 3.6.81:
Government Gazette 3.6.81 p. 1778; rest of Act on
1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Crimes (Classification of Offences) Act 1981, No. 9576/1981 (as amended by
No. 9902/1983)

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances Act 1981, No. 9719/1981

Assent Date: 12.1.82
Commencement Date: 18.12.83: Government Gazette 14.12.83 p. 3955
Current State: All of Act in operation

Director of Public Prosecutions Act 1982, No. 9848/1982

Assent Date: 21.12.82
Commencement Date: Ss 1–8, 17 on 12.1.83: Government Gazette 12.1.83
p. 80; rest of Act on 1.6.83: Government Gazette
11.5.83 p. 1146
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Transport Act 1983, No. 9921/1983

Assent Date: 23.6.83
Commencement Date: S. 255(Sch. 12) on 1.7.83: s. 1(2)(c)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 3(3)(Sch. 2 items 9–15) on 20.12.83: Government Gazette 14.12.83 p. 4035
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Community Welfare Services (Director-General of Corrections) Act 1983, No. 9966/1983

Assent Date: 22.11.83
Commencement Date: S. 21 on 1.2.84: Government Gazette 25.1.84 p. 162
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Procedure) Act 1983, No. 10026/1983

Assent Date: 20.12.83
Commencement Date: 7.2.84: Government Gazette 7.2.84 p. 381
Current State: All of Act in operation

Crimes (Criminal Investigations) Act 1984, No. 10076/1984

Assent Date: 15.5.84
Commencement Date: 5.6.84: Government Gazette 5.6.84 p. 1777
Current State: All of Act in operation

Crimes (Conspiracy and Incitement) Act 1984, No. 10079/1984

Assent Date: 15.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Crimes (General Amendment) Act 1984, No. 10084/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2119
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Planning (Brothels) Act 1984, No. 10094/1984 (as amended by No. 124/1986)

Assent Date: 22.5.84
Commencement Date: S. 14 on 2.7.84: Government Gazette 30.5.84 p. 1674
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Penalties and Sentences (Amendment) Act 1984, No. 10152/1984

Assent Date: 20.11.84
Commencement Date: S. 9 on 1.6.85: Government Gazette 22.5.85 p. 1667
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1985, No. 10233/1985

Assent Date: 10.12.85
Commencement Date: Ss 1–3, 10 on 22.1.86: Government Gazette 22.1.86 p. 144; rest of Act on 24.3.86: Government Gazette 12.2.86 p. 382
Current State: All of Act in operation

Registration of Births Deaths and Marriages (Amendment) Act 1985, No. 10244/1985

Assent Date: 10.12.85
Commencement Date: 31.10.86: Government Gazette 29.10.86 p. 4114
Current State: All of Act in operation

Magistrates (Summary Proceedings) (Amendment) Act 1985, No. 10249/1985

Assent Date: 10.12.85
Commencement Date: S. 13 on 5.3.86: Government Gazette 5.3.86 p. 581
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Penalties and Sentences Act 1985, No. 10260/1985

Assent Date: 10.12.85
Commencement Date: S. 114(Sch. 4 items 4, 5) on 1.6.86: Government Gazette 30.4.86 p. 1116; Sch. 4 item 6 was never proclaimed, repealed by No. 49/1991 s. 118(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30 on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1986, No. 37/1986 (as amended by No. 35/1990)

Assent Date: 20.5.86
Commencement Date: 1.7.86: Government Gazette 25.6.86 p. 2239
Current State: All of Act in operation

Crimes (Confiscation of Profits) Act 1986, No. 101/1986

Assent Date: 16.12.86
Commencement Date: 1.8.87: Government Gazette 22.7.87 p. 1924
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Proceedings) Act 1986, No. 102/1986

Assent Date: 16.12.86
Commencement Date: 1.4.87: Government Gazette 11.3.87 p. 539
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Transport Accident Act 1986, No. 111/1986

Assent Date: 16.12.86
Commencement Date: S. 180(2)(Sch. 2 item 5) on 1.2.87: Government Gazette 28.1.87 p. 180
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Corrections Act 1986, No. 117/1986

Assent Date: 23.12.86
Commencement Date: S. 6(Sch. 1 item 2(4)(5)) on 6.5.87: Government Gazette 6.5.87 p. 1004; Sch. 1 item 1(8) on 1.3.88: Government Gazette 24.2.88 p. 363
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Prostitution Regulation Act 1986, No. 124/1986

Assent Date: 23.12.86
Commencement Date: Ss 74(a)(b)(d)(e), 80 on 16.8.87: Government Gazette 12.8.87 p. 2175; s. 74(c) on 1.4.90: Government Gazette 28.3.90 p. 895
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Road Safety Act 1986, No. 127/1986

Assent Date: 23.12.86
Commencement Date: S. 102 on 1.3.87: Government Gazette 25.2.87 p. 445; Sch. 4 items 5.1–5.5 on 1.7.87: Special Gazette (No. 27) 25.6.87 p. 1
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: Ss 1–6, 9–13 on 22.2.89: Government Gazette 22.2.89 p. 386; Sch. 2 items 1–13 on 15.3.89: Government Gazette 15.3.89 p. 587; ss 7, 8 on 25.6.92: Government Gazette 24.6.92 p. 1532
Current State: All of Act in operation

Crimes (Family Violence) Act 1987, No. 19/1987

Assent Date: 12.5.87
Commencement Date: 1.12.87: Government Gazette 23.9.87 p. 2521
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Amendment) Act 1987, No. 70/1987

Assent Date: 24.11.87
Commencement Date: Ss 1–3, 5–7 on 6.12.87: Government Gazette 2.12.87 p. 3309; s. 8 on 1.9.88: Government Gazette 31.8.88 p. 2598; s. 4 on 27.6.89: Special Gazette (No. 35) 27.6.89 p. 1
Current State: All of Act in operation

Road Safety (Amendment) Act 1987, No. 78/1987

Assent Date: 24.11.87
Commencement Date: S. 10 on 1.3.87: s. 2(2); rest of Act on 9.12.87: Government Gazette 9.12.87 p. 3328
Current State: All of Act in operation

Crimes (Computers) Act 1988, No. 36/1988

Assent Date: 24.5.88
Commencement Date: 1.6.88: Government Gazette 1.6.88 p. 1487
Current State: All of Act in operation

Crimes (Custody and Investigation) Act 1988, No. 37/1988 (as amended by No. 38/1988)

Assent Date: 24.5.88
Commencement Date: 15.3.89: Government Gazette 15.3.89 p. 589
Current State: All of Act in operation

Crimes (Fingerprinting) Act 1988, No. 38/1988 (as amended by No. 25/1989)

Assent Date: 24.5.88
Commencement Date: Ss 4, 5 on 1.1.90: Government Gazette 20.12.89 p. 3290
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Firearms (Amendment) Act 1988, No. 40/1988

Assent Date: 24.5.88
Commencement Date: S. 22 on 25.5.88: Government Gazette 25.5.88 p. 1458
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Local Government (Consequential Provisions) Act 1989, No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 item 20.1) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes Legislation (Miscellaneous Amendments) Act 1989, No. 25/1989

Assent Date: 6.6.89
Commencement Date: Ss 3–10, 15–20 on 25.6.89: Special Gazette (No. 34) 20.6.89 p. 1; ss 11–13 on 1.1.90: Government Gazette 20.12.89 p. 3290; s. 14 on 1.9.90: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Prescribed Weapons Act 1989, No. 39/1989

Assent Date: 6.6.89
Commencement Date: 1.9.89: Government Gazette 30.8.89 p. 2210
Current State: All of Act in operation

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 41(Sch. 2 item 7) on 1.7.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Court Act 1989, No. 51/1989

Assent Date: 14.6.89
Commencement Date: S. 143 on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Young Persons Act 1989, No. 56/1989

Assent Date: 14.6.89
Commencement Date: S. 286(Sch. 2 items 7.1, 7.2, 7.5–7.9, 7.11, 7.12, 7.14, 7.15) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; Sch. 2 items 7.3, 7.4, 7.10, 7.13, 7.16 on 23.9.91: Government Gazette 28.8.91 p. 2368
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989
(as amended by No. 34/1990)

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Crimes (Blood Samples) Act 1989, No. 84/1989

Assent Date: 5.12.89
Commencement Date: Ss 1–6, 9, 10 on 1.6.90: Government Gazette 30.5.90 p. 1662; s. 7 on 1.9.90: Government Gazette 25.7.90 p. 2217; s. 8 on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Control of Weapons Act 1990, No. 24/1990

Assent Date: 5.6.90
Commencement Date: 31.8.90: Government Gazette 29.8.90 p. 2616
Current State: All of Act in operation

Courts (Amendment) Act 1990, No. 64/1990

Assent Date: 20.11.90
Commencement Date: Ss 12, 20(Sch. item 3(a)(b)) on 1.1.91: Government Gazette 19.12.90 p. 3750
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Children and Young Persons (Amendment) Act 1990, No. 93/1990

Assent Date: 18.12.90
Commencement Date: All of Act (*except* s. 8(2)) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; s. 8(2) on 30.9.92: Government Gazette 26.8.92 p. 2470
Current State: All of Act in operation

Crimes (Sexual Offences) Act 1991, No. 8/1991

Assent Date: 16.4.91
Commencement Date: S. 22(1) on 16.4.91: s. 2(2); ss 3–6 on 5.8.91: Government Gazette 24.7.91 p. 2026
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Legislation (Miscellaneous Amendments) Act 1991, No. 23/1991

Assent Date: 31.5.91
Commencement Date: 31.5.91: s. 2
Current State: All of Act in operation

Sentencing Act 1991, No. 49/1991 (as amended by No. 81/1991)

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Crimes (Year and A Day Rule) Act 1991, No. 65/1991

Assent Date: 19.11.91
Commencement Date: 19.11.91: s. 2
Current State: All of Act in operation

Crimes (Rape) Act 1991, No. 81/1991

Assent Date: 3.12.91
Commencement Date: Ss 7, 8 on 16.4.91: s. 2(2); ss 1–4, 6, 9, 10 on 1.1.92: Government Gazette 18.12.91 p. 3486; s. 5 on 1.2.92: Government Gazette 22.1.92 p. 114
Current State: All of Act in operation

Crimes (Culpable Driving) Act 1992, No. 13/1992

Assent Date: 2.6.92
Commencement Date: 13.6.92: Government Gazette 10.6.92 p. 1418
Current State: All of Act in operation

Crimes Act 1958
Act No. 6231/1958

Endnotes

Evidence (Unsworn Evidence) Act 1993, No. 12/1993

Assent Date: 11.5.93
Commencement Date: 11.5.93: s. 2
Current State: All of Act in operation

Crimes (HIV) Act 1993, No. 19/1993

Assent Date: 25.5.93
Commencement Date: 25.5.93: s. 2
Current State: All of Act in operation

Sentencing (Amendment) Act 1993, No. 41/1993

Assent Date: 1.6.93
Commencement Date: Ss 1, 2 on 1.6.93: s. 2(1); rest of Act (*except* ss 13, 15) on 15.8.93; ss 13, 15 on 1.11.93: Government Gazette 12.8.93 p. 2244
Current State: All of Act in operation

Crimes (Criminal Trials) Act 1993, No. 60/1993

Assent Date: 8.6.93
Commencement Date: Ss 1–3 on 8.6.93: s. 2(1); s. 27 on 21.6.93: Special Gazette (No. 40) 17.6.93 p. 1; rest of Act (ss 4–26, 28) on 1.7.93: Government Gazette 1.7.93 p. 1735
Current State: All of Act in operation

Transport (Amendment) Act 1993, No. 120/1993

Assent Date: 7.12.93
Commencement Date: S. 79 on 7.12.93: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1993, No. 129/1993 (as amended by No. 33/1994)

Assent Date: 14.12.93
Commencement Date: Pt 1 (ss 1–3) on 14.12.93: s. 2(1); s. 10 on 21.12.93: Special Gazette (No. 95) 21.12.93 p. 1; ss 4–9, 11 on 1.6.94: s. 2(3)
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Public Prosecutions Act 1994, No. 43/1994

Assent Date: 7.6.94
Commencement Date: S. 56(Sch. items 1.1–1.8) on 1.7.94: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Amendment) Act 1994, No. 95/1994

Assent Date: 13.12.94
Commencement Date: Pt 1 (ss 1, 2) on 13.12.94: s. 2(1); ss 3–10 on 23.1.95: Government Gazette 19.1.95 p. 121; rest of Act on 13.6.95: s. 2(3)
Current State: All of Act in operation

Prostitution Control Act 1994, No. 102/1994

Assent Date: 13.12.94
Commencement Date: Ss 1, 2 on 13.12.94: s. 2(1); rest of Act on 13.6.95: s. 2(3)
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Legal Aid Commission (Amendment) Act 1995, No. 48/1995

Assent Date: 14.6.95
Commencement Date: Pt 1 (ss 1–3) on 14.6.95: s. 2(1); rest of Act on 14.12.95: s. 2(3)
Current State: All of Act in operation

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, No. 90/1995

Assent Date: 5.12.95
Commencement Date: Pt 1 (ss 1–5) on 5.12.95: s. 2(1); rest of Act on 1.1.96: Government Gazette 21.12.95 p. 3570
Current State: All of Act in operation

Mental Health (Amendment) Act 1995, No. 98/1995

Assent Date: 5.12.95
Commencement Date: S. 65(Sch. 1 item 3) on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: Ss 5–8 on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 16.1–16.20) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Corrections (Amendment) Act 1996, No. 45/1996

Assent Date: 26.11.96
Commencement Date: S. 18(Sch. 2 items 6.1–6.6) on 6.2.97: Government Gazette 6.2.97 p. 257
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Female Genital Mutilation) Act 1996, No. 46/1996

Assent Date: 26.11.96
Commencement Date: 26.11.96: s. 2
Current State: All of Act in operation

Firearms Act 1996, No. 66/1996 (as amended by Nos 26/1997, 74/2000)

Assent Date: 17.12.96
Commencement Date: Ss 201(1)(2) on 29.4.97: Government Gazette 24.4.97 p. 921; s. 202 on 31.1.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Police and Corrections (Amendment) Act 1997, No. 26/1997

Assent Date: 20.5.97
Commencement Date: Ss 51–53 on 22.5.97: Government Gazette 22.5.97 p. 1131
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Road Safety (Disclosure of Information) Act 1997, No. 30/1997

Assent Date: 27.5.97
Commencement Date: S. 6 on 1.9.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Law and Justice Legislation Amendment Act 1997, No. 44/1997

Assent Date: 11.6.97
Commencement Date: S. 3 on 19.6.97: Government Gazette 19.6.97 p. 1384
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997

Assent Date: 11.6.97
Commencement Date: Ss. 54–58, 60–63, Sch. 1 on 1.9.97: s. 2(2), s. 59 on 20.11.97: Government Gazette 20.11.97 p. 3169
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997

Assent Date: 18.11.97
Commencement Date: S. 82 on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Sentencing (Amendment) Act 1997, No. 69/1997

Assent Date: 18.11.97
Commencement Date: Pt 3 (ss 22–25) on 18.11.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1997, No. 81/1997

Assent Date: 2.12.97
Commencement Date: Ss 4–8, 14, 15 on 1.1.98: s. 2(2); ss 16–31 on 1.7.98: s. 2(4)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 42 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1561
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Confiscation Act 1997, No. 108/1997

Assent Date: 23.12.97
Commencement Date: S. 151 on 1.7.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 17) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 1998, No. 65/1998

Assent Date: 4.11.98
Commencement Date: Ss 3, 4, 6 on 4.11.98: s. 2(1); s. 5 on 1.1.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes, Confiscation and Evidence Acts (Amendment) Act 1998, No. 80/1998

Assent Date: 13.11.98
Commencement Date: Pt 2 (ss 3, 4) on 13.11.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Magistrates' Court (Amendment) Act 1999, No. 10/1999

Assent Date: 11.5.99
Commencement Date: S. 31(5) on 11.5.99: s. 2(1); ss 8(5), 18(4), 20 on 1.7.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Dental Practice Act 1999, No. 26/1999

Assent Date: 1.6.99
Commencement Date: S. 107(Sch. item 1) on 1.7.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Criminal Trials) Act 1999, No. 35/1999

Assent Date: 8.6.99
Commencement Date: S. 34 on 1.9.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Juries Act 2000, No. 53/2000

Assent Date: 12.9.00
Commencement Date: S. 94 on 1.8.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 2000, No. 67/2000

Assent Date: 21.11.00
Commencement Date: 22.11.00: s. 2
Current State: All of Act in operation

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 30) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Questioning of Suspects) Act 2000, No. 86/2000

Assent Date: 5.12.00
Commencement Date: 6.12.00: s. 2
Current State: All of Act in operation

Magistrates' Court (Committal Proceedings) Act 2000, No. 92/2000

Assent Date: 5.12.00
Commencement Date: Ss 11, 12 on 1.7.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Corrections (Custody) Act 2001, No. 45/2001

Assent Date: 27.6.01
Commencement Date: S. 40 on 1.3.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Crimes (Validation of Orders) Act 2001, No. 58/2001

Assent Date: 16.10.01
Commencement Date: 17.10.01: s. 2
Current State: All of Act in operation

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001

Assent Date: 23.10.01
Commencement Date: S. 16(1) on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2001, No. 69/2001

Assent Date: 7.11.01
Commencement Date: S. 20 on 8.11.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Sentencing (Emergency Service Costs) Act 2001, No. 80/2001

Assent Date: 4.12.01
Commencement Date: S. 7 on 5.12.01: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 13) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (DNA Database) Act 2002, No. 16/2002

Assent Date: 21.5.02
Commencement Date: S. 18(2) on 1.1.02: s. 2(2); ss 1–18(1), 19 on 22.5.02: s. 2(1)
Current State: All of Act in operation

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002

Assent Date: 18.6.02
Commencement Date: Ss 3–5, 28(Sch. item 3) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Property Damage and Computer Offences) Act 2003, No. 10/2003

Assent Date: 6.5.03
Commencement Date: Ss 4–9 on 7.5.03: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Australian Crime Commission (State Provisions) Act 2003, No. 52/2003

Assent Date: 16.6.03
Commencement Date: S. 52(Sch. 1 item 2) on 17.6.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Confiscation (Amendment) Act 2003, No. 63/2003

Assent Date: 30.9.03
Commencement Date: S. 43, 44 on 1.12.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Cemeteries and Crematoria Act 2003, No. 80/2003

Assent Date: 11.11.03
Commencement Date: S. 185 on 1.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Money Laundering) Act 2003, No. 104/2003

Assent Date: 9.12.03
Commencement Date: Ss 3, 4 on 1.1.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Stalking) Act 2003, No. 105/2003

Assent Date: 9.12.03
Commencement Date: 10.12.03: s. 2
Current State: All of Act in operation

Justice Legislation (Sexual Offences and Bail) Act 2004, No. 20/2004

Assent Date: 18.5.04
Commencement Date: Ss 3–7 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Amendment) Act 2004, No. 41/2004

Assent Date: 16.6.04
Commencement Date: 17.6.04: s. 2
Current State: All of Act in operation

Sex Offenders Registration Act 2004, No. 56/2004

Assent Date: 21.9.04
Commencement Date: S. 79 on 1.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Dangerous Driving) Act 2004, No. 59/2004

Assent Date: 12.10.04
Commencement Date: 13.10.04: s. 2
Current State: All of Act in operation

Sentencing (Superannuation Orders) Act 2004, No. 65/2004

Assent Date: 12.10.04
Commencement Date: S. 4(1) on 13.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Children and Young Persons (Age Jurisdiction) Act 2004, No. 72/2004

Assent Date: 9.11.04
Commencement Date: Ss 24–33 on 1.7.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 48) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005, No. 6/2005

Assent Date: 27.4.05
Commencement Date: S. 12 on 28.4.05: s. 2; s. 13(1)–(3) on 26.5.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 4(Sch. 2 item 1) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 27) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Vagrancy (Repeal) and Summary Offences (Amendment) Act 2005, No. 56/2005

Assent Date: 13.9.05
Commencement Date: Ss 6, 7 on 14.9.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Contamination of Goods) Act 2005, No. 66/2005

Assent Date: 11.10.05
Commencement Date: 12.10.05: s. 2
Current State: All of Act in operation

Crimes (Homicide) Act 2005, No. 77/2005

Assent Date: 22.11.05
Commencement Date: Ss 3–7, 8(3), 9 on 23.11.05: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes Act 1958
Act No. 6231/1958

Endnotes

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 9 on 1.7.06: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Crimes (Document Destruction) Act 2006, No. 6/2006

Assent Date: 4.4.06
Commencement Date: S. 3 on 1.9.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: Ss 13–15 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Justice Legislation (Further Miscellaneous Amendments) Act 2006, No. 27/2006

Assent Date: 6.6.06
Commencement Date: Ss 3–18 on 30.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Courts Legislation (Jurisdiction) Act 2006, No. 50/2006

Assent Date: 15.8.06
Commencement Date: Ss 7, 9, 11 on 16.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes Act 1958**

Criminal Appeal Rules 1965, S.R. No. 144/1965 (as amended by S.R. No. 75/1987)

Date of Making: 6.7.65
Date of Commencement: 1.2.66: reg. 1(1)

3. Explanatory Details

¹ Pt 1 Div. 1 Subdiv. (2): See Pt 1 Div. 1 Subdiv. (11) as to procuring abortion.

² Pt 1 Div. 1 Subdiv. (3):

Pt 1 Div. 1 Subdiv. (3) (Heading) repealed by No. 25/1989 s. 20(b).

Ss 11–13 amended by No. 9576 s. 11(1), repealed by No. 10233 s. 8(1).

S. 14 amended by No. 9576 s. 11(1), repealed by No. 10233 s. 5.

³ S. 36: Section 9(1) of the **Crimes (Rape) Act 1991**, No. 81/1991 reads as follows:

9. Transitional provisions

- (1) Sections 36 and 37 of the **Crimes Act 1958** (as inserted by section 3 of this Act) and the amendments made by sections 4 and 5 of this Act apply to proceedings that occur after the commencement of the relevant provision of this Act regardless of when the alleged offence was committed.

Section 61 of the **Crimes Act 1958** sets out other jury warnings.

⁴ S. 37: See note 3.

⁵ Pt 1 Div. 1 Subdiv. (8A): Section 9(2)–(4) of the **Crimes (Rape) Act 1991**, No. 81/1991 reads as follows:

9. Transitional provisions

- (2) Subdivision (8A) of Division 1 of Part I of the **Crimes Act 1958** (as inserted by section 3 of this Act) applies only to offences alleged to have been committed after the commencement of that section.
- (3) The abolition of the common law offence of rape by section 6 does not apply to an offence that is alleged to have been committed before the commencement of that section.

- (4) For the purposes of this section, if an offence is alleged to have been committed between two dates and the relevant provision of this Act commences on a date between those two dates, the offence is alleged to have been committed before the commencement date.

⁶ S. 63(2): As to proof of age see section 411.

⁷ Pt 1 Div. 1 Subdiv. (11): See section 10 as to the offence of child destruction.

⁸ Pt 1 Div. 1 Subdiv. (12): See section 6 as to the offence of infanticide.

⁹ Pt 1 Div. 2: Section 3(1) of the **Crimes (Theft) Act 1973**, No. 8425/1973 reads as follows:

3. Abolition of common law offences

- (1) The offences at common law of larceny, robbery, burglary, receiving stolen property, obtaining property by threats, extortion by colour of office or franchise, false accounting by public officers, concealment of treasure trove, and except as regards offences relating to the public revenue, cheating, are hereby abolished for all purposes not related to offences committed before the commencement of this Act.

¹⁰ Ss 96–174:

S. 96 amended by No. 7876 s. 2(3), substituted by No. 8425 s. 2(1)(b), repealed by No. 10260 s. 114(Sch. 4 item 4).

Ss 97–173 repealed by No. 8425 s. 2(1)(b).

S. 174 repealed by No. 7705 s. 10.

¹¹ S. 175: As to trade and commerce with other countries and among the States and to dealings with the Commonwealth, see Commonwealth Secret Commissions Act 1905.

¹² S. 176: See note 11.

¹³ S. 177: See note 11.

¹⁴ S. 178: See note 11.

Crimes Act 1958
Act No. 6231/1958

¹⁵ S. 179: See note 11.

¹⁶ S. 180: See note 11.

¹⁷ S. 181: See note 11.

¹⁸ S. 182: See note 11.

¹⁹ S. 184: See note 11.

²⁰ S. 185: See note 11.

²¹ S. 186: See note 11.

²² Pt 1 Div. 3: Section 3 of the **Crimes (Criminal Damage) Act 1978**, No. 9228/1978 reads as follows:

3. Abolition of arson at common law

The offence at common law of arson is hereby
abolished for all purposes not related to offences
committed before the commencement of this Act.

²³ S. 206: See section 435.

²⁴ S. 232: Compare sections 25–28.

²⁵ S. 233: See note 24.

²⁶ Pt 1 Div. 8: See also sections 15–31, Pt 1 Div. 3, section 466 and the **Dangerous Goods Act 1985**, No. 10189/1985.

²⁷ S. 317(9)(d): See section 466 of this Act and the **Dangerous Goods Act 1985**, No. 10189/1985.

²⁸ Ss 327–332:

S. 327 amended by No. 6731 s. 4, repealed by No. 9576 s. 4(1).

S. 328 repealed by No. 9576 s. 4(1).

Ss 329–332 repealed by No. 8425 s. 2(1)(h).

²⁹ Ss 355, 356:

S. 355 repealed by No. 9407 s. 2(d).

S. 356 repealed by No. 9576 s. 11(1).

³⁰ S. 376: See section 395 as to procedure at the trial.

³¹ S. 380: See Schedule 6 rule 6.

Crimes Act 1958
Act No. 6231/1958

³² S. 393 (*repealed*): Schedule 3 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, No. 65/1997 reads as follows:

SCHEDULE 3

SAVINGS AND TRANSITIONAL PROVISIONS

1. Definitions

In this Schedule—

"commencement day" means the day on which this Schedule comes into operation;

"existing detainee" means a person who, immediately before the commencement day, was subject to an order under section 393 or 420 of the **Crimes Act 1958** (whether by the court or by the Governor).

2. Existing detainees

- (1) Each existing detainee is, on and after the commencement day, deemed to be subject to a custodial supervision order under this Act.
- (2) The nominal term of the custodial supervision order is to be determined in accordance with section 28 as if the maximum penalty for the offence which led to the person becoming an existing detainee were the maximum penalty attaching to that offence on the commencement day.
- (3) If the offence referred to in sub-section (2) no longer exists—
 - (a) the Supreme Court, on application by the existing detainee or the Director of Public Prosecutions, must determine whether there is an existing offence, as at the commencement day, with which the existing detainee could have been charged had it existed at the time of the original charge; and
 - (b) if there is such an offence, the nominal term is to be determined by reference to the maximum penalty for that offence as at the commencement day.
- (4) The nominal term runs from the day on which the existing detainee was made subject to the order under section 393 or 420 of the **Crimes Act 1958**.

Crimes Act 1958
Act No. 6231/1958

Sch. 3 cl. 2(5) amended by No. 43/1998 s. 40(b)(i).

- (5) If the nominal term has expired, a major review must be held within 6 months after the commencement day.

3. Leave

- (1) Subject to this clause, an existing detainee who, immediately before the commencement day, was on leave from the place of detention that corresponds to leave that may be granted under Part 7 is deemed to be on the corresponding leave as if granted under that Part, and any conditions to which the leave was subject immediately before the commencement day continue to apply.

Sch. 3 cl. 3(2) amended by No. 43/1998 s. 40(b)(ii).

- (2) Sub-clause (1) applies for the period of 12 months commencing on, and including, the commencement day.
- (3) For the purposes of this clause, leave granted before the commencement day corresponds to leave that may be granted under Part 7 if it is substantially similar to that leave.

Sch. 3 cl. 3(4) inserted by No. 7/2002 s. 33(1).

- (4) Sections 53 and 54, as in force immediately before the commencement of sections 24 and 25 of the **Forensic Health Legislation (Amendment) Act 2002**, continue to apply in relation to any limited off-ground leave granted before that commencement, until the expiry of that leave.

4. Revocation of supervision order

- (1) Despite anything to the contrary in Part 5, an existing detainee who has been, or is deemed to have been, on extended leave for a period of at least 12 months may apply to the court that made the original order under which he or she was detained for revocation of his or her supervision order.
- (2) On an application under sub-clause (1) the court may revoke the supervision order if satisfied on the evidence available that the safety of the existing detainee or members of the public will not be seriously endangered as a result of the revocation of the order.

Crimes Act 1958
Act No. 6231/1958

- (3) In considering an application for revocation of a supervision order in respect of an existing detainee the court may take into account any reports on the existing detainee made by, or submitted to, the Adult Parole Board before the commencement day.

5. Persons released under section 498 of Crimes Act 1958

Despite the repeal of section 498 of the **Crimes Act 1958**, any conditions imposed on a person under that section that were in force immediately before the commencement day continue to apply on and after the commencement day.

6. Unfitness to stand trial

- (1) Part 2 applies with respect to an offence that is alleged to have been committed, whether before, on or after the commencement day.
- (2) If a person has been found unfit to stand trial but no order has been made in respect of the person before the commencement day, the court must proceed to hold a special hearing under Part 3 in respect of the person.

7. Mental impairment and insanity

- (1) Despite section 25, the defence of insanity continues to apply with respect to any offence alleged to have been committed before the commencement day.
- (2) If a jury returns a verdict of not guilty on account of insanity in relation to a person charged with an offence alleged to have been committed before the commencement day, that verdict is to be taken for all purposes to be a finding of not guilty because of mental impairment under Part 4.

Sch. 3 cl. 8 inserted by No. 7/2002 s. 33(2).

8. Periodic major reviews

Section 35, as amended by section 14 of the **Forensic Health Legislation (Amendment) Act 2002**, applies to a supervision order made before, on or after the commencement of that section 14.

Crimes Act 1958
Act No. 6231/1958

Sch. 3 cl. 9 inserted by No. 7/2002 s. 33(2).

9. Notification requirements

Sections 38A, 38B, 38C and 38E, as inserted by section 17 of the **Forensic Health Legislation (Amendment) Act 2002**, apply to—

- (a) applications that are made after the commencement of that section 17; and
- (b) reviews that are listed by the court after the commencement of that section 17.

Sch. 3 cl. 10 inserted by No. 7/2002 s. 33(2).

10. Appeals

- (1) An order for unconditional release can be appealed under section 19A or 24A (as the case may be) whether the order was made before or after the commencement of that section, unless—
 - (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.
- (2) A supervision order can be appealed under section 28A whether the order was made before or after the commencement of that section, unless—
 - (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.
- (3) An order confirming, varying or revoking a supervision order can be appealed under section 34 (as substituted by section 13 of the **Forensic Health Legislation (Amendment) Act 2002**) or section 34A (as the case may be) whether the order was made before or after the commencement of that section, unless—
 - (a) the order had been appealed before that commencement; or
 - (b) any time limit for appealing the order had expired before that commencement.

Crimes Act 1958
Act No. 6231/1958

- (4) A refusal to grant extended leave or a grant of extended leave can be appealed under section 57B whether the refusal or grant was made before or after the commencement of that section.
- (5) A revocation of extended leave or a refusal to revoke extended leave can be appealed under section 58A whether the revocation or refusal was made before or after the commencement of that section.
- (6) Any appeal referred to in sub-clause (1)(a), (2)(a) or (3)(a) that has not been determined before the commencement referred to in that sub-clause is to be determined in accordance with this Act as in force immediately before that commencement.

³³ S. 398: Section 7 of the **Evidence (Unsworn Evidence) Act 1993**, No. 12/1993 reads as follows:

7. Transitional

- (1) The amendments made by this Act to the **Evidence Act 1958**, the **Crimes Act 1958** and the **Magistrates' Court Act 1989** apply to the trial or hearing of a charge for an offence that commences on or after the commencement of this Act, irrespective of when the offence was committed or alleged to have been committed.
- (2) For the purposes of sub-section (1)—
 - (a) a trial commences on arraignment of the accused;
 - (b) a hearing of a charge for an offence commences on the taking of a formal plea from the accused.

³⁴ S. 398A (*repealed*): See note 33.

³⁵ S. 399(3): See note 33.

³⁶ S. 399(7A) (*repealed*): See note 33.

³⁷ S. 399(8): See note 33.

³⁸ S. 401: See section 376.

Crimes Act 1958
Act No. 6231/1958

³⁹ Ss 406–408A:

S. 406 repealed by No. 9576 s. 11(1).

S. 407 repealed by No. 25/1989 s. 9.

S. 408 amended by Nos 6886 s. 3, 7184 s. 5, 7327 s. 3(a)(b), 7696 s. 2, repealed by No. 8143 s. 11.

S. 408A inserted by No. 6806 s. 2, amended by Nos 7327 s. 3(a)–(d), 7546 s. 10(1)(2), 7645 s. 6, 7696 s. 3, 7782 ss 2, 3, repealed by No. 8143 s. 11.

⁴⁰ S. 412: See **Magistrates' Court Act 1989**, No. 51/1989.

⁴¹ Pt 3 Div. 1 Subdiv. (15): As to form of record after amendment, see section 436.

⁴² S. 417(1): See note 33.

⁴³ S. 417(3): See note 33.

⁴⁴ S. 418(b) (*repealed*): See note 33.

⁴⁵ S. 418(c): See note 33.

⁴⁶ S. 418(c)(i): See note 33.

⁴⁷ S. 418(c)(ii): See note 33.

⁴⁸ S. 418(c)(ii)(A): See note 33.

⁴⁹ S. 418(c)(ii)(B): See note 33.

⁵⁰ S. 418(e) (*repealed*): See note 33.

⁵¹ S. 420 (*repealed*): See note 32.

⁵² S. 436: See section 416.

⁵³ S. 439(1)–439(5):

S. 439(1) amended by No. 7705 s. 10, repealed by No. 10152 s. 9(a).

S. 439(2) amended by Nos 7705 s. 10, 8338 s. 7(a), 9427 s. 6(1)(Sch. 5 item 39), repealed by No. 10152 s. 9(a).

S. 439(3) amended by No. 8338 s. 7(a)(d), repealed by No. 10152 s. 9(a).

S. 439(4) amended by Nos 7703 s. 5, 7705 s. 10, 7876 s. 2(3), 8731 s. 173, repealed by No. 10152 s. 9(a).

S. 439(5) amended by No. 8731 s. 173, repealed by No. 10152 s. 9(a).

Crimes Act 1958
Act No. 6231/1958

⁵⁴ S. 446(1): Section 29 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 reads as follows:

29. Proceedings before Full Court

- (1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.
- (2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgement in that proceeding, may be done by the Court of Appeal.

⁵⁵ S. 446(2): See note 54.

⁵⁶ S. 446(3): See note 54.

⁵⁷ S. 447(1): See note 54.

⁵⁸ S. 447(1): See section 579(4).

⁵⁹ S. 447(3): See note 54.

⁶⁰ S. 448: See note 54.

⁶¹ S. 449: See note 54.

⁶² S. 450: See note 54.

⁶³ S. 450A: See note 54.

⁶⁴ Pt 3 Div. 1 Subdiv. (30A): Section 6 of the **Crimes (Custody and Investigation) Act 1988**, No. 37/1988 reads as follows:

6. Application of Act

- (1) The Governor in Council may by proclamation published in the Government Gazette proclaim regions for the purposes of this Act.

Crimes Act 1958
Act No. 6231/1958

- (2) The Principal Act as amended by sections 4 and 5 of this Act applies to—
- (a) persons taken into custody; or
 - (b) persons questioned; or
 - (c) persons in respect of whom an application is made under section 464B(1) to a court—
- in a proclaimed region after the commencement of this Act.
- (3) The Principal Act applies to—
- (a) persons taken into custody; or
 - (b) persons questioned—
- other than in a proclaimed region after the commencement of this Act as if sections 4 and 5 of this Act had not been enacted.

⁶⁵ S. 464(2) def. of "authorised person": Section 9 of the **Crimes (Fingerprinting) Act 1988**, No. 38/1988 (as amended by section 21 of the **Crimes Legislation (Miscellaneous Amendments) Act 1989**, No. 25/1989) reads as follows:

9. Fingerprints to which this Act applies

The Principal Act as amended by a section of this Act or section 11, 12, 13 or 14 of the **Crimes Legislation (Miscellaneous Amendments) Act 1989** applies only with respect to fingerprints taken after the commencement of this section.

⁶⁶ S. 464(2) def. of "fingerprints": See note 65.

⁶⁷ S. 464(2) def. of "held in a prison, police gaol, youth training centre or youth residential centre": See note 65.

⁶⁸ S. 464(2) def of "suspect": See note 65.

⁶⁹ S. 464(3): See note 65.

⁷⁰ S. 464S: The amendments proposed by section 118(Sch. 1 items 15.2–15.6, 15.8) to the **Medical Practice Act 1994**, No. 23/1994 are not included in this publication because section 464S had been substituted before the proposed amendments came into operation.

Crimes Act 1958
Act No. 6231/1958

⁷¹ S. 464T(1)(c): See note 70.

⁷² S. 464U(5): See note 70.

⁷³ S. 464V(6)(d): See note 70.

⁷⁴ S. 464X(1): See note 70.

⁷⁵ S. 464ZE: See note 70.

⁷⁶ S. 466: See **Dangerous Goods Act 1985**, No. 10189/1985.

⁷⁷ Ss 472–476A:

S. 472 repealed by No. 8679 s. 3(1)(b), new s. 472 inserted by No. 9576 s. 8(b), amended by No. 10260 s. 114(Sch. 4 item 4), repealed by No. 70/1987 s. 6.

S. 473 substituted by No. 6884 s. 2(3), amended by No. 7651 s. 2(1)(Sch. item 3), repealed by No. 8679 s. 3(1)(b).

Ss 474, 475 repealed by No. 8679 s. 3(1)(b).

S. 476 amended by Nos 8338 s. 7(a), 8426 s. 9(1) (as amended by No. 8701 s. 7(f)), 8870 s. 7(a), 9554 s. 47(a)(b), 9945 s. 3(3)(Sch. 2 item 9), substituted by No. 10084 s. 8(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 476A inserted by No. 6651 s. 57(a), repealed by No. 10084 s. 8(2).

⁷⁸ Ss 477–479:

S. 477 amended by Nos 6731 s. 5, 8338 s. 7(a)(b), repealed by No. 9554 s. 2(1)(Sch. 1 item 7).

S. 478 amended by Nos 8280 s. 16, 9576 ss 8(c), 11(1), 9945 s. 3(3)(Sch. 2 item 10), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 479 amended by No. 7705 s. 10, repealed by No. 10260 s. 114(Sch. 4 item 4).

⁷⁹ Ss 480–484:

Ss 480, 481 amended by No. 8181 s. 2(1)(Sch. item 31), repealed by No. 10260 s. 114(Sch. 4 item 4).

Ss 482, 483 amended by No. 10087 s. 3(1)(Sch. 1 item 27), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 484 amended by Nos 9554 s. 2(1)(Sch. 1 item 8), 9945 s. 3(3)(Sch. 2 item 11), 10152 s. 9(b)(i)(ii), repealed by No. 10260 s. 114(Sch. 4 item 4).

Crimes Act 1958
Act No. 6231/1958

⁸⁰ S. 485 amended by No. 8338 s. 7(b), repealed by No. 8679 s. 3(1)(b).

Ss 486, 487 amended by No. 8338 s. 7(a)(c), repealed by No. 8679 s. 3(1)(b).

S. 488 amended by No. 8338 s. 7(a)(c)(l), repealed by No. 8679 s. 3(1)(b).

Ss 489, 490 amended by No. 8338 s. 7(a), repealed by No. 8679 s. 3(1)(b).

S. 491 repealed by No. 8679 s. 3(1)(b).

S. 492 amended by No. 8338 s. 7(a), repealed by No. 8679 s. 3(1)(b).

⁸¹ Ss 495–497:

S. 495 repealed by No. 9945 s. 3(3)(Sch. 2 item 13).

S. 496 repealed by No. 8679 s. 3(1)(b).

S. 497 amended by No. 8280 s. 17, repealed by No. 8679 s. 3(1)(b).

⁸² S. 498 (*repealed*): See note 32.

⁸³ Ss 499–502:

S. 499 substituted by No. 6884 s. 3, amended by Nos 9498 s. 3, 16/1986 s. 30, repealed by No. 117/1986 s. 6(Sch. 1 item 2(4)).

S. 500 amended by Nos 8493 s. 33(c), 9549 s. 2(1)(Sch. item 51), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 501 repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 502 amended by Nos 7876 s. 2(3), 8493 s. 33(d), 8731 s. 173, 10087 s. 3(1)(Sch. 1 item 29), repealed by No. 10260 s. 114(Sch. 4 item 4).

⁸⁴ Ss 508, 509:

S. 508 amended by Nos 7263 s. 2(c)(i)–(iv), 7705 s. 10, 7876 s. 2(3), 9059 s. 2(1)(Sch. item 11), 9966 s. 21(3)(a)–(f), 10087 s. 3(Sch. 1 item 30), 10152 s. 9(c), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 509 amended by No. 10152 s. 9(d), repealed by No. 10260 s. 114(Sch. 4 item 5).

⁸⁵ Ss 510–515A:

S. 510 amended by Nos 7577 s. 6, 7705 s. 10, 7876 s. 2(3), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 511 amended by No. 9966 s. 21(4), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 512 amended by Nos 7263 s. 2(d), 7876 s. 2(3), repealed by No. 10260 s. 114(Sch. 4 item 5).

Crimes Act 1958
Act No. 6231/1958

S. 513 amended by Nos 7263 s. 2(e), 9966 s. 21(4)(5), 10152 s. 9(e), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 514 repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 515 amended by No. 9966 s. 21(4), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 515A inserted by No. 10152 s. 9(f), repealed by No. 10260 s. 114(Sch. 4 item 5).

⁸⁶ Ss 516–519A:

S. 516 amended by Nos 7184 s. 8, 7705 s. 10, 7876 s. 2(3), 9554 s. 2(2)(Sch. 2 item 62), 9848 s. 18(1), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 517 amended by Nos 7184 s. 8, 7705 s. 10, 7876 s. 2(3), 8181 s. 2(1)(Sch. item 35), 9848 s. 18(1), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 518 amended by No. 7705 s. 10, repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 519 amended by Nos 8731 s. 173, 9019 s. 2(1)(Sch. item 46), 9059 s. 2(1)(Sch. item 12), 10087 s. 3(1)(Sch. 1 item 30), repealed by No. 10260 s. 114(Sch. 4 item 5).

S. 519A inserted by No. 7184 s. 9, repealed by No. 10260 s. 114(Sch. 4 item 5).

⁸⁷ Ss 543–544:

S. 543 amended by Nos 9576 s. 11(1), 9902 s. 2(1)(Sch. item 56), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 543A inserted by No. 9407 s. 2(h), amended by No. 9576 s. 11(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

S. 544 amended by No. 8679 s. 3(1)(d), substituted by No. 9576 s. 11(1), repealed by No. 10260 s. 114(Sch. 4 item 4).

⁸⁸ S. 547: As to trust property vested in any person who becomes a "convict", see section 72 of the **Trustee Act 1958**, No. 6401/1958.

⁸⁹ S. 566 def. of "Full Court" (*repealed*): See note 54.

⁹⁰ S. 567(b): See note 54.

⁹¹ S. 567A: See note 54.

⁹² S. 568: See note 54.

Crimes Act 1958
Act No. 6231/1958

⁹³ S. 569: See note 54.

⁹⁴ S. 570: See note 54.

⁹⁵ S. 570A: See note 54.

⁹⁶ S. 570B: See note 54.

⁹⁷ S. 570C: See note 54.

⁹⁸ S. 571: See note 54.

⁹⁹ S. 572: See note 54.

¹⁰⁰ S. 573: See note 54.

¹⁰¹ S. 574: See note 54.

¹⁰² S. 574(b): See note 54.

¹⁰³ S. 574(f) (*repealed*): See note 54.

¹⁰⁴ S. 576: See note 54.

¹⁰⁵ S. 577: See note 54.

¹⁰⁶ S. 578: See note 54.

¹⁰⁷ S. 579: See note 54.

¹⁰⁸ S. 579(3): See the **Community Services Act 1970**, No. 8089/1970.

¹⁰⁹ S. 579(5): See note 54.

¹¹⁰ S. 580: See note 54.

¹¹¹ S. 581: See note 54.

¹¹² S. 582: See note 54.

¹¹³ S. 582A: See note 54.

¹¹⁴ S. 583: See note 54.

¹¹⁵ S. 584(a): See note 54.

¹¹⁶ S. 584(b): See note 54.

¹¹⁷ Sch. 6 Forms 22–24:

Sch. 6 Form 22 repealed by No. 9228 s. 2(1)(k).

Sch. 6 Form 23 repealed by No. 25/1989 s. 18(2).

Sch. 6 Form 24 repealed by No. 25/1989 s. 18(2).

Crimes Act 1958
Act No. 6231/1958

¹¹⁸ Schs 8A–11:

Sch. 8A inserted by No. 7184 s. 13, amended by No. 8338 s. 7(a)(d),
repealed by No. 10152 s. 9(g).

Sch. 9 amended by No. 8338 s. 7(a), repealed by No. 9059 s. 2(1)(Sch.
item 13).

Sch. 10 amended by No. 8338 s. 7(o), repealed by No. 9059 s. 2(1)(Sch.
item 13).

Sch. 11 amended by No. 7705 s. 10, repealed by No. 8493 s. 33(f).