

South Australia



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**CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY)
AMENDMENT ACT 2002**

No. 26 of 2002

[Assented to 31 October 2002]

An Act to amend the Criminal Law Consolidation Act 1935; to repeal the Secret Commissions Act 1920; and to make related amendments to other Acts.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002*.

(2) The *Criminal Law Consolidation Act 1935* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended by inserting after the definition of "liable to be imprisoned for life" in subsection (1) the following definition:

"local government body" means a council or other body constituted under the *Local Government Act 1999*;

Substitution of ss. 130-166

4. Sections 130 to 166 (inclusive) of the principal Act are repealed and the following Parts are substituted:

**PART 5
OFFENCES OF DISHONESTY**

DIVISION 1—PRELIMINARY

Interpretation

130. In this Part—

"benefit" means—

- (a) a benefit of a proprietary nature; or
- (b) a financial advantage; or
- (c) a benefit of a kind that might be conferred by the exercise of a public duty in a particular way;

"deal"—a person deals with property if the person—

- (a) takes, obtains or receives the property; or
- (b) retains the property; or
- (c) converts or disposes of the property; or
- (d) deals with the property in any other way;

"deceive" means to engage in deception;

"deception" means a misrepresentation by words or conduct and includes—

- (a) a misrepresentation about a past, present or future fact or state of affairs; or
- (b) a misrepresentation about the intentions of the person making the misrepresentation or another person; or
- (c) a misrepresentation of law;

"detriment" means—

- (a) a detriment of a proprietary nature; or
- (b) a financial disadvantage; or
- (c) loss of an opportunity to gain a benefit; or
- (d) a detriment of a kind that might result from the exercise of a public duty in a particular way;

"document" includes any record of information whether in documentary, magnetic, electronic or other form;

"jury" includes, where an offence is tried by a judge or magistrate sitting alone, the judge or magistrate acting as a tribunal of fact;

"local conditions" in relation to a particular situation includes—

- (a) the physical environment; or
- (b) the cultural environment, including—
 - (i) language;
 - (ii) law and customs;
 - (iii) the currency;
 - (iv) the level of prices that generally prevails for goods and services of various kinds;

"machine" means a machine, computer or device that stores information in electronic, magnetic or other form and includes anything designed for operation with such a machine, such as a credit card, smart card or other device;

"manipulate", in relation to a machine, includes use of the machine to produce a particular result or effect and any act that affects how the machine operates or the result or effect of the machine's operation;

Examples—

1. An alteration to a computer program.
2. An alteration to a computer database.

"owner" of property means—

- (a) a person who has a proprietary interest in the property other than an equitable interest arising under—
 - (i) an agreement to transfer or grant an interest in the property; or
 - (ii) a constructive trust; or
- (b) in relation to property subject to a trust (other than a trust arising from an agreement to transfer or grant an interest in the property or a constructive trust)—a person who has a right to enforce the trust; or
- (c) in relation to property received from or on account of another by a person who is under an obligation to deal with the property or its proceeds in a particular way—the person from whom, or on whose account, the property was received; or
- (d) a person who is entitled to possession or control of the property,

(and, if there are 2 or more owners of property, a reference in this Part to the owner is a reference to both or all of them);

"proceeds" of property means money or property into which property has been converted by a transaction or series of transactions (involving sale, exchange, or any other form of dealing);

"property" means real or personal property and includes—

- (a) money;
- (b) intangible property (including things in action);
- (c) electricity;
- (d) a wild creature that is tamed or ordinarily kept in captivity or is reduced (or in the course of being reduced) into someone's possession;

"steal"—a person steals property if the person commits theft of the property or obtains it by deception; and "stolen" has a corresponding meaning;

"stolen property" means property stolen within or outside the State, but property ceases to be stolen property when—

- (a) it is restored to the person from whom it was stolen or other lawful custody; or
- (b) the person from whom it was stolen ceases to have a right to restitution;

"**tainted property**" means stolen property or property obtained from any other unlawful act or activity (within or outside the State), or the proceeds of such property (but property ceases to be tainted when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality, and for value);

"**transaction**" includes a gift.

Dishonesty

131. (1) A person's conduct is **dishonest** if the person acts dishonestly according to the standards of ordinary people and knows that he or she is so acting.

(2) The question whether a defendant's conduct was dishonest according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

(3) A defendant's willingness to pay for property involved in an alleged offence of dishonesty does not necessarily preclude a finding of dishonesty.

(4) A person does not act dishonestly if the person—

- (a) finds property; and
- (b) keeps or otherwise deals with it in the belief that the identity or whereabouts of the owner cannot be discovered by taking reasonable steps; and
- (c) is not under a legal or equitable obligation with which the retention of the property is inconsistent.

(5) The conduct of a person who acts in a particular way is not dishonest if the person honestly but mistakenly believes that he or she has a legal or equitable right to act in that way.

Example—

A takes an umbrella violently from B honestly but mistakenly believing that B has stolen A's umbrella and that A is entitled to use force to get it back. In fact, it belongs to B. A is charged with robbery. A cannot be properly convicted on this charge because of his honest but mistaken belief (however unreasonable). However, he may still be guilty of an assault.

(6) A person who asserts a legal or equitable right to property that he or she honestly believes to exist does not, by so doing, deal dishonestly with the property.

Example—

A takes an umbrella violently from B honestly believing that the umbrella belongs to A and that A is entitled to possession of the umbrella (but knowing that she is not entitled to use force to get it back). The assertion of that possessory right (whether or not correctly founded in law) is not dishonest (and therefore cannot amount to theft) although the means used to get the umbrella back may well amount to some other offence.

Consent of owner

132. (1) A reference to the consent of the owner of property extends to—

- (a) the implied consent of the owner (or owners); or

- (b) the actual or implied consent of a person who has actual or implied authority to consent on behalf of the owner (or owners).

(2) A person is taken to have the implied consent of another if the person honestly believes, from the words or conduct of the other, that he or she has the other's consent.

(3) However, a person who knows that another's consent was obtained by dishonest deception is taken to act without consent.

Operation of this Part

133. (1) This Part operates to the exclusion of offences of dishonesty that exist at common law or under laws of the Imperial Parliament.

(2) However, the common law offence of conspiracy to defraud continues as part of the criminal law of the State.

DIVISION 2—THEFT

Theft (and receiving)

134. (1) A person is guilty of theft if the person deals with property—

- (a) dishonestly; and
- (b) without the owner's consent; and
- (c) intending—
 - (i) to deprive the owner permanently of the property; or
 - (ii) to make a serious encroachment on the owner's proprietary rights.

Maximum penalty: Imprisonment for 10 years.

(2) A person intends to make a serious encroachment on an owner's proprietary rights if the person intends—

- (a) to treat the property as his or her own to dispose of regardless of the owner's rights; or
- (b) to deal with the property in a way that creates a substantial risk (of which the person is aware)—
 - (i) that the owner will not get it back; or
 - (ii) that, when the owner gets it back, its value will be substantially impaired.

(3) It is possible to commit theft as follows:

- (a) a person may commit theft of property that has come lawfully into his or her possession;

- (b) a person may commit theft of property by the misuse of powers that are vested in the person as agent or trustee or in some other capacity that allows the person to deal with the property.

Example—

Suppose that land is vested in a trustee in a fiduciary capacity. She is empowered under the instrument of trust to mortgage the land for the purposes of the trust. The trustee dishonestly mortgages the land as security for a personal liability that is unrelated to the trust. In this case, the trustee commits theft of the interest created by the mortgage.

(4) If a person honestly believes that he or she has acquired a good title to property, but it later appears that the title is defective because of a defect in the title of the transferor or for some other reason, the later retention of the property, or any later dealing with the property, by the person cannot amount to theft.

(5) Theft committed by receiving stolen property from another amounts to the offence of receiving but may be described either as theft or receiving in an instrument of charge and is, in any event, punishable as a species of theft.

(6) If a person is charged with receiving, the court may, if satisfied beyond reasonable doubt that the defendant is guilty of theft but not that the theft was committed by receiving stolen property from another, find the defendant guilty of theft.

Special provision with regard to land and fixtures

135. (1) A trespass to land, or other physical interference with land, cannot amount to theft of the land (even if it results in acquisition of the land by adverse possession).

(2) A thing attached to land, or forming part of land, can be stolen by severing it from the land.

General deficiency

136. (1) A person may be charged with, and convicted of, theft by reference to a general deficiency in money or other property.

(2) In such a case, it is not necessary to establish any particular act or acts of theft.

DIVISION 3—ROBBERY

Robbery

137. (1) A person who commits theft is guilty of robbery if—

- (a) the person—
- (i) uses force, or threatens to use force, against another in order to commit the theft; or
 - (ii) uses force, or threatens to use force, against another in order to escape from the scene of the offence; and
- (b) the force is used, or the threat is made, at the time of, or immediately before or after, the theft.

Maximum penalty: Imprisonment for 15 years.

- (2) A person who commits robbery is guilty of aggravated robbery if the person—
- (a) commits the robbery in company with one or more other persons; or
 - (b) has an offensive weapon with him or her when committing the robbery.

Maximum penalty: Imprisonment for life.

(3) If 2 or more persons jointly commit robbery in company, each is guilty of aggravated robbery.

Example—

Suppose that A and B plan to steal from a service station. A assaults the attendant while B takes money from the till. In this case, each is guilty of robbery on the principle enunciated by the High Court in *McAuliffe v R* ((1995) 183 CLR 108). Robbery committed in these circumstances is to be treated as aggravated robbery. In other words, the principle expressed in subsection (2)(a) applies irrespective of whether all elements of robbery can be established against a particular person.

DIVISION 4—MONEY LAUNDERING

Money laundering

138. (1) A person who engages, directly or indirectly, in a transaction involving property the person knows to be tainted property is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 20 years.

In the case of a body corporate—\$600 000.

(2) A person who engages, directly or indirectly, in a transaction involving tainted property in circumstances in which the person ought reasonably to know that the property is tainted is guilty of an offence.

Maximum penalty:

In the case of a natural person—Imprisonment for 4 years.

In the case of a body corporate—\$120 000.

(3) A **transaction** includes any of the following:

- (a) bringing property into the State;
- (b) receiving property;
- (c) being in possession of property;
- (d) concealing property;
- (e) disposing of property.

DIVISION 5—DECEPTION

Deception

139. A person who deceives another and, by doing so—

- (a) dishonestly benefits him/herself or a third person; or
- (b) dishonestly causes a detriment to the person subjected to the deception or a third person,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

DIVISION 6—DISHONEST DEALINGS WITH DOCUMENTS

Dishonest dealings with documents

140. (1) For the purposes of this section, a document is false if the document gives a misleading impression about—

- (a) the nature, validity or effect of the document; or
- (b) any fact (such as, for example, the identity, capacity or official position of an apparent signatory to the document) on which its validity or effect may be dependent; or
- (c) the existence or terms of a transaction to which the document appears to relate.

(2) A document that is a true copy of a document that is false under the criteria prescribed by subsection (1) is also false.

(3) A person engages in conduct to which this section applies if the person—

- (a) creates a document that is false; or
- (b) falsifies a document; or
- (c) has possession of a document knowing it to be false; or
- (d) produces, publishes or uses a document knowing it to be false; or
- (e) destroys, conceals or suppresses a document.

(4) A person is guilty of an offence if the person dishonestly engages in conduct to which this section applies intending—

- (a) one of the following:
 - (i) to deceive another, or people generally, or to facilitate deception of another, or people generally, by someone else;
 - (ii) to exploit the ignorance of another, or the ignorance of people generally, about the true state of affairs;
 - (iii) to manipulate a machine or to facilitate manipulation of a machine by someone else; and

- (b) by that means—
- (i) to benefit him/herself or another; or
 - (ii) to cause a detriment to another.

Maximum penalty: Imprisonment for 10 years.

(5) A person cannot be convicted of an offence against subsection (4) on the basis that the person has concealed or suppressed a document unless it is established that—

- (a) the person has taken some positive step to conceal or suppress the document; or
- (b) the person was under a duty to reveal the existence of the document and failed to comply with that duty; or
- (c) the person, knowing of the existence of the document, has responded dishonestly to inquiries directed at finding out whether the document, or a document of the relevant kind, exists.

(6) A person who has, in his or her possession, without lawful excuse, any article for creating a false document or for falsifying a document is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

DIVISION 7—DISHONEST MANIPULATION OF MACHINES

Dishonest manipulation of machines

141. (1) A person who dishonestly manipulates a machine in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

(2) A person who dishonestly takes advantage of the malfunction of a machine in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

DIVISION 8—DISHONEST EXPLOITATION OF ADVANTAGE**Dishonest exploitation of position of advantage**

142. (1) This section applies to the following advantages:

- (a) the advantage that a person who has no disability or is not so severely disabled has over a person who is subject to a mental or physical disability¹;
- (b) the advantage that one person has over another where they are both in a particular situation and one is familiar with local conditions while the other is not².

¹ Compare *R v Hinks* [2000] 4 All ER 833.

² Compare *R v Lawrence* [1972] AC 626.

(2) A person is guilty of an offence if the person dishonestly exploits an advantage to which this section applies in order to—

- (a) benefit him/herself or another; or
- (b) cause a detriment to another.

Maximum penalty: Imprisonment for 10 years.

DIVISION 9—MISCELLANEOUS OFFENCES OF DISHONESTY**Dishonest interference with merchandise**

143. A person who dishonestly interferes with merchandise, or a label attached to merchandise, so that the person or someone else can get the merchandise at a reduced price is guilty of an offence¹.

Maximum penalty: Imprisonment for 2 years.

¹ Compare *R v Morris* [1984] AC 320.

Making off without payment

144. (1) A person who, knowing that payment for goods or services is required or expected, dishonestly makes off intending to avoid payment is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) This section does not apply if the transaction for the supply of the goods or services is—

- (a) unlawful; or
- (b) unenforceable as contrary to public policy.

PART 6
SECRET COMMISSIONS

DIVISION 1—PRELIMINARY

Interpretation

145. (1) In this Part—

"benefit" includes an indirect benefit;

"indirect benefit"—a benefit given or offered by a person (A) to another person (B) is taken to be an indirect benefit to a third person (C) if it is given or offered with the intention of influencing C and C, knowing of A's intention, acquiesces in A's act;

"public agency" means—

- (a) the police force; or
- (b) a department or administrative unit of the public service; or
- (c) any other agency or instrumentality of the State; or
- (d) a body that is subject to control or direction by a Minister, agency or instrumentality of the State; or
- (e) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister, agency or instrumentality of the State; or
- (f) a local government body;

"public officer" means a member, officer or employee of a public agency.

(2) A person, who works for a public agency by agreement between the person's employer and the public agency or an authority responsible for staffing the public agency, is to be regarded, for the purposes of this Part, as an employee of the public agency.

DIVISION 2—UNLAWFUL BIAS IN COMMERCIAL RELATIONSHIPS

Fiduciaries

146. (1) For the purposes of this Part, a person is to be regarded as a fiduciary of another (the principal) if—

- (a) the person is an agent of the other (under an express or implied authority to act on behalf of the other); or
- (b) the person is an employee of the other; or
- (c) the person is a public officer and the other is the public agency of which the person is a member or for which the person acts; or

- (d) the person is a partner and the other is another partner in the same partnership; or
- (e) the person is an officer of a body corporate and the other is the body corporate; or
- (f) the person is a lawyer and the other is a client; or
- (g) the person is engaged on a commercial basis to provide advice or recommendations to the other on—
 - (i) investment; or
 - (ii) business management; or
 - (iii) the sale or purchase of a business or real or personal property; or
- (h) the person is engaged on a commercial basis to provide advice or recommendations to the other on any other subject and the terms or circumstances of the engagement are such that the other (that is, the principal) is reasonably entitled to expect—
 - (i) that the advice or recommendations will be disinterested; or
 - (ii) that, if a possible conflict of interest exists, it will be disclosed.

(2) A reference to a fiduciary extends to a person who is to become one.

Exercise of fiduciary functions

147. A fiduciary exercises a fiduciary function if the fiduciary—

- (a) exercises or intentionally refrains from exercising a power or function in the affairs of the principal; or
- (b) gives or intentionally refrains from giving advice, or makes or intentionally refrains from making a recommendation, to the principal; or
- (c) exercises an influence that the fiduciary has because of the fiduciary's position as such over the principal or in the affairs of the principal.

Unlawful bias

148. (1) A fiduciary exercises an unlawful bias if—

- (a) the fiduciary—
 - (i) has received or expects to receive a benefit from a third party for exercising a fiduciary function in a particular way; and
 - (ii) exercises a fiduciary function in the relevant way without appropriate disclosure of the benefit or expected benefit; and
- (b) the fiduciary's failure to make appropriate disclosure of the benefit or expected benefit is intentional or reckless.

(2) A fiduciary makes appropriate disclosure of a benefit or expected benefit if the fiduciary discloses to the principal—

- (a) the nature and value (or approximate value) of the benefit; and
- (b) the identity of the third party from whom the benefit has been, or is to be, received.

Offence for fiduciary to exercise unlawful bias

149. A fiduciary who exercises an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

Bribery

150. (1) A person who bribes a fiduciary to exercise an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(2) A person bribes a fiduciary to exercise an unlawful bias if the person—

- (a) gives or offers to give a benefit intending that the fiduciary will, in return for the benefit, exercise a fiduciary function in a particular way; and
- (b) knows or believes that the fiduciary will not make an appropriate disclosure of the benefit or expected benefit to the principal or is reckless as to whether or not the fiduciary will make such a disclosure.

(3) A fiduciary who accepts a bribe to exercise an unlawful bias is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

(4) A fiduciary accepts a bribe to exercise an unlawful bias if—

- (a) a person gives or offers to give a benefit intending that the fiduciary will, in return for the benefit, exercise a fiduciary function in a particular way; and
- (b) the fiduciary accepts the benefit or the offer—
 - (i) intending not to disclose the benefit or expected benefit to the principal; or
 - (ii) later forms the intention not to disclose it to the principal.

(5) This section applies even though the relevant fiduciary relationship had not been formed when the benefit was given or offered if, at the relevant time, the fiduciary and the person who gave or offered to give the benefit anticipated the formation of the relevant fiduciary relationship or the formation of fiduciary relationships of the relevant kind.

DIVISION 3—EXCLUSION OF DEFENCE

Exclusion of defence

151. It is not a defence to a charge of an offence against this Part to establish that the provision or acceptance of benefits of the kind to which the charge relates is customary in a trade or business in which the fiduciary or the person giving or offering the benefit was engaged.

Substitution of heading

5. The italicised heading immediately preceding section 167 of the principal Act is repealed and the following heading is substituted:

**PART 6A
SERIOUS CRIMINAL TRESPASS**

Amendment of s. 167—Sacrilige

6. Section 167 of the principal Act is amended by striking out "larceny" wherever it occurs in the note to that section and substituting, in each case, "theft".

Amendment of s. 168—Serious criminal trespass

7. Section 168 of the principal Act is amended by striking out "larceny" wherever it occurs in the note to that section and substituting, in each case, "theft".

Substitution of ss. 171 to 236

8. Sections 171 to 236 (inclusive) of the principal Act are repealed and the following Parts are substituted:

**PART 6B
BLACKMAIL**

Interpretation

171. (1) In this Part—

"demand" includes an implied demand;

"harm" means—

- (a) physical or mental harm (including humiliation or serious embarrassment); or
- (b) harm to a person's property (including economic harm);

"menace"—a person who makes a threat **menaces** the person to whom the threat is addressed (the **victim**) if—

- (a) the threat is a threat of harm to the victim or a third person (to be inflicted by the person making the threat or someone else); and
- (b) the threat is unwarranted; and

- (c) either—
- (i) the threat would be taken seriously by a reasonable person of normal stability and courage; or
 - (ii) the victim in fact takes the threat seriously because of a particular vulnerability known to the person making the threat;

"serious offence" means an offence punishable by imprisonment;

"threat" includes an implied threat but, unless the threat is a threat of violence, does not include a threat made in the course of, or incidentally to—

- (a) collective bargaining; or
- (b) negotiations to secure a political or industrial advantage;

"unwarranted"—a threat is unwarranted if—

- (a) the carrying out of the threat would (if it were carried out in the State) constitute a serious offence; or
- (b) the making of the threat is, in the circumstances in which it is made—
 - (i) improper according to the standards of ordinary people; and
 - (ii) known by the person making the threat to be improper according to the standards of ordinary people.

(2) The question whether a defendant's conduct was improper according to the standards of ordinary people is a question of fact to be decided according to the jury's own knowledge and experience and not on the basis of evidence of those standards.

Blackmail

172. (1) A person who menaces another intending to get the other to submit to a demand is guilty of blackmail.

Maximum penalty: Imprisonment for 15 years.

(2) The object of the demand is irrelevant.

Examples—

1. The person who makes the demand may be demanding marriage or access to children.
2. The person who makes the demand may be seeking to influence the performance of a public duty.

**PART 6C
PIRACY**

Interpretation

173. (1) A person commits an act of piracy if—

- (a) the person, acting without reasonable excuse, takes control of a ship, while it is in the course of a voyage, from the person lawfully in charge of it; or
- (b) the person, acting without reasonable excuse, commits an act of violence against the captain or a member of the crew of a ship, while it is in the course of a voyage, in order to take control of the ship from the person lawfully in charge of it; or
- (c) the person, acting without reasonable excuse, boards a ship, while it is in the course of a voyage, in order to—
 - (i) take control of the ship from the person lawfully in charge of it; or
 - (ii) endanger the ship; or
 - (iii) steal or damage the ship's cargo; or
- (d) the person boards a ship, while it is in the course of a voyage, in order to commit robbery or any other act of violence against a passenger or a member of the crew.

(2) A person takes control of a ship from another if the person compels the other to navigate the ship in accordance with the person's directions.

Piracy

174. A person who commits an act of piracy is guilty of an offence.

Maximum penalty: Imprisonment for life.

Amendment of s. 237—Definitions

9. Section 237 of the principal Act is amended by striking out the definition of "local government body".

Amendment of s. 269G—What happens if trial judge decides to proceed first with trial of objective elements of offence

10. Section 269G of the principal Act is amended—

- (a) by striking out from subsection A.(2) "record a finding that the defendant is" and substituting "find the defendant";
- (b) by striking out paragraph (a) of subsection B.(3) and substituting the following paragraph:
 - (a) if so—must declare that the defendant was mentally incompetent to commit the offence, find the defendant not guilty of the offence and declare the defendant to be liable to supervision under this Part;

- (c) by striking out from subsection B.(5)(b) "record a finding that the defendant is" and substituting "find the defendant".

Amendment of s. 269Y—Appeals

11. Section 269Y of the principal Act is amended by inserting after subsection (4) the following subsection:

- (5) On an appeal, the appellate court may exercise one or more of the following powers:
- (a) confirm, set aside, vary or reverse a decision of the court of trial;
 - (b) direct a retrial of the case or an issue arising in the case;
 - (c) make any finding or exercise any power that could have been made or exercised by the court of trial;
 - (d) make ancillary orders and directions.

Amendment of s. 270B—Assaults with intent

12. Section 270B of the principal Act is amended—

- (a) by inserting after subsection (3) the following subsection:

(4) This section applies to the following offences:

- (a) an offence against the person;
- (b) theft or an offence of which theft is an element;
- (c) an offence involving interference with, damage to, or destruction of property punishable by imprisonment for 3 years or more.;

- (b) by striking out the note to the section.

Insertion of Part 9 Div. 4

13. The following Division is inserted in Part 9 of the principal Act after section 270B:

DIVISION 4—PREPARATORY CONDUCT

Going equipped for commission of offence of dishonesty or offence against property

270C. (1) A person who is, in suspicious circumstances, in possession of an article intending to use it to commit an offence to which this section applies is guilty of an offence.

Maximum penalty—

- (a) if the maximum penalty for the intended offence is life imprisonment or imprisonment for 14 years or more—imprisonment for 7 years;
- (b) in any other case—imprisonment for one-half the maximum period of imprisonment fixed for the intended offence.

(2) This section applies to the following offences:

- (a) theft (or receiving) or an offence of which theft is an element;
- (b) an offence against Part 6A (Serious Criminal Trespass);
- (c) unlawfully driving, using or interfering with a motor vehicle;
- (d) an offence against Part 5 Division 6 (Dishonest Dealings with Documents);
- (e) an offence against Part 5 Division 7 (Dishonest Manipulation of Machines);
- (f) an offence involving interference with, damage to or destruction of property punishable by imprisonment for 3 years or more.

(3) A person is in **suspicious circumstances** if it can be reasonably inferred from the person's conduct or circumstances surrounding the person's conduct (or both) that the person—

- (a) is proceeding to the scene of a proposed offence; or
- (b) is keeping the scene of a proposed offence under surveillance; or
- (c) is in, or in the vicinity of, the scene of a proposed offence awaiting an opportunity to commit the offence.

Going equipped for commission of offence against the person

270D. (1) A person who is armed, at night, with a dangerous or offensive weapon intending to use the weapon to commit an offence against the person is guilty of an offence.

(2) The maximum penalty for an offence against this section is—

- (a) if the offender has been previously convicted of an offence against the person or an offence against this section (or a corresponding previous enactment)—imprisonment for 10 years;
- (b) in any other case—imprisonment for 7 years.

Amendment of s. 271—General power of arrest

14. Section 271 of the principal Act is amended by striking out from subsection (3)(b) "larceny" twice occurring and substituting, in each case, "theft".

Repeal of ss. 317 and 318

15. Sections 317 and 318 of the principal Act are repealed.

Insertion of Part 9 Div. 15

16. The following Division is inserted in Part 9 of the principal Act after section 329:

DIVISION 15—OVERLAPPING OFFENCES

Overlapping offences

330. No objection to a charge or a conviction can be made on the ground that the defendant might, on the same facts, have been charged with, or convicted of, some other offence.

Amendment of s. 354—Powers of Court in special cases

17. Section 354 of the principal Act is amended by striking out subsection (4).

Insertion of Part 12

18. The following Part is inserted after section 369 of the principal Act:

**PART 12
REGULATIONS**

Regulations

370. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.

Further amendments of principal Act and related amendments to other Acts

19. (1) The principal Act is further amended as set out in Schedule 2.

(2) Schedule 3 provides for related amendments to other Acts.

SCHEDULE 1

Repeal and Transitional Provisions

Repeal of Secret Commissions Prohibition Act 1920

1. The *Secret Commissions Prohibition Act 1920* is repealed.

Transitional provision

2. (1) The principal Act as in force before the commencement of this Act applies to offences committed before the commencement of this Act.

(2) The principal Act as amended by this Act applies to offences committed on or after the commencement of this Act.

SCHEDULE 2

Further Amendment of Criminal Law Consolidation Act 1935

Provision Amended	How Amended
Italicised heading immediately before section 11	Strike out this heading and substitute: DIVISION 1—HOMICIDE
Immediately after section 13A	Insert: DIVISION 2—DEFENCE OF LIFE AND PROPERTY
Immediately before section 16	Insert: DIVISION 3—MISCELLANEOUS
Italicised heading immediately before section 19	Strike out this heading and substitute: DIVISION 4—UNLAWFUL THREATS
Italicised heading immediately before section 19AA	Strike out this heading and substitute: DIVISION 5—STALKING
Italicised heading immediately before section 19A	Strike out this heading and substitute: DIVISION 6—DEATH AND INJURY ARISING FROM RECKLESS DRIVING, ETC.
Italicised heading immediately before section 20	Strike out this heading and substitute: DIVISION 7—ACTS CAUSING OR INTENDED TO CAUSE DANGER TO LIFE OR BODILY HARM, ETC.
Italicised heading immediately before section 33	Strike out this heading and substitute: DIVISION 8—FEMALE GENITAL MUTILATION
Section 33(1)	Strike out "(ss. 33 - 33B)"
Italicised heading immediately before section 39	Strike out this heading and substitute: DIVISION 9—ASSAULTS
Italicised heading immediately before section 47A	Strike out this heading and substitute: DIVISION 10—THREATENING ANOTHER PERSON WITH FIREARM
Italicised heading immediately before section 48	Strike out this heading and substitute: DIVISION 11—RAPE AND OTHER SEXUAL OFFENCES
Italicised heading immediately before section 65A	Strike out this heading and substitute: DIVISION 12—COMMERCIAL SEXUAL SERVICES AND RELATED OFFENCES
Section 65A(1)	Strike out "(ie sections 65A to 68)"
Italicised heading immediately before section 68A	Strike out this heading and substitute: DIVISION 13—MISCELLANEOUS SEXUAL OFFENCES
Italicised heading immediately after section 72	Strike out this heading and substitute: DIVISION 14—PROCEDURE IN SEXUAL OFFENCES
Italicised heading immediately before section 78	Strike out this heading and substitute: DIVISION 15—BIGAMY
Italicised heading immediately before section 80	Strike out this heading and substitute: DIVISION 16—ABDUCTION OF CHILDREN
Italicised heading immediately before section 81	Strike out this heading and substitute: DIVISION 17—ABORTION

Italicised heading immediately before section 83	Strike out this heading and substitute: DIVISION 18—CONCEALMENT OF BIRTH
Italicised heading immediately before section 270	Strike out this heading and substitute: DIVISION 1—PUNISHMENT FOR CERTAIN COMMON LAW OFFENCES
Italicised heading immediately before section 270A	Strike out this heading and substitute: DIVISION 2—ATTEMPTS
Italicised heading immediately before section 270B	Strike out this heading and substitute: DIVISION 3—ASSAULTS WITH INTENT
Italicised heading immediately before section 271	Strike out this heading and substitute: DIVISION 5—APPREHENSION OF OFFENDERS
Italicised heading immediately before section 274	Strike out this heading and substitute: DIVISION 6—INFORMATIONS
Italicised heading immediately following section 281	Strike out the heading <i>Change of Forum</i>
Italicised heading immediately before section 282	Strike out this heading and substitute: DIVISION 7—SAVING AND TRANSITIONAL PROVISIONS
Italicised heading immediately before section 284	Strike out this heading and substitute: DIVISION 8—PLEAS AND PROCEEDINGS ON TRIAL
Italicised heading immediately before section 291	Strike out this heading and substitute: DIVISION 9—PROCEEDINGS AGAINST CORPORATIONS
Italicised heading immediately before section 294	Strike out this heading and substitute: DIVISION 10—VERDICTS AND ABOLITION OF FORFEITURE, ETC.
Italicised heading immediately before section 297	Strike out this heading and substitute: DIVISION 11—COSTS, WITNESS FEES AND COMPENSATION
Italicised heading immediately before section 299A	Strike out this heading and substitute: DIVISION 12—ORDERS RELATING TO FIREARMS AND OTHER OFFENSIVE WEAPONS
Italicised heading next after section 299A	Strike out the heading <i>Harbouring Thieves</i>
Italicised heading immediately before section 328A	Strike out this heading and substitute: DIVISION 13—ABOLITION OF PRESUMPTION OF MARITAL COERCION
Part 9 new Division heading	Insert in Part 9 immediately before section 329: DIVISION 14—PROVISION AS TO PERSONS CONVICTED OF OFFENCE
Part 11 new Division heading	Insert in Part 11 immediately before section 348: DIVISION 1—PRELIMINARY
Italicised heading immediately before section 350	Strike out this heading and substitute: DIVISION 2—REFERENCE OF QUESTIONS OF LAW
Italicised heading immediately before section 352	Strike out this heading and substitute: DIVISION 3—APPEALS

*Italicised heading immediately
before section 357*

Strike out the heading *Procedure*.

*Italicised heading immediately
before section 369*

Strike out this heading and substitute:
**DIVISION 5—REFERENCES ON PETITIONS FOR
MERCY**

Schedule 3
Appendix to Rules

Strike out this Appendix.

SCHEDULE 3

*Related Amendments to Other Acts***Amendments to Criminal Assets Confiscation Act 1996**

1. The *Criminal Assets Confiscation Act 1996* is amended—

- (a) by striking out from subparagraph (vi) of the definition of "local forfeiture offence" in section 3 ", 37, 38 ";
- (b) by striking out from the definition of "money laundering offence" in section 3 "section 211A" and substituting "Part 5 Division 4".

Amendments to Criminal Law (Sentencing) Act 1988

2. The *Criminal Law (Sentencing) Act 1988* is amended—

- (a) by striking out from section 22(1) the entry relating to Class 5 and substituting the following entry:
Class 5: Part 5—Offences of Dishonesty;
- (b) by striking out from section 22(1) the entry relating to Class 7;
- (c) by striking out from section 22(1) "(Classes 1 to 7 refer to offences under the *Criminal Law Consolidation Act 1935*)" and substituting "(Classes 1 to 6 refer to offences under the *Criminal Law Consolidation Act 1935*)";
- (d) by striking out from section 22(2)(b) ", 7".

Amendment to Criminal Law (Undercover Operations) Act 1995

3. The *Criminal Law (Undercover Operations) Act 1995* is amended by striking out paragraph (g) from the definition of "serious criminal behaviour" in section 2.

Amendment to Financial Transaction Reports (State Provisions) Act 1992

4. The *Financial Transaction Reports (State Provisions) Act 1992* is amended—

- (a) by striking out from section 5(2)(b) "*Crimes (Confiscation of Profits) Act 1986*" and substituting "*Criminal Assets Confiscation Act 1996*";
- (b) by striking out from section 6(1)(b) "*Crimes (Confiscation of Profits) Act 1986*" and substituting "*Criminal Assets Confiscation Act 1996*";
- (c) by striking out from section 6(7)(b) "*Crimes (Confiscation of Profits) Act 1986*" and substituting "*Criminal Assets Confiscation Act 1996*";
- (d) by striking out from section 7(2) "section 10b of the *Crimes (Confiscation of Profits) Act 1986*" and substituting "section 138 of the *Criminal Law Consolidation Act 1935*".

Amendment to Kidnapping Act 1960

5. The *Kidnapping Act 1960* is amended by striking out section 3.

Amendment of Road Traffic Act 1961

6. The *Road Traffic Act 1961* is amended by striking out from section 44A "fraud or" and substituting "dishonest".

Amendments to Shop Theft (Alternative Enforcement) Act 2000

7. The *Shop Theft (Alternative Enforcement) Act 2000* is amended—

- (a) by striking out from the definition of "minor shop theft" in section 3(1) "larceny" and substituting "theft";

- (b) by striking out from section 3(2) "larceny" wherever occurring and substituting, in each case, "theft";
- (c) by striking out from section 4(1) "larceny" wherever occurring and substituting, in each case, "theft";
- (d) by striking out from section 7 "larceny" and substituting "theft";
- (e) by striking out from section 13 "larceny" and substituting "theft";
- (f) by striking out from section 14 "larceny" and substituting "theft".

Amendments to Summary Offences Act 1953

8. The *Summary Offences Act 1953* is amended—

- (a) by repealing sections 11, 37, 38 and 42;
- (b) by inserting after section 48 the following section:

Advertising rewards for the return of property stolen or lost

48A. Where a person publicly advertises a reward for the return of any property that has been stolen or lost and by that advertisement indicates—

- (a) that no questions will be asked of the person returning the property; or
- (b) that the person returning the property will be safe from apprehension or investigation; or
- (c) that money paid for the purchase of the property or advanced by way of loan on the property will be repaid,

the person, and any person who prints or publishes the advertisement, is guilty of an offence.

Maximum penalty: \$500.

Amendments to Summary Procedure Act 1921

9. The *Summary Procedure Act 1921* is amended—

- (a) by striking out from section 4(1) the definitions of "schedule 3 offence" and "schedule 4 offence";
- (b) by striking out from section 5(2)(c) "a schedule 3 offence" and substituting "an offence against Part 5 of the *Criminal Law Consolidation Act 1935*";
- (c) by striking out from section 5(3)(a)(iii) the first subparagraph (relating to a schedule 3 or schedule 4 offence);
- (d) by inserting in section 5(3)(a)(iii) after the subparagraph relating to an offence against section 56 of the *Criminal Law Consolidation Act 1935* the following subparagraph:
 - an offence (not being an offence of violence) against Part 5 of the *Criminal Law Consolidation Act 1935* involving \$30 000 or less;
- (e) by striking out from section 5(3)(a)(iii) the last subparagraph (relating to an offence against section 171 of the *Criminal Law Consolidation Act 1935*);

(f) by inserting after subsection (3) of section 5 the following subsection:

(3a) For the purposes of the above classifications, an offence against Part 5 of the *Criminal Law Consolidation Act 1935* includes—

- (a) an offence of attempting to commit such an offence; or
- (b) an offence of aiding, abetting, counselling or procuring such an offence; or
- (c) an offence of conspiring to commit such an offence; or
- (d) an offence of being an accessory after the fact to such an offence.;

(g) by striking out schedules 3 and 4.