

CRIMES ACT 1958

No. 6231 of 1958

Version incorporating amendments as at 24 April 2013

Crimes Act 1958

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1. General Information
2. Table of Amendments
3. Explanatory Details

Crimes Act 1958

- SECT 1

Short title and commencement

<pre>

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.

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Crimes Act 1958

- SECT 2

Repeals and savings

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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(1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.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(a) all persons things and circumstances appointed or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;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.

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Crimes Act 1958
- SECT 2A
Definitions

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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;

* * * * *

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

* * * * *

protective services officer means a protective services officer appointed under section 118B(1) of the Police Regulation Act 1958;

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Crimes Act 1958

- SECT 2B

Offences under this Act deemed to be indictable offences

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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.

Division 1-Offences against the person

(1) Homicide

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Crimes Act 1958

- SECT 3

Punishment for murder

<pre>

3. Punishment for murder

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

(a) level 1 imprisonment (life); or

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

as the court determines.

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Crimes Act 1958

- SECT 3A

Unintentional killing in the course or furtherance of a crime of violence

<pre>

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

(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 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.

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Crimes Act 1958

- SECT 3B

Provocation no longer a partial defence to murder

<pre>

3B. Provocation no longer a partial defence to murder

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

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Crimes Act 1958

- SECT 4

Alternative verdict of defensive homicide on charge for murder

<pre>

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.

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Crimes Act 1958

- SECT 5
Punishment of manslaughter

<pre>
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.

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Crimes Act 1958
- SECT 5A
Child homicide

<pre>
5A. Child homicide

A person who, by his or her conduct, kills a child who is under the age of 6 years in circumstances that, but for this section, would constitute manslaughter is guilty of child homicide, and not of manslaughter, and liable to level 3 imprisonment (20 years maximum).

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Crimes Act 1958
- SECT 6
Infanticide

<pre>
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 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.

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Crimes Act 1958

- SECT 6A

Suicide no longer a crime

<pre>

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.

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Crimes Act 1958

- SECT 6B

Survivor of suicide pact who kills deceased party is guilty of manslaughter

<pre>

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, 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.

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

(2) Any person who-

(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).

(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.

* * * * *

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Crimes Act 1958
- SECT 8
Petit treason

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8. Petit treason

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.

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Crimes Act 1958
- SECT 9

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

<pre>

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 child homicide or of defensive homicide or of being accessory to murder or manslaughter or child homicide 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.

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Crimes Act 1958

- SECT 9AA

Abolition of year-and-a-day rule

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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

</pre>

Crimes Act 1958

- SECT 9AB

Definitions and application of Subdivision

<pre>

9AB. Definitions and application of Subdivision

(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.

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Crimes Act 1958
- SECT 9AC
Murder-"self-defence"

<pre>

9AC. Murder-"self-defence"

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.

Notes

1. See section 4 for alternative verdict of defensive homicide where the accused had no reasonable grounds for the belief.
2. This section does not apply where the response is to lawful conduct- see section 9AF.
3. See section 9AH as to belief in circumstances where family violence is alleged.

</pre>

Crimes Act 1958
- SECT 9AD
Defensive homicide

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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.

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Crimes Act 1958

- SECT 9AE

Manslaughter-"self-defence"

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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.

Notes

1. See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.
2. This section does not apply where the response is to lawful conduct-see section 9AF.

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Crimes Act 1958

- SECT 9AF

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

<pre>

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.

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Crimes Act 1958

- SECT 9AG

Duress

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9AG. Duress

(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 subsection (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.

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Crimes Act 1958
- SECT 9AH
Family violence

<pre>

9AH. Family violence

(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

(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 subsection (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 subsection (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 subsection (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 subsection (4)-

(a) a single act may amount to abuse for the purposes of that definition;

(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.

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Crimes Act 1958

- SECT 9AI

Sudden or extraordinary emergency

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9AI. Sudden or extraordinary emergency

(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.

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Crimes Act 1958
- SECT 9AJ
Intoxication

<pre>

9AJ. Intoxication

(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 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 subsection (5), intoxication is self-induced in the circumstances referred to in subsection (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.

(1A) Reasonable offences

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Crimes Act 1958
- SECT 9A
Treason

<pre>

9A. Treason

(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;

(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 subsection 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

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

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 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 subsection (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.

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(4) Offences against the person

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15. Definitions

In this subdivision-

abortion has the meaning given in the Abortion Law Reform Act 2008;

child means any person under the age of 18 years;

female genital mutilation means all or any of the following-

- (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-

- (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;

medical procedure, in relation to paragraph (b) of the definition of serious injury, means-

- (a) an abortion performed by a registered medical practitioner in accordance with the Abortion Law Reform Act 2008; or
- (b) the administration or supply of a drug or drugs by a registered pharmacist or registered nurse in accordance with the Abortion Law Reform Act 2008 to cause an abortion;

midwife means-

- (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 which is similar to that of registered midwife;

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;

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

registered midwife means a person registered under the Health Practitioner Regulation National Law-

- (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and
- (b) in the register of midwives kept for that profession;

registered nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student);

registered pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

serious injury includes-

- (a) a combination of injuries; and
- (b) the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm;

woman means a female person of any age.

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Crimes Act 1958

- SECT 16

Causing serious injury intentionally

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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).

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Crimes Act 1958

- SECT 17

Causing serious injury recklessly

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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).

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Crimes Act 1958

- SECT 18

Causing injury intentionally or recklessly

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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).

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Crimes Act 1958

- SECT 19

Offence to administer certain substances

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19. Offence to administer certain substances

(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

(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 subsection (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.

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Crimes Act 1958
- SECT 19A
Intentionally causing a very serious disease

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19A. Intentionally causing a very serious disease

(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 subsection (1), very serious disease means HIV within the meaning of section 3(1) of the Public Health and Wellbeing Act 2008.

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Crimes Act 1958
- SECT 20
Threats to kill

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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).

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Crimes Act 1958
- SECT 21
Threats to inflict serious injury

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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).

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Crimes Act 1958

- SECT 21A

Stalking

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21A. Stalking

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

(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;

(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;

(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;

(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;

(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);

(da) making threats to the victim;

(db) using abusive or offensive words to or in the presence of the victim;

(dc) performing abusive or offensive acts in the presence of the victim;

(dd) directing abusive or offensive acts towards the victim;

(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;

(f) keeping the victim or any other person under surveillance;

(g) acting in any other way that could reasonably be expected-

(i) to cause physical or mental harm to the victim, including self-harm; or

(ii) 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, including self-harm, 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, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if-

(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
- (e) the protection of the public revenue-

that, but for this subsection, would constitute an offence against subsection (1).

(4A) In a proceeding for an offence against subsection (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.

* * * * *

(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (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 subsection (1) occurred, so long as that conduct occurred in Victoria.

(8) In this section-
mental harm includes-

- (a) psychological harm; and
- (b) suicidal thoughts.

Note

The Personal Safety Intervention Orders Act 2010 provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

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Crimes Act 1958
- SECT 22
Conduct endangering life

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    22.      Conduct endangering life
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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).

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Crimes Act 1958
- SECT 23
Conduct endangering persons

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    23.      Conduct endangering persons
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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).

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Crimes Act 1958
- SECT 24
Negligently causing serious injury

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    24.      Negligently causing serious injury
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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 5 imprisonment (10 years maximum).

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Crimes Act 1958
- SECT 25
Setting traps etc. to kill

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    25.      Setting traps etc. to kill
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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).

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Crimes Act 1958
- SECT 26
Setting traps etc. to cause serious injury

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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).

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Crimes Act 1958
- SECT 27
Extortion with threat to kill

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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).

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Crimes Act 1958
- SECT 28
Extortion with threat to destroy property etc.

<pre>
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).

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Crimes Act 1958

- SECT 29

Using firearm to resist arrest etc.

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29. Using firearm to resist arrest etc.

(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.

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

(2) A person who commits an offence against subsection (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 subsection in addition to any penalty to which he or she may be liable for that other offence.

(3) In this section-

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

(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.

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Crimes Act 1958

- SECT 30

Threatening injury to prevent arrest

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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 or a protective services officer from investigating in a lawful manner any act or circumstance which reasonably calls for investigation by a member of the police force or a protective services officer-

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

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Crimes Act 1958

- SECT 31

Assaults

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31. Assaults

(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

(ia) a protective services officer in the due execution of duty; or

(ii) a person acting in aid of a member of the police force or in aid of a protective services officer-

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

(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 subsection (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 subsection (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.

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Crimes Act 1958

- SECT 31A

Use of firearms in the commission of offences

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31A. Use of firearms in the commission of offences

(1) A person who is found guilty of an indictable offence and who carried-

(a) a firearm (within the meaning of the Firearms Act 1996); or

(b) an imitation firearm (within the meaning of section 29(3)(b))-

when committing the offence is guilty of a further offence and is liable to level 6 imprisonment (5 years maximum).

(2) Despite anything to the contrary in the Sentencing Act 1991 or in any other law, a court, in imposing a penalty under subsection (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.

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Crimes Act 1958

- SECT 31B

Being armed with criminal intent

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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).

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Crimes Act 1958

- SECT 32

Offence to perform female genital mutilation

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32. Offence to perform female genital mutilation

(1) A person must not perform female genital mutilation on
a child.

Penalty: Level 4 imprisonment (15 years maximum).

(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.

Penalty: Level 4 imprisonment (15 years maximum).

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Crimes Act 1958

- SECT 33

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

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

(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.

Penalty: Level 4 imprisonment (15 years maximum).

(2) In proceedings for an offence under subsection (1), proof that-

(a) the accused 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 accused 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.

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Crimes Act 1958

- SECT 34

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

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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.

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Crimes Act 1958

- SECT 34A

Exceptions to offences under section 32

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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 subsection (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 subsection (1) lies with the prosecution.

(5) Corpses

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Crimes Act 1958

- SECT 34B

Offence to interfere with corpse of a human being

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

(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) Subsection (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

(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.

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(8) Sexual offences (general provisions)

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Crimes Act 1958
- SECT 35
Definitions

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35. Definitions

(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;
domestic partner of a person means-

(a) a person who is in a registered domestic relationship with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

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.

(1A) For the purposes of the definition of domestic partner in subsection (1)-

(a) registered domestic relationship has the same meaning as in the Relationships Act 2008; and

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the Relationships Act 2008 as may be relevant in a particular case.

(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.

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Crimes Act 1958
- SECT 36
Meaning of consent1

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36. Meaning of consent1

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.

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Crimes Act 1958
- SECT 37
Jury directions

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37. Jury directions

(1) If relevant to the facts in issue in a proceeding the judge must direct the jury on the matters set out in sections 37AAA and 37AA.

(2) A judge must not give to a jury a direction of a kind referred to in section 37AAA or 37AA if the direction is not relevant to the facts in issue in the proceeding.

(3) A judge must relate any direction given to the jury of a kind referred to in section 37AAA or 37AA to-

(a) the facts in issue in the proceeding; and

(b) the elements of the offence being tried in respect of which the direction is given-

so as to aid the jury's comprehension of the direction.

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Crimes Act 1958
- SECT 37AAA
Jury directions on consent

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37AAA. Jury directions on consent

For the purposes of section 37, the matters relating to consent on which the judge must direct the jury are-

(a) the meaning of consent set out in section 36;

(b) that the law deems a circumstance specified in section 36 to be a circumstance in which the complainant did not consent;

(c) that if the jury is satisfied beyond reasonable doubt that a circumstance specified in section 36 exists in relation to the complainant, the jury must find that the complainant was not consenting;

(d) that the fact that a person did not say or do anything to indicate free agreement to a sexual act at the time at which the act took place is enough to show that the act took place without that person's free agreement;

(e) that the jury is not to regard a person 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.

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Crimes Act 1958

- SECT 37AA

Jury directions on the accused's awareness

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37AA. Jury directions on the accused's awareness

For the purposes of section 37, if evidence is led or an assertion is made that the accused believed that the complainant was consenting to the sexual act, the judge must direct the jury that in considering whether the prosecution has proved beyond reasonable doubt that the accused was aware that the complainant was not consenting or might not have been consenting, the jury must consider-

- (a) any evidence of that belief; and
- (b) whether that belief was reasonable in all the relevant circumstances having regard to-

(i) in the case of a proceeding in which the jury finds that a circumstance specified in section 36 exists in relation to the complainant, whether the accused was aware that that circumstance existed in relation to the complainant; and

(ii) whether the accused took any steps to ascertain whether the complainant was consenting or might not be consenting, and if so, the nature of those steps; and

(iii) any other relevant matters.

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Crimes Act 1958

- SECT 37A

Objectives of Subdivisions 8A to 8G

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37A. Objectives of Subdivisions 8A to 8G

The objectives of Subdivisions (8A) to (8G) are-

(a) to uphold the fundamental right of every person to make decisions about his or her sexual behaviour and to choose not to engage in sexual activity;

(b) to protect children and persons with a cognitive impairment from sexual exploitation.

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Crimes Act 1958

- SECT 37B

Guiding principles

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37B. Guiding principles

It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that-

(a) there is a high incidence of sexual violence within society; and

(b) sexual offences are significantly under-reported; and

(c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment; and

(d) sexual offenders are commonly known to their victims; and

(e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

(8A) Rape and indecent assault 2

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Crimes Act 1958

- SECT 38
Rape

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38. Rape

(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-

(i) while being aware that the person is not consenting or might not be consenting; or

(ii) while not giving any thought to whether 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.

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

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

(b) who has sexually penetrated the offender or another person, not to cease sexually penetrating 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 subsection (3), a person compels another person (the victim) to engage in a sexual act if the person compels the victim (by force or otherwise) to engage in that act-

(a) without the victim's consent; and

(b) while-

(i) being aware that the victim is not consenting or might not be consenting; or

(ii) not giving any thought to whether the victim is not consenting or might not be consenting.

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Crimes Act 1958

- SECT 38A
Compelling sexual penetration

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38A. Compelling sexual penetration

(1) A person must not compel another person to take part in an act of sexual penetration.

Penalty: Level 2 imprisonment (25 years maximum).

(2) A person (the offender) compels another person (the victim) to take part in an act of sexual penetration if-

(a) the offender compels the victim to introduce (to any extent) an object or a part of his or her body into his or her own anus or, in the case of a female victim, her own vagina, other than in the course of a procedure carried out in good faith for medical or hygienic purposes; or

(b) the offender compels the victim to take part in an act of bestiality within the meaning of section 59.

(3) For the purposes of subsection (2), a person compels another person (the victim) to take part in an act of sexual penetration if the person compels the victim (by force or otherwise) to engage in that act-

(a) without the victim's consent; and

(b) while-

(i) being aware that the victim is not consenting or might not be consenting; or

(ii) not giving any thought to whether the victim is not consenting or might not be consenting.

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Crimes Act 1958
- SECT 39
Indecent assault

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39. Indecent assault

(1) A person must not commit indecent assault.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A person commits indecent assault if he or she assaults another person in indecent circumstances-

(a) while being aware that the person is not consenting or might not be consenting; or

(b) while not giving any thought to whether the person is not consenting or might not be consenting.

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Crimes Act 1958

- SECT 40

Assault with intent to rape

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40. Assault with intent to rape

(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 subsection (1), assault has the same meaning as in section 31(1).

(8B) Incest

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Crimes Act 1958

- SECT 44

Incest

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44. Incest

(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).

(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.

Penalty: Level 2 imprisonment (25 years maximum).

(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.

Penalty: Level 6 imprisonment (5 years maximum).

(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.

Penalty: Level 6 imprisonment (5 years maximum).

(5) Consent is not a defence to a charge under this section.

(6) A person who is compelled by another person to take part in an act of sexual penetration in any of the circumstances referred to in subsection (1), (2), (3) or (4) is not guilty of an offence against this section.

(6A) For the purposes of this section, a person compels another person (the victim) to take part in an act of sexual penetration if the person compels the victim (by force or otherwise) to engage in that act without the victim's consent.

(7) In all proceedings for offences under this section (except under subsection (2)) it shall be presumed in the absence of evidence to the contrary-

(a) that the accused knew that he or she was related to the other person in the way alleged; and

(b) that people who are reputed to be related to each other in a particular way are in fact related in that way.

(8C) Sexual offences against children

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Crimes Act 1958

- SECT 45

Sexual penetration of child under the age of 16

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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 subsection (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 12, 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 12 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 of sexual penetration of a child between the ages of 12 and 16, to level 5 imprisonment (10 years maximum).

(3) Subsection (1) does not apply to an act of sexual penetration if-

(a) the child is aged between 12 and 16; and

(b) the persons taking part in the act are married to each other.

(4) Consent is not a defence to a charge under subsection (1) unless at the time of the alleged offence the child was aged 12 or older and-

(a) the accused satisfies the court on the balance of probabilities that he or she 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 satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that he or she was married to the child.

(4A) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

(5) A circumstance of aggravation described in subsection (2) is not an element of an offence against subsection (1) but must be stated in the indictment.

(6) An accused who takes issue with a circumstance of aggravation described in subsection (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 subsection (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.

(8) An offender who pleads not guilty to an offence against subsection (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 subsection (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 subsection (1) is not an offence to which section 28 of the Criminal Procedure Act 2009 applies even though the offence is punishable by level 5 imprisonment where a circumstance of aggravation described in subsection (2) is not present.

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Crimes Act 1958

- SECT 47
Indecent act with child under the age of 16

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47. Indecent act with child under the age of 16

(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.

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-

(a) the accused satisfies the court on the balance of probabilities that he or she 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 satisfies the court on the balance of probabilities that he or she believed on reasonable grounds that he or she was married to the child.

(3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

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Crimes Act 1958

- SECT 47A

Persistent sexual abuse of child under the age of 16

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47A. Persistent sexual abuse of child under the age of 16

(1) A person who persistently sexually abuses 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 subsection (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

(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.

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

(3) It is not necessary to prove an act referred to in subsection (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 subsection (1).

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

(5) If on the trial of a person charged with an offence against subsection (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) Subsection (5) does not restrict the operation of section 421 or 422.

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

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Crimes Act 1958
- SECT 48
Sexual penetration of 16 or 17 year old child

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48. Sexual penetration of 16 or 17 year old child

(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.

Penalty: Level 5 imprisonment (10 years maximum).

(2) Consent is not a defence to a charge under subsection (1) unless the accused satisfies the court on the balance of probabilities that 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.

(3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

(4) For the purposes of subsection (1), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is-

(a) the child's teacher;

(b) the child's foster parent;

(c) the child's legal guardian;

(d) a minister of religion with pastoral responsibility for the child;

(e) the child's employer;

(f) the child's youth worker;

(g) the child's sports coach;

(h) the child's counsellor;

(i) the child's health professional;

(j) a member of the police force acting in the course of his or her duty in respect of the child;

(k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

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Crimes Act 1958

- SECT 49

Indecent act with 16 or 17 year old child

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49. Indecent act with 16 or 17 year old child

(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 or 17 year old child to whom he or she is not married and who is under his or her care, supervision or authority.

Penalty: Level 6 imprisonment (5 years maximum).

(2) Consent is not a defence to a charge under subsection (1) unless the accused satisfies the court on the balance of probabilities that 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.

(3) If consent is relevant to a charge under subsection (1), the prosecution bears the burden of proving lack of consent.

(4) For the purposes of subsection (1), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is-

(a) the child's teacher;

(b) the child's parent, adoptive parent, foster parent or step parent;

(c) the child's legal guardian;

(d) a minister of religion with pastoral responsibility for the child;

(e) the child's employer;

(f) the child's youth worker;

(g) the child's sports coach;

(h) the child's counsellor;

(i) the child's health professional;

(j) a member of the police force acting in the course of his or her duty in respect of the child;

(k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

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Crimes Act 1958

- SECT 49A

Facilitating sexual offences against children

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49A. Facilitating sexual offences against children

(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 subsection (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 persons with a cognitive impairment

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Crimes Act 1958
- SECT 50
Definitions

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50. Definitions

(1) In this Subdivision-

cognitive impairment includes impairment because of mental illness, intellectual disability, dementia or brain injury;

facility means a service operated by any person or body (government or non-government) that provides programs specially designed to meet the developmental or educational needs of persons with a cognitive impairment and includes a residential facility;

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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 Disability Act 2006;

* * * * *

residential facility means-

(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;

(c) a supported residential service within the meaning of the Supported Residential Services (Private Proprietors) Act 2010;

worker means a person who delivers, or assists in delivering, at a facility (whether as an employee or as a volunteer or in any other capacity)-

(a) a program specially designed to meet the developmental or educational needs of persons with a cognitive impairment residing at the facility or attending the facility to take part in the program; or

(b) other services to residents at a residential facility- but does not include a person with a cognitive impairment who also resides at the facility or attends the facility to take part in the program.

(2) For the purposes of this Subdivision a person in respect of whom a statement has been issued by the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the Disability Act 2006 must be taken to be intellectually disabled.

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Crimes Act 1958

- SECT 51

Sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services

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51. Sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services

(1) A person who provides medical or therapeutic services to a person with a cognitive impairment who is not his or her spouse or

domestic partner must not take part in an act of sexual penetration with that person.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A person who provides medical or therapeutic services to a person with a cognitive impairment who is not his or her spouse or domestic partner 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).

(3) In a proceeding for an offence against subsection (1) or (2) in circumstances in which the services provided by the accused were related to the cognitive impairment of the other person, it is a defence to the charge for the accused to prove on the balance of probabilities that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the other person did not have a cognitive impairment.

(4) In a proceeding for an offence against subsection (1) or (2) in circumstances in which the services provided by the accused were not related to the cognitive impairment of the other person, it is a defence to the charge for the accused to prove on the balance of probabilities that at the time at which the offence is alleged to have been committed, the accused was not aware that the other person had a cognitive impairment.

(5) Consent is not a defence to a charge against subsection (1) or (2) unless the accused satisfies the court on the balance of probabilities that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that he or she was the spouse or domestic partner of the other person.

(6) If consent is relevant to a charge against subsection (1) or (2), the prosecution bears the burden of proving lack of consent.

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Crimes Act 1958

- SECT 52

Sexual offences against persons with a cognitive impairment by workers

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52. Sexual offences against persons with a cognitive impairment by workers

(1) A worker at a facility must not take part in an act of sexual penetration with a person with a cognitive impairment who-

(a) is residing at the facility or attending the facility to take part in a program specially designed to meet the

developmental or educational needs of persons with a cognitive impairment;
and

(b) is not his or her spouse or domestic partner.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A worker at a facility must not commit, or be in any way a party to the commission of, an indecent act with a person with a cognitive impairment who-

(a) is residing at the facility or attending the facility to take part in a program specially designed to meet the developmental or educational needs of persons with a cognitive impairment;
and

(b) is not his or her spouse or domestic partner.

Penalty: Level 6 imprisonment (5 years maximum).

(3) Consent is not a defence to a charge under this section unless the accused satisfies the court on the balance of probabilities that at the time of the alleged offence the accused believed on reasonable grounds that he or she was the spouse or domestic partner of the person residing at or attending the facility.

(4) If consent is relevant to a charge under this section, the prosecution bears the burden of proving lack of consent.

(8E) Other sexual offences

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Crimes Act 1958

- SECT 53

Administration of drugs etc.

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53. Administration of drugs etc.

(1) 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).

(2) 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 commit, or in any way be a party to the commission of, an indecent act with that person.

Penalty: Level 6 imprisonment (5 years maximum).

(3) In subsection (2), indecent act means an indecent assault in any of the circumstances referred to in section 39(2) or an indecent act in any of the circumstances referred to in section 47, 49, 51(2) or 52(2).

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Crimes Act 1958

- SECT 54

Occupier etc. permitting unlawful sexual penetration

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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.

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Crimes Act 1958

- SECT 55

Abduction or detention

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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).

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Crimes Act 1958

- SECT 56

Abduction of child under the age of 16

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56. Abduction of child under the age of 16

(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).

(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).

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Crimes Act 1958

- SECT 57

Procuring sexual penetration by threats or fraud

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57. Procuring sexual penetration by threats or fraud

(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).

(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).

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Crimes Act 1958

- SECT 58

Procuring sexual penetration of a child

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58. Procuring sexual penetration of a child

(1) A person aged 18 years or more must not solicit or procure a child under the age of 16 years to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), outside marriage with him or her or another person.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A person aged 18 years or more must not solicit or procure another person to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), outside marriage with a child under the age of 16 years.

Penalty: Level 5 imprisonment (10 years maximum).

(3) A person aged 18 years or more must not solicit or procure 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 to take part in an act of sexual penetration, or an indecent act (within the meaning of Subdivision (8D)), with him or her or another person.

Penalty: Level 5 imprisonment (10 years maximum).

(4) If-

(a) a person does an act or thing referred to in subsection (1), (2) or (3) outside, or partly outside, Victoria; and

(b) there is a real and substantial link within the meaning of subsection (5) between the doing of the act or thing and Victoria- those subsections apply to the act or thing as if it had been done wholly within Victoria.

(5) For the purposes of subsection (4), 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 occurred in Victoria; or

(b) where the act or thing was done wholly outside Victoria, if the act or thing was done with the intention that the act of sexual penetration or the indecent act occur in Victoria.

(6) For the purposes of subsection (3), and without limiting that subsection, a child is under the care, supervision or authority of a person if the person is-

- (a) the child's teacher;
- (b) the child's foster parent;
- (c) the child's legal guardian;
- (d) a minister of religion with pastoral responsibility for the child;
- (e) the child's employer;
- (f) the child's youth worker;
- (g) the child's sports coach;
- (h) the child's counsellor;
- (i) the child's health professional;
- (j) a member of the police force acting in the course of his or her duty in respect of the child;
- (k) employed in, or providing services in, a remand centre, youth residential centre, youth justice centre or prison and is acting in the course of his or her duty in respect of the child.

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Crimes Act 1958
- SECT 59
Bestiality

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59. Bestiality

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

Penalty: Level 6 imprisonment (5 years maximum).

(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.

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Crimes Act 1958

- SECT 60A

Sexual offence while armed with an offensive weapon

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60A. Sexual offence while armed with an offensive weapon

(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 subsection (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) Subsection (3) is in addition to, and does not limit the operation of, section 359AA.

(8EAA) Sexual servitude

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Crimes Act 1958

- SECT 60AB

Sexual servitude

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60AB. Sexual servitude

(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

- (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 subsection (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.

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Crimes Act 1958
- SECT 60AC
Aggravated sexual servitude

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60AC. Aggravated sexual servitude

(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).

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Crimes Act 1958
- SECT 60AD
Deceptive recruiting for commercial sexual services

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60AD. Deceptive recruiting for commercial sexual services

(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).

(2) In subsection (1), commercial sexual services has the same meaning as in section 60AB.

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Crimes Act 1958

- SECT 60AE

Aggravated deceptive recruiting for commercial sexual services

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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).

(8EA) Loitering by sexual offender

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Crimes Act 1958

- SECT 60B

Loitering near schools etc.

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60B. Loitering near schools etc.

(1) In this section, sexual offence means-

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

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

(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-

(a) has been found guilty of-

(i) a sexual offence; or

(ia) an offence against-

(A) section 5, 6, 7 or 11 of the Sex Work 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

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

(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, a children's services centre or an education and care service premises; or

(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.

(2A) An offence against subsection (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 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.

(4) In this section-

children's services centre means a place at which a children's service within the meaning of the Children's Services Act 1996 operates;
education and care service premises means a place at which an education and care service (other than a family day care service) within the meaning of the Education and Care Services National Law (Victoria) educates or cares for children.

(8F) Jury warnings

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Crimes Act 1958
- SECT 61
Jury warnings

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61. Jury warnings

(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

(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-

(i) 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; and

(ii) must not warn, or suggest in any way to, the jury that the credibility of the complainant is affected by the delay unless, on the application of the accused, the judge is satisfied that there is sufficient evidence tending to suggest that the credibility of the complainant is so affected to justify the giving of such a warning; and

(iii) must not warn, or suggest in any way to, the jury that it would be dangerous or unsafe to find the accused guilty because of the delay.

(1A) If the judge, on the application of the accused in a proceeding to which subsection (1) applies, is satisfied that the accused has suffered a significant forensic disadvantage because of the consequences of the 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, in any terms that the judge considers appropriate having regard to the circumstances of the case-

(a) inform the jury of the nature of the forensic disadvantage suffered by the accused; and

(b) instruct the jury to take that disadvantage into consideration.

(1B) Despite subsection (1A), a judge must not warn, or suggest in any way to, the jury that it would be dangerous or unsafe to find the accused guilty because of the delay.

(1C) For the purposes of subsection (1A), the passage of time alone is not to be taken to cause a significant forensic disadvantage.

(1D) Nothing in subsection (1A) requires a judge to give a warning referred to in that subsection if there is no reason to do so in the particular proceeding.

(1E) A judge must not give a warning referred to in subsection (1A) or a warning to the effect of a warning referred to in subsection (1A) except in accordance with this section and any rule of law to the contrary is hereby abrogated.

(1F) Nothing in subsections (1A) to (1E) affects the power of a judge to give any other warning to, or to otherwise inform, the jury.

(2) Nothing in subsection (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.

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

(8G) Abrogation of obsolete rules of law

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Crimes Act 1958
- SECT 62
Abrogation of obsolete rules of law

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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.

(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.

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(9) Child stealing

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Crimes Act 1958
- SECT 63
Child stealing

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63. Child stealing

(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).

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 subsection 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 years 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).

(9A) Kidnapping

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Crimes Act 1958
- SECT 63A
Kidnapping

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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

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Crimes Act 1958
- SECT 64
Bigamy

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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

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Crimes Act 1958

- SECT 65

Abortion performed by unqualified person

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65. Abortion performed by unqualified person

(1) A person who is not a qualified person must not perform an abortion on another person.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A woman who consents to, or assists in, the performance of an abortion on herself is not guilty of an offence against this section.

(3) For the purposes of this section-

(a) a registered medical practitioner is a qualified person; and

(b) a registered pharmacist or registered nurse is a qualified person only for the purpose of performing an abortion by administering or supplying a drug or drugs in accordance with the Abortion Law Reform Act 2008.

(4) In this section-

abortion has the same meaning as in the Abortion Law Reform Act 2008; perform an abortion includes supply or procure the supply of any drug or other substance knowing that it is intended to be used to cause an abortion; registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

registered nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse or as a midwife (other than as a student); registered pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

woman means a female person of any age.

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Crimes Act 1958

- SECT 66

Abortion-Abolition of common law offences

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66. Abortion-Abolition of common law offences

Any rule of common law that creates an offence in relation to procuring a woman's miscarriage is abolished.

(12) Concealing the birth of a child³

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Crimes Act 1958

- SECT 67

Concealing birth of a child

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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

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Crimes Act 1958

- SECT 67A

Definitions

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67A. Definitions

In this Subdivision-

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;

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;

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.

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Crimes Act 1958

- SECT 68

Production of child pornography

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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 subsection (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 subsection (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.

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Crimes Act 1958
- SECT 69
Procurement etc. of minor for child pornography

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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

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

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

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

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 subsection (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 would, if classified, be classified other than RC or X or X 18+.

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Crimes Act 1958
- SECT 70
Possession of child pornography

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70. Possession of child pornography

(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 subsection (1) to prove-

(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

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

(d) that the accused 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 accused 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 accused.

(3) Despite subsection (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-

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.

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Crimes Act 1958
- SECT 70AA
Forfeiture

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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.

(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 subsection (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 subsection (4).

(6) On an application under subsection (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 subsection (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.

(14) Sexual performances involving a minor

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Crimes Act 1958
- SECT 70AB
Definitions

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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.

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Crimes Act 1958

- SECT 70AC
Sexual performance involving a minor

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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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Division 1A-Piracy

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Crimes Act 1958
- SECT 70A
Piracy with violence

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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
- (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

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

as the court determines.

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Crimes Act 1958
- SECT 70B
Piratical acts

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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

(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-

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

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

as the court determines.

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Crimes Act 1958
- SECT 70C
Trading etc. with pirates

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70C. Trading etc. with pirates

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).

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Crimes Act 1958
- SECT 70D
Being found on board piratical vessel and unable to prove non-complicity

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

(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).

(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.

Division 2-Theft and similar or associated offences4

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Crimes Act 1958
- SECT 71
Definitions

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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).

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Crimes Act 1958
- SECT 72
Basic definition of theft

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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.

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Crimes Act 1958

- SECT 73

Further explanation of theft

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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 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 subsection 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.

(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 carcass 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.

(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 subsection (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 subsection (12) in any proceedings-

(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

(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.

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Crimes Act 1958
- SECT 74
Theft

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74. Theft

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

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

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Crimes Act 1958
- SECT 74A
Shop theft

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74A. Shop theft

(1) Despite section 74 and anything to the contrary in this Division, a member of the police force may serve an infringement notice on any person if he or she believes on reasonable grounds that the theft is shop theft.

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.

(3) The infringement penalty for an offence for which an infringement notice may be served under this section is 2 penalty units.

(4) An infringement notice under this section must not be served on a person who is under 18 years of age at the time of the alleged offence.

Note

The Infringements Act 2006 provides that, subject to that Act and any other Act, a person who pays an infringement penalty and any prescribed costs within the time required under that Act expiates the offence by that payment. Section 33 of that Act provides that, generally, expiation means that no further proceedings may be taken against the person for that offence and no conviction is taken to have been recorded against the person for that offence. Payment is not to be taken as an admission of guilt or liability and payment is not to be referred to in any report provided to a court for the purposes of determining sentence for an offence.

(5) For the purposes of this section-

retail premises means the whole or any part of a building, structure or place or any vehicle-

(a) that is used wholly or predominantly for the retail sale of goods; and

(b) in or at which goods are sold or exposed or offered for sale by retail on one or more occasions;

shop theft means theft from retail premises of property which is goods valued at, or displayed for sale at, a price less than \$600.

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Crimes Act 1958

- SECT 75

Robbery

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75. Robbery

(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.

(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).

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Crimes Act 1958
- SECT 75A
Armed robbery

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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).

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Crimes Act 1958
- SECT 76
Burglary
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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

(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 subsection (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).

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Crimes Act 1958
- SECT 77
Aggravated burglary

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77. Aggravated burglary

(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.

(1A) For the purposes of subsection (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.

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

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Crimes Act 1958

- SECT 78

Removal of articles from places open to the public

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78. Removal of articles from places open to the public

(1) Subject to subsections (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 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 subsection (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 subsection (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).

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Crimes Act 1958
- SECT 80
Unlawfully taking control of an aircraft

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<pre> 80.      Unlawfully taking control of an aircraft
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(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).

(2) A person who without lawful excuse, by force or violence or threat of force or violence or by any trick or 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).

Fraud and blackmail

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Crimes Act 1958
- SECT 80A
Extra-territorial offences

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<pre> 80A.      Extra-territorial offences
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(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

(b) there is a real and substantial link within the meaning of subsection (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 subsection (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.

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Crimes Act 1958
- SECT 81
Obtaining property by deception

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81. Obtaining property by deception

(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).

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

(3) Subsections (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.

(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.

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Crimes Act 1958

- SECT 82

Obtaining financial advantage by deception

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82. Obtaining financial advantage by deception

(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).

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

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Crimes Act 1958

- SECT 83

False accounting

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83. False accounting

(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-

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.

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Crimes Act 1958
- SECT 83A
Falsification of documents

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83A. Falsification of documents

(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).

(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).

(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).

(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 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.

Penalty: Level 5 imprisonment (10 years maximum).

(5A) A person must not, with the intention that he or she may commit an offence against subsection (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.

Penalty: Level 5 imprisonment (10 years maximum).

(5B) A person must not, with the intention that another person may commit an offence against subsection (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.

Penalty: Level 5 imprisonment (10 years maximum).

(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

(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.

(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 subsection (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.

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Crimes Act 1958

- SECT 83B

Abolition of common law offences of forgery and uttering

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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.

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Crimes Act 1958

- SECT 84

Liability of company officers for certain offences by company

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84. Liability of company officers for certain offences by company

(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.

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Crimes Act 1958

- SECT 85

False statements by company directors etc.

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85. False statements by company directors etc.

(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.

(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.

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Crimes Act 1958

- SECT 86

Suppression etc. of documents

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86. Suppression etc. of documents

(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).

(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 subsection 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.

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Crimes Act 1958
- SECT 87
Blackmail

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87. Blackmail

(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).

Offences relating to goods stolen, &c.

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Crimes Act 1958
- SECT 88
Handling stolen goods

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88. Handling stolen goods

(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).

(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.

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Crimes Act 1958

- SECT 88A

Alternative charges of theft and handling stolen goods

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88A. Alternative charges of theft and handling stolen goods

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 indictment as alternative charges 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.

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Crimes Act 1958

- SECT 89

Advertising rewards for return of goods stolen or lost

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89. Advertising rewards for return of goods stolen or lost

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).

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Crimes Act 1958

- SECT 90

Scope of offences relating to stolen goods

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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.

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

Possession of housebreaking implements, &c.

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Crimes Act 1958

- SECT 91

Going equipped for stealing etc.

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91. Going equipped for stealing etc.

(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.

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

(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.

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Crimes Act 1958
- SECT 92
Search for stolen goods

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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-

(a) in the custody or possession of the person; or

(b) on any premises (including any vehicle on or in those premises) of the person; or

(c) on or in a particular vehicle located in a public place-

any stolen goods, the magistrate may grant a warrant to search for and seize those goods.

(1A) A warrant issued under subsection (1) must be addressed to a constable unless the warrant is issued under the authority of an enactment that expressly provides otherwise.

(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) If under this section a person is authorised to search premises or a particular vehicle located in a public place for stolen goods, he or she may enter and search the premises or the vehicle accordingly, and may seize any goods the person believes to be stolen goods.

(4) This section is to be construed in accordance with section 90 and in subsection (2) the references to handling stolen goods shall include any corresponding offence committed before the commencement of the Crimes (Theft) Act 1973.

(5) In this section-
public place has the same meaning as it has in section 3 of the Summary Offences Act 1966;
vehicle includes motor vehicle, aircraft and vessel.

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Crimes Act 1958
- SECT 93
Procedure and evidence

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93. Procedure and evidence

(1) Any number of persons may be charged in one indictment 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.

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

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General and consequential provisions

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Crimes Act 1958
- SECT 95
Husband and wife

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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.

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Secret commissions prohibition

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Crimes Act 1958
- SECT 175
Definitions5

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175. Definitions5

(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;

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;

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.

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Crimes Act 1958

- SECT 176

Receipt or solicitation of secret commission by an agent an indictable offence6

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176. Receipt or solicitation of secret commission by an agent an indictable offence6

(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

(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.

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Crimes Act 1958

- SECT 177

Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent7

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177. Secret gifts to parent, wife, child, partner etc. of agent deemed gifts to agent7

(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.

(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.

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Crimes Act 1958

- SECT 178

Giving or receiving false or misleading receipt or account an indictable offence8

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178. Giving or receiving false or misleading receipt or account an indictable offence8

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.

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Crimes Act 1958

- SECT 179

Gift or receipt of secret commission in return for advice given9

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179. Gift or receipt of secret commission in return for advice given9

(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

(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 subsection 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-

(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 subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

(3) Any person on conviction of an indictable offence under any of the provisions of this section shall-

(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.

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Crimes Act 1958

- SECT 180

Secret commission to trustee in return for substituted appointment10

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180. Secret commission to trustee in return for substituted appointment10

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-

(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.

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Crimes Act 1958

- SECT 181

Aiding and abetting offences within or outside Victoria11

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181. Aiding and abetting offences within or outside Victoria11

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-

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.

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Crimes Act 1958

- SECT 182

Liability of directors etc. acting without authority12

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182. Liability of directors etc. acting without authority12

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-

(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.

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Crimes Act 1958

- SECT 184

Protection of witness giving answers criminating himself 13

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184. Protection of witness giving answers criminating himself 13

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:
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.

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Crimes Act 1958

- SECT 185

Stay of proceedings against such witness14

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185. Stay of proceedings against such witness14

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.

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Crimes Act 1958

- SECT 186

Custom of itself no defence15

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186. Custom of itself no defence15

(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 given or offered in contravention of any of the provisions of this subdivision shall be on the accused.

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Fraudulently inducing persons to invest

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Crimes Act 1958
- SECT 191
Fraudulently inducing persons to invest money

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191. Fraudulently inducing persons to invest money

(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 subsection shall be punishable as if he had committed such an offence.

(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.

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Division 2AA-Identity crime

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Crimes Act 1958
- SECT 192A
Definitions

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192A. Definitions

In this Division-
identification documentation means a document or other thing that-

- (a) contains or incorporates identification information; and
- (b) is capable of being used by a person for the purpose of pretending to be, or passing themselves off as, another person (whether living or dead, or real or fictitious);

identification information means information relating to a person (whether living or dead, or real or fictitious) that is capable of being used (whether alone or in conjunction with other information) to identify, or purportedly identify, the person, being information such as-

- (a) a name, address, date of birth or place of birth;
- (b) information as to the person's marital status;
- (c) information that identifies another person as a relative of the person;
- (d) a driver licence or driver licence number;
- (e) a passport or passport number;
- (f) biometric data;
- (g) a voice print;
- (h) a credit or debit card, its number or data stored or encrypted on it;
- (i) a financial account number, user name or password;
- (j) a digital signature;
- (k) a series of numbers or letters (or both) intended for use as a means of personal identification;
- (l) an Australian Business Number within the meaning of the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth.

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Crimes Act 1958

- SECT 192B

Making, using or supplying identification information

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192B. Making, using or supplying identification information

(1) A person, who makes, uses or supplies identification information (that is not identification information that relates to that person), and-

(a) who is aware that, or aware that there is a substantial risk that, the information is identification information; and

(b) who intends to use or supply the information to commit an indictable offence, or to facilitate the commission of an indictable offence-

is guilty of an offence and liable to level 6 imprisonment (5 years maximum).

Note

See section 426 for an alternative verdict for this offence.

(2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.

(3) It is not a defence to a charge for an offence against this section that the person to whom the identification information relates consented to the making, use or supply of the identification information.

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Crimes Act 1958
- SECT 192C
Possession of identification information

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192C. Possession of identification information

(1) A person, who possesses identification information (that is not identification information that relates to the person), and-

(a) who is aware that, or aware that there is a substantial risk that, the information is identification information; and

(b) who intends to use the information to commit an indictable offence, or to facilitate the commission of an indictable offence-
is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

(2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.

(3) It is not a defence to a charge for an offence against this section that the person to whom the identification information relates consented to the possession of the identification information.

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Crimes Act 1958
- SECT 192D
Possession of equipment used to make etc. identification documentation

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192D. Possession of equipment used to make etc. identification documentation

(1) A person, who possesses equipment that is capable of being used to make, use, supply or retain identification documentation, and-

(a) who intends to use, or who intends that another person will use, the equipment to make, use, supply or retain identification documentation; and

(b) who intends to use any such identification documentation to commit an indictable offence or to facilitate the commission of an indictable offence-

is guilty of an offence and liable to imprisonment for a term not exceeding 3 years.

(2) A person may be found guilty of an offence against this section even if the commission of the indictable offence is impossible.

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Crimes Act 1958

- SECT 192E

Not an offence to attempt to commit an identity crime offence

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192E. Not an offence to attempt to commit an identity crime offence

It is not an offence to attempt to commit an offence against section 192B, 192C or 192D.

Division 2A-Money laundering etc.

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Crimes Act 1958

- SECT 193

Definitions

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193. Definitions

(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.

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Crimes Act 1958

- SECT 194

Dealing with proceeds of crime

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194. Dealing with proceeds of crime

(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.

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Crimes Act 1958

- SECT 195

Dealing with property suspected of being proceeds of crime

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195. Dealing with property suspected of being proceeds of crime

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).

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Crimes Act 1958

- SECT 195A

Dealing with property which subsequently becomes an instrument of crime

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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.

Division 2B-Cheating at gambling

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Crimes Act 1958
- SECT 195B
Interpretation

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195B. Interpretation

(1) In this Division-

bet includes-

- (a) place, accept or withdraw a bet; and
- (b) cause a bet to be placed, accepted or withdrawn;

causing a financial disadvantage includes-

- (a) causing a financial disadvantage to another person; and
- (b) inducing a third person to do something that results in

another person suffering a financial disadvantage-

whether the financial disadvantage is permanent or temporary;

conduct means an act or omission to do an act;

conduct that corrupts or would corrupt a betting outcome of an event or an event contingency means conduct that-

(a) affects or, if engaged in, would or would be likely to affect the outcome of any type of betting on the event or event contingency; and

(b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event or event contingency;

encourage includes incite, induce, persuade, urge, threaten or pressure;

engage in conduct means-

- (a) do an act; or
- (b) omit to do an act;

event means an event (whether it takes place in Victoria or elsewhere) on which it is lawful to bet under a law of Victoria, another State, a Territory or the Commonwealth;

event contingency means a contingency connected to an event, being a contingency on which it is lawful to bet under a law of Victoria, another State, a Territory or the Commonwealth;
obtaining a financial advantage includes-

- (a) obtaining a financial advantage for oneself or another person;
- and
- (b) inducing a third person to do something that results in obtaining a financial advantage for oneself or for another person; and
 - (c) retaining a financial advantage that one has- whether the financial advantage is permanent or temporary.

(2) In a proceeding for an offence against this Division, an accused will be taken to have intended to obtain a financial advantage, or cause a financial disadvantage, if, and only if, it is proved that the accused-

(a) intended to obtain a financial advantage, or to cause a financial disadvantage, in connection with betting on an event or event contingency; or

(b) was aware that another person intended to obtain a financial advantage, or to cause a financial disadvantage, in connection with betting on an event or event contingency as a result of the conduct that is the subject of the charge.

(3) In a proceeding for an offence against this Division, it is not necessary to prove that a financial advantage was actually obtained or a financial disadvantage was actually caused.

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Crimes Act 1958
- SECT 195C

Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency

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195C. Engaging in conduct that corrupts or would corrupt a betting outcome of event or event contingency

A person must not engage in conduct that corrupts or would corrupt a betting outcome of an event or event contingency-

(a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or the event contingency; and

(b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

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Crimes Act 1958

- SECT 195D

Facilitating conduct that corrupts or would corrupt a betting outcome of event or event contingency

<pre>

195D. Facilitating conduct that corrupts or would corrupt a betting outcome of event or event contingency

(1) A person must not offer to engage in, or encourage another person to engage in, conduct that corrupts or would corrupt a betting outcome of an event or event contingency-

(a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or event contingency; and

(b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

(2) A person must not enter into an agreement or arrangement in respect of conduct that corrupts or would corrupt a betting outcome of an event or event contingency-

(a) knowing that, or being reckless as to whether, the conduct the subject of the agreement or arrangement corrupts or would corrupt a betting outcome of the event or event contingency; and

(b) intending to obtain a financial advantage, or to cause a financial disadvantage, in connection with any betting on the event or the event contingency.

Penalty: level 5 imprisonment (10 years maximum).

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Crimes Act 1958

- SECT 195E

Concealing conduct, agreement or arrangement

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195E. Concealing conduct, agreement or arrangement

(1) A person must not encourage another person to conceal from a relevant authority conduct, or an agreement or arrangement in respect of conduct, that corrupts or would corrupt a betting outcome of an event or event contingency-

(a) knowing that, or being reckless as to whether, the conduct corrupts or would corrupt a betting outcome of the event or event contingency; and

(b) intending to obtain a financial advantage, or cause a financial disadvantage, in connection with any betting on the event or event contingency.

Penalty: level 5 imprisonment (10 years maximum).

(2) In this section relevant authority means-

(a) a member of the police force; or

(b) a body that has the official function of controlling, regulating or supervising an event or betting on an event; or

(c) any other authority of a kind prescribed by regulation.

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Crimes Act 1958

- SECT 195F

Use of corrupt conduct information for betting purposes

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195F. Use of corrupt conduct information for betting purposes

(1) A person who-

(a) possesses information in connection with an event or event contingency about conduct that corrupts or would corrupt a betting outcome of the event or event contingency; and

(b) knows that, or is reckless as to whether, the information is about conduct that corrupts or would corrupt a betting outcome of the event or event contingency-

must not, if the information is relevant to the bet-

(c) bet on the event or event contingency; or

(d) encourage another person to bet on the event or event contingency in a particular way; or

(e) communicate the information, or cause the information to be communicated, to another person who the first person knows or ought reasonably to know would, or would be likely to, bet on the event or event contingency.

Penalty: level 5 imprisonment (10 years maximum).

(2) In a proceeding for an offence against subsection (1) (d) or (e), it is not necessary to prove that the other person actually bet on the event or event contingency concerned.

Division 3-Criminal damage to property16

(1) General offences and procedural provisions

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Crimes Act 1958
- SECT 196
Definition

<pre>

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.

(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.

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Crimes Act 1958

- SECT 197

Destroying or damaging property

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197. Destroying or damaging property

(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).

(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 subsections (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 subsection (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.

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Crimes Act 1958
- SECT 197A
Arson causing death

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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).

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Crimes Act 1958
- SECT 198
Threats to destroy or damage property

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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).

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Crimes Act 1958
- SECT 199
Possessing anything with intent to destroy or damage property

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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
(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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Crimes Act 1958
- SECT 201
Lawful excuse

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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

(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 subsection (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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Crimes Act 1958
- SECT 201A
Intentionally or recklessly causing a bushfire

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201A. Intentionally or recklessly causing a bushfire

(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 subsection (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 subsection (2)(b)(ii) it is sufficient that a person honestly believed that the conduct was justified.

(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.

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Crimes Act 1958
- SECT 202
Jurisdiction of magistrates' courts

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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.

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(2) Injuries to buildings &c. by rioters and forcible entries and detainers

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Crimes Act 1958
- SECT 206

Rioters demolishing buildings17

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206. Rioters demolishing buildings17

(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 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).

(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).

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Crimes Act 1958
- SECT 207
Forcible entry

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207. Forcible entry

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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.

(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.

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(3) Interference with mines, sea banks &c., railways and navigation aids

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Crimes Act 1958
- SECT 225
Conveying water into a mine

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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.

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Crimes Act 1958
- SECT 228

Removing etc. piles of sea banks

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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).

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Crimes Act 1958

- SECT 232

Placing things on railways to obstruct or overturn engine etc.18

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232. Placing things on railways to obstruct or overturn engine etc.18

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 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).

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Crimes Act 1958

- SECT 233

Obstructing engine, carriage etc. on railway19

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233. Obstructing engine, carriage etc. on railway19

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).

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Crimes Act 1958
- SECT 244
Altering signals or exhibiting false ones

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244. Altering signals or exhibiting false ones

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).

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Crimes Act 1958
- SECT 245
Removing buoy etc.

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245. Removing buoy etc.

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).

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(4) Injuries to aircraft

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Crimes Act 1958

- SECT 246A

Endangering safe operation of an aircraft

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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).

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Crimes Act 1958

- SECT 246B

Setting fire etc. to aircraft

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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).

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Crimes Act 1958

- SECT 246C

Endangering safety of aircraft

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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).

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Crimes Act 1958

- SECT 246D

Dangerous goods on aircraft

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246D. Dangerous goods on aircraft

(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.

(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.

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Crimes Act 1958
- SECT 246E
Threats to safety of aircraft

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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).

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(5) False statements

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Crimes Act 1958
- SECT 247
False statements

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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;

or (b) destroy, damage or endanger the safety thereof;

(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).

(6) Computer offences

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Crimes Act 1958
- SECT 247A
Interpretation

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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.

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Crimes Act 1958

- SECT 247B

Unauthorised access, modification or impairment with intent to commit serious offence

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247B. Unauthorised access, modification or impairment with intent to commit serious offence

(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.

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Crimes Act 1958

- SECT 247C

Unauthorised modification of data to cause impairment

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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).

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Crimes Act 1958

- SECT 247D

Unauthorised impairment of electronic communication

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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).

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Crimes Act 1958

- SECT 247E

Possession of data with intent to commit serious computer offence

<pre>

247E. Possession of data with intent to commit serious computer offence

(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.

</pre>

Crimes Act 1958

- SECT 247F

Producing, supplying or obtaining data with intent to commit serious computer offence

<pre>

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.

</pre>

Crimes Act 1958

- SECT 247G

Unauthorised access to or modification of restricted data

<pre>

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.

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Crimes Act 1958

- SECT 247H

Unauthorised impairment of data held in computer disk, credit card or other device

<pre>

247H. Unauthorised impairment of data held in computer disk, credit card or other device

(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.

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Crimes Act 1958

- SECT 247I

Extra-territorial operation of offences

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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.

(7) Sabotage

</pre>

Crimes Act 1958
- SECT 247J
Interpretation

<pre>

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.

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Crimes Act 1958
- SECT 247K
Sabotage

<pre>

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).

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Crimes Act 1958
- SECT 247L
Threats to sabotage

<pre>

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).

(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.

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Division 4-Contamination of goods

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Crimes Act 1958
- SECT 248
Interpretation

<pre>

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.

(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.

</pre>

Crimes Act 1958

- SECT 249

Contaminating goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

<pre>

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

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Crimes Act 1958

- SECT 250

Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

<pre>

250. Threatening to contaminate goods with intent to cause, or being reckless as to whether it would cause, public alarm or economic loss

(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-

(a) public alarm or anxiety; or

(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

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.

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Crimes Act 1958

- SECT 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

<pre>

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

(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.

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.

</pre>

Crimes Act 1958

- SECT 252

Territorial nexus for offences

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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-

(a) public alarm or anxiety in Victoria; or

(b) economic loss in Victoria through public awareness of the contamination.

Division 5-Destruction of evidence

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Crimes Act 1958
- SECT 253
Definitions

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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 (Miscellaneous Provisions) 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.

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Crimes Act 1958
- SECT 254
Destruction of evidence

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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

(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.

Notes

1. Document is defined in the Evidence Act 2008.

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.

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Crimes Act 1958

- SECT 255

Corporate criminal responsibility for offence against section 254

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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

(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 subsection (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) Subsection (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 subsection (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 subsection (8), it is not necessary that each element of an offence against section 254 that is attributed to a body corporate by force of subsection (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.

Division 6-Perjury

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Crimes Act 1958
- SECT 314
Perjury

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314. Perjury

(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 subsection (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 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.

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Crimes Act 1958

- SECT 315

All evidence material with respect to perjury

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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

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Crimes Act 1958

- SECT 316

Unlawful oaths to commit treason, murder etc.

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316. Unlawful oaths to commit treason, murder etc.

(1) 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 commit treason or murder; 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 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):-

(i) to engage in any mutinous or seditious enterprise;

(ii) to commit any indictable offence other than treason or murder;

(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 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).

(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 evidence 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 evidence or by evidence on oath before 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.

(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 substances20

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Crimes Act 1958

- SECT 317

Offences connected with explosive substances

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317. Offences connected with explosive substances

(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;

public place has the same meaning as it has in section 3 of the Summary Offences Act 1966;

vehicle includes motor vehicle, aircraft and vessel.

(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 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).

(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).

(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.

* * * * *

(7) In any indictment the same criminal act may be charged in different charges as constituting different crimes under this Division, and upon the trial of any such indictment the prosecution shall not be put to its election as to the charge on which it must proceed.

(8) This Division shall not exempt any person from any indictment 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 (including any vehicle on or in the premises or place) mentioned in the warrant, or a particular vehicle mentioned in the warrant located in a public place, if necessary by force, and to search the premises, place or vehicle and every person found therein, and to seize and detain any explosive substance which he finds on the premises or place, or on or in the vehicle, 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 or on or in the vehicle in the public place 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.

(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 elsewhere²¹.

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Crimes Act 1958
- SECT 317A
Bomb hoaxes

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317A. Bomb hoaxes

(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.

(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.

(3) For a person to be guilty of an offence against subsection (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 subsection.

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.

Division 9-Driving offences connected with motor vehicles

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Crimes Act 1958
- SECT 317B
Interpretation

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317B. Interpretation

(1) In this Division-

drive, in relation to a motor vehicle, includes operate a vessel;
motor vehicle includes vessel, whether or not the vessel is powered by a motor;

operate, in relation to a vessel, means-

- (a) steer or navigate the vessel; or
 - (b) direct the steering or navigation of the vessel or provide instructions as to the steering or navigation of the vessel; or
 - (c) substantially change the movement or direction of the vessel;
- vessel has the same meaning as in the Marine Safety Act 2010.

(2) For the purposes of this Division-

(a) a person may operate a vessel that is at anchor, made fast to the shore or aground;

(b) a person does not operate a vessel solely because the person is in charge of the vessel.

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Crimes Act 1958
- SECT 318
Culpable driving causing death

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318. Culpable driving causing death

(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.

(2) For the purposes of subsection (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.

(2A) Without limiting subsection (2)(b), negligence within the meaning of that subsection 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.

(3) An indictment for an indictable offence under this section shall specify which form of culpability within the meaning of

subsection (2) is charged but evidence of the whole of the circumstances shall be admissible on the trial on the indictment.

(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.

(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 indictment with an indictable offence under this section.

(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 or the Marine Act 1988 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 indictment with an indictable offence under this section.

(7) Drug means a drug within the meaning of the Road Safety Act 1986.

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Crimes Act 1958

- SECT 319

Dangerous driving causing death or serious injury

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

(1A) 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 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.

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Crimes Act 1958

- SECT 319AA

Dangerous or negligent driving while pursued by police

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319AA. Dangerous or negligent driving while pursued by police

(1) A person must not drive a motor vehicle dangerously or negligently if he or she knows, or ought reasonably to know, that-

(a) he or she has been given a direction to stop the vehicle by a member of the police force; and

(b) a member of the police force is pursuing the vehicle.

Penalty: 3 years imprisonment.

(2) For the purposes of subsection (1)-

(a) a person drives a motor vehicle dangerously if he or she drives the vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case; and

(b) a person drives a motor vehicle negligently if he or she fails 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; and

(c) a member of the police force may be pursuing a motor vehicle even if not travelling at the same speed as the vehicle; and

(d) it is irrelevant that the police pursuit is suspended or terminated before the motor vehicle being pursued stops.

(3) In this section-

direction to stop has the same meaning as it has in section 64A(5) of the Road Safety Act 1986;

motor vehicle does not include a vessel.

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Division 9AA-Offences connected with dangerous, menacing and restricted breed dogs

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Crimes Act 1958
- SECT 319A
Definitions

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319A. Definitions

In this Division-
control, in relation to a dangerous dog, menacing dog or restricted breed dog, includes failing to comply with any of the requirements under sections 24, 26(1), 28, 29, 38, 39, 40, 41, 41E, 41F(1) (a), 41G, 41H, 41HA and 41I of the Domestic Animals Act 1994;
dangerous dog has the same meaning as in section 3(1) of the Domestic Animals Act 1994;
menacing dog has the same meaning as in section 3(1) of the Domestic Animals Act 1994;
owner, in relation to a dangerous dog, menacing dog or restricted breed dog, has the same meaning as in section 3(1) of the Domestic Animals Act 1994 and includes a person who is deemed to be an owner of the dog under section 4 of that Act;
restricted breed dog has the same meaning as in section 3(1) of the Domestic Animals Act 1994 and includes a dog that is taken under section 3(3) of that Act to be a restricted breed dog.

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Crimes Act 1958
- SECT 319B

Failure to control dangerous, menacing or restricted breed dog that kills person

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319B. Failure to control dangerous, menacing or restricted breed dog that kills person

(1) If-

(a) an owner of a dangerous dog, menacing dog or restricted breed dog fails to keep the dog under control; and

(b) the dog kills another person (the victim); and

(c) a reasonable person would have realised that that failure would expose the victim or any other person to an appreciable risk of death-

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

(2) If-

(a) a person (other than the owner of a dangerous dog, menacing dog or restricted breed dog)-

(i) is, for the time being, in charge or has care of the dog; and
(ii) fails to keep the dog under control; and
(iii) is reckless as to whether the dog is a dangerous dog, menacing dog or restricted breed dog; and

(b) the dog kills another person (the victim); and

(c) a reasonable person would have realised that that failure would expose the victim or any other person to an appreciable risk of death-

the first mentioned person is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

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Crimes Act 1958

- SECT 319C

Recklessness as to whether controlling dangerous, menacing or restricted breed dog may place another person in danger of death

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319C. Recklessness as to whether controlling dangerous, menacing or restricted breed dog may place another person in danger of death

(1) An owner of a dangerous dog, menacing dog or restricted breed dog who, without lawful excuse, recklessly engages in conduct so that the dog is not under control, and that conduct places or may place another person in danger of death, is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

(2) A person (other than the owner of a dangerous dog, menacing dog or restricted breed dog) who-

(a) for the time being, is in charge or has care of the dog; and

(b) is reckless as to whether the dog is a dangerous dog, menacing dog or restricted breed dog; and

(c) without lawful excuse, recklessly engages in conduct so that the dog is not under control, and that conduct places or may place another person in danger of death-

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

Division 9A-Penalties for certain common law offences

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Crimes Act 1958

- SECT 320

Maximum term of imprisonment for certain common law offences

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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.

TABLE

Column 1Column 2

| Common law offence | Maximum Term of Imprisonment |
|--|---|
| 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) |
| Wilful exposure | Level 6 imprisonment (5 years maximum) |

Division 10-Conspiracy

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Crimes Act 1958

- SECT 321

Conspiracy to commit an offence

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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 subsection (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 subsection (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) An indictment charging an offence against this section must not be filed 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 subsection.

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Crimes Act 1958
- SECT 321A
Agreements to commit offences outside Victoria

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321A. Agreements to commit offences outside Victoria

(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 subsection 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.

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Crimes Act 1958

- SECT 321B

As to consequences of acquittal of co-conspirators

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321B. As to consequences of acquittal of co-conspirators

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 are 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.

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Crimes Act 1958

- SECT 321C

Penalties for conspiracy

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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;

(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-

(i) level 1 imprisonment (life); or

(ii) imprisonment for such other term as is fixed by the court- as the court determines;

(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

(d) if the relevant offence, or each of the relevant offences, may be heard and determined only in the Magistrates' Court, the person shall be liable to-

(i) level 6 imprisonment (5 years maximum); or

(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.

(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

(b) the person shall, in any other case, be liable to a level 6 fine (600 penalty units maximum).

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Crimes Act 1958
- SECT 321D
Application of certain provisions

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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.

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Crimes Act 1958
- SECT 321E
Limitations on prosecution

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321E. Limitations on pr

