

## INDEX

- abandoned property, 504, 544
- abhorrent violent material online, 775
- accessorial liability, 806–15
  - aiding and abetting, 806, 807
  - counselling, 806
  - mental elements of, 809–10
  - presence of accessory and, 806–9
  - procuring, 806
  - withdrawal, 815–16
- accessory after the fact, 835–7
- accountability and denunciation, 4
- acting in concert, *see* joint criminal enterprise
- actual bodily harm, 234, 238
- actus reus*, 23, 24, 37, 41, 42, 46, 48, 281, 286, 311, 800
  - of incitement, 804
  - voluntariness and, 24–7, 38, 342
- actus reus* of burglary
  - entry as a trespasser, 529–31
  - role of consent, 531–4
- actus reus* of larceny
  - abandoned property, 544
  - larceny by finding, 544–5
  - larceny by mistake, 545–8
  - property already stolen, 548
  - property capable of being stolen, 540
  - taken and carried away, 539
  - without consent of the owner, 541–4
- actus reus* of murder, 339
  - causation, 344–9
  - death of a human being, 339–42
  - omission, 349
  - voluntariness, 342–4
- actus reus* of theft
  - abandoned property, 504
  - appropriation, *see* appropriation
  - 'belonging to another', 500–1
  - property and, 495–500
  - property belonging to another, 494
  - property held under an obligation, 502–3
  - property subject to a restoration obligation, 504
  - special circumstances of 'belonging to another', 501–2
- admixtures, 585–7
- affray, 179, 182–3, 254–5
  - elements differing affray from riot, 182
- age of consent, 314–18
  - prostitution and, 186–7
- aggravated offences, 535–6
  - aggravated burglary, 536
  - armed robbery, 535
  - firearm and offensive weapon offences, *see* firearm and offensive weapon offences
  - online child pornography, 767
  - sexual offences, 308
- aiding and abetting, 806, 807
- alcohol, prescribed concentration of, 205
- analogues of prohibited drugs, 585
- appeals
  - conviction appeals against guilty verdict, 101–2
  - High Court of Australia, 100
  - remedy given by statute, 100–1
  - types of, 102–3
- appellate review, common law principles
  - governing, 119–20
- apprehended violence orders, 265
- appropriation, 505–6
  - consent and, 506–13
  - innocent acquisition of property and, 513
- armed robbery, 535
- arrest, 60–3
  - action of 'last resort', 63–8
  - Evidence Acts and, 69–72
  - investigation period, 72–3
  - justifying criteria, 63
  - prescribed period of detention, 73–6
  - under a warrant, 63
  - use of force in, 68–9
- assault, 146
  - causing death, 396–400
  - common assault, 220
  - common law concept of, 219–20
  - consent to physical harm and, *see* consent to physical harm
  - contact assaults, *see* contact assaults
  - mental element of, *see* mental element of assault
  - physical element of, *see* physical element of assault
  - sexual assault, 309
  - with intent to have sexual intercourse, 308–9
- attempt, 779, 780–1
  - conduct elements of, 781–5
  - mental element of, 785–8
  - offences of strict or absolute liability, 787
  - preparatory offences, 788–9
  - proximity test, 782
  - sexual assault and, 787–8
- Australian Bureau of Statistics
  - Crime Victimisation Survey, 275
  - Personal Safety Survey, 275
- Australian Crime Commission, 78

- Australian Criminal Intelligence Commission, 60
- Australian Defence Intelligence Organisation, 687
- Australian Design Rules, 200
- Australian Federal Police, 652
  - AFP Code of Conduct, 54
- Australian Institute of Criminology, 493
- Australian National Victim Image Library scale, 754
- Australian Road Rules, 189
  - definition of road, 192
  - definition of speeding, 203
  - mobile phone use while driving, 208
- Australian Security Intelligence Organisation, 687
- Australian Signals Directorate, 687
- automatism, 439–44
- bail, 78
  - bail conditions, 81–2
  - bail reform, 84–7
  - determination of, 78
  - general considerations for, 78–9
  - police bail, 83
  - thresholds and presumptions against, 79–81
- battery, *see* assault
- behaviour, offensive, *see* offensive behaviour
- belief and knowledge about consent, 297
  - knowledge, 302
  - legislative deeming provisions, 302–3
  - reasonable belief, 297–300
  - recklessness and, 300–2
- beyond reasonable doubt, 15
  - jurors' understanding of, 15–16
- bike paths, 192
- binding over order, 137
- body modification
  - consent to physical harm and, 251–2
  - minors, 251
- body piercing, 251, 252
- boxing, 247–50
- breach of peace, 136–8
- breaking and entering, 558
  - breaking, 558
  - entering, 558–9
  - implements of housebreaking, 560
  - sentencing for, 559–60
- burden of proof, 14–16
- Bureau of Crime Statistics and Research (NSW), 15, 219, 260
- burglary, 528–9
  - actus reus* of, *see actus reus* of burglary
  - aggravated burglary, 536
  - intention to steal or commit a prescribed offence, 535
  - of any building or part of a building, 534
- carnal knowledge, inadequacy of common law
  - definition, 278–9
- carriage service, meaning of, 766–7
- Cartesian dualism, 23
- causation, 31
  - 'but for' causation, 31–2
  - as element of fraud offences, 554
  - establishing legal causation, 32–4
  - external events or natural forces, 35–6
  - legal tests in homicide, 349
  - murder and, 344–9
  - third party intervention, 34–5
  - victim intervention, 34
- caution, *see* right to silence and caution
- chalk marking, 177
- cheques, bank deposits and electronic funds
  - transfer, 495–500
- child, definition, 741, 755
- child abuse material, 756
- child exploitation, 741–6
- child pornography, 753–5, 756
  - assessing offensiveness, 756–62
  - Australian National Victim Image Library scale, 754
  - distinction between abuse material and, 756
  - meaning of 'child', 755
  - offences outside Australia, 772–3
  - Oliver Scale, 754
  - online offences, *see* online child pornography
  - private sexual content and the age of subjects, 762–3
- child prostitution, 185, 186, 187
- children
  - corporal punishment of, 266–8
  - criminal liability, 17–18
  - drug supply and trafficking offences and, 615–17
  - schools and other institutions acting *in loco parentis* and, 268–9
  - sexual offences against, *see* sexual offences against children
  - violence and, 266
  - see also* minors
- circumstances vitiating consent to sexual intercourse, 290
- incapacity, 291–2
- intoxication of the complainant, 292
- mistake, 292–5
- threats and submissions, 290–1
- Combating Paedophile Information Networks in Europe, 754
- committal, 93–4
- common purpose, *see* joint criminal enterprise
- Commonwealth Director of Public Prosecutions, 95, 652

- Commonwealth land, 656–7
- Commonwealth Sentencing Database, 117
- complicity, 780
  - accessory after the fact, 835–7
  - innocent agency, *see* innocent agency
  - joint criminal enterprise, *see* joint criminal enterprise
  - primary and derivative liability, 805
- components of mental impairment (Victoria), 432–3
  - knowledge element, 433
  - knowledge that the conduct is wrong, 436
  - nature and quality of conduct, 433–6
- computer, definition, 748
- conduct element of murder, *see actus reus* of murder
- conduct on the road, 203
  - drink driving, 204–5
  - drug driving, 205
  - speeding, 203–4
- confidential information, 495
- consent
  - appropriation and, 505–6
  - belief and knowledge about, *see* belief and knowledge about consent
  - burglary and, 531–4
  - circumstances vitiating, *see* circumstances vitiating consent to sexual intercourse
  - dishonesty and, 517
  - informed consent, 251
  - rape and, *see* rape
- consent to physical harm, 245–7
  - body modification, 251–2
  - medical procedures, 250–1
  - sports violence, 247–50
- conspiracy, 779–80, 789–90
  - construction of at common law, *see* construction of conspiracy at common law
  - sources of offences, *see* sources of conspiracy offences
  - unlawful act and factual impossibility, 800–2
- Constitution*
  - drug offences and, 579–80
  - role of in criminal law, 652–5
- constitutional law, drug offences and, 579–80
- construction of conspiracy at common law, 795–6
  - agreement, 796–8
  - conspiracy of one, 799–800
- constructive murder, 360–3
- contact assault offences, 236
  - offences causing significant harm, 238
  - offences of serious harm, *see* offences of serious harm
- contact assaults, 233
  - criticisms of particularism, 243
  - female genital mutilation, 243–5
  - levels of harm in, *see* levels of harm in contact assaults
  - non-fatal strangulation, 245
  - offences categorised by degrees of harm, *see* contact assault offences
  - use of a weapon, 241
  - vulnerable victims, 241–3
- continuing detention, 690–2
- control orders, 688–9
- core sources of drug offences law, 579
  - Commonwealth law, 579–80, 581
  - international law, 580–1
  - state law, 581
  - state/federal overlap, 582
- corporal punishment of children, 266–8
- corporate criminal liability, 20
  - doctrine of identification, 21–3
  - vicarious liability, 21
- court attendance notice, 63
- Court of Arbitration for Sport, Essendon Football Club case, 645
- crime commissions, 78
- criminal associations and organisations, 698–9
  - associating in support of serious organised criminal activity, 699–704
  - committing an offence for the benefit, or under direction, 706–9
  - directing a criminal organisation, 709–12
  - state laws concerned with, *see* state laws concerned with criminal associations and organisations
  - supporting a criminal organisation, 704–5
- Criminal Justice Sexual Offences Taskforce (NSW), 277, 295
- criminal law
  - categories of offences in, 129–30
  - criminal liability, *see* criminal liability
  - domestic violence and, 261–4
  - limits of, *see* limits of the criminal law
  - procedural criminal law, 2
  - purposes of, *see* purposes of the criminal law
  - role of Commonwealth in, *see* role of the Commonwealth in criminal law
  - sex and, 274–8
  - sources of, *see* sources of criminal law
  - substantive criminal law, *see* substantive criminal law
- criminal liability, 17
  - children, 17–18
  - corporations, *see* corporate criminal liability
  - mental impairment and, 19–20
- criminal negligence
  - general, 376–8
  - specific requirements of category from case law, 378–89

- wicked negligence, 382
- criminal procedure
  - bail, *see* bail
  - committal, 93–4
  - legal representation, *see* legal representation
  - preliminary hearings, 94
  - pre-trial procedures, *see* pre-trial procedures
  - right to silence and caution, *see* right to silence and caution
  - sentencing, *see* sentencing
  - trial procedures, *see* trial procedures
- criminal proceedings
  - modes of criminal trial process, 127
  - sites of, 128
- criminal responsibility, 14
  - burden of proof, 14–16
  - complicity, *see* complicity
  - defences, *see* defences
  - elements of crime, *see* elements of crime
  - inchoate offences, *see* inchoate offences
- Cronulla riots, 243
- culpable or dangerous driving causing death, 402–8
- cultivation of prohibited plants, 628–9
  - Australian Capital Territory, 630
  - Commonwealth, 630–1
  - elements of cultivation offences, 631–6
  - New South Wales, 631
  - Victoria, 631
- cybercrime, 746–7
  - categories of, 747
  - hacking and other online interference, *see* hacking and other online interference
- damage to property, 170
  - definition of property, 172
  - graffiti, 177–9
  - scope and meaning of ‘damage’, 172–9
- dangerous act, manslaughter by, 372–6
- dangerous conduct causing death, 414
- dangerous or culpable driving causing death, 402–8
- data, unauthorised modification of, 749
- debt bondage, 726
- deception, 553–4
  - obtaining by, 522–4
- defence of insanity, *see* insanity defence
- defences, 46, 421–2
  - automatism, 439–44
  - conceptualising and classifying, 48
  - diminished responsibility, 444–6
  - factors in legitimate defences, 46–8
  - importance of, 421–2
  - infanticide, 454–5
  - intoxication, *see* intoxication as a defence
  - justifications and excuses, 48–9
  - mental state defences, *see* mental state defences
  - defences
    - mistake of fact, 45–6
    - provocation, *see* provocation
    - self-help defences, *see* self-help defences
- defendants, right to give evidence, 99
- defined substances, 583–5
- detention
  - continuing, 690–2
  - prescribed period of, 73–6
  - preventative, 689–90
- deterrence, 4
- diminished responsibility, 444–6
- dishonesty, 40–1, 516
  - belief in legal right, 516–17
  - belief that owner cannot be found, 517
  - consent and, 517
  - conspiracy to defraud, 524–5
  - as element of fraud offences, 554–5
  - special meaning of, 517–20
  - willingness to pay and, 517
- doctrine of identification, 21–3
- doli incapax*, 17–18, 50, 178
- domestic relationship, definition, 264
- domestic violence, 259–60
  - criminal law and, 261–4
  - forms of, 260–1
- domestic violence order, definition, 263–4
- drink driving, 204–5
  - detection, 205–7
  - legal consequences of, 207
  - prescribed concentration of alcohol, 205
- drink and drug driving, 207–8
- driver
  - licensing, 197
  - traffic offences and, 194–5
- drug driving, 205
  - detection, 205–7
- drug offences
  - core sources of law, *see* core sources of drug offences law
  - cultivation, *see* cultivation of prohibited plants
  - drug offence classification, 571–2
  - drug precursors and, *see* drug precursors
  - hierarchy of offences, 575–8
  - importation, 636–44
  - manufacture of drugs, *see* manufacture of drugs offences
  - policy context, 572–4
  - possession, *see* possession
  - problem of terminology, 566–8
  - prohibited drugs, *see* prohibited drugs
  - steroids, 644–5
  - supply and trafficking, *see* supply and trafficking of drugs

- drug precursors, 589
- drug use, prevalence of in Australia, 568–71
- Drug Use Monitoring in Australia Project, 568
- drugs, prohibited, *see* prohibited drugs
- duress, 474–7
- duty to act
  - assuming a duty to act, 28–31
  - duty arising through relationship to victim, 27–8
  - situations where duty arises, 27
- egg-shell skull rule, 346, 347
- electronic communication, unauthorised
  - impairment of, 749–50
- electronic funds transfer, cheques and bank deposits, 495–500
- Electronic Recording of Interviews with Suspected Persons (NSW), 54
- elements of crime, 23–4
  - contemporaneity of physical and fault elements, 41–2
  - fault element, *see mens rea*
  - physical elements, *see* physical elements of crime
  - strict and absolute liability offences, 42–5
- elements of fraud offences
  - causation, 554
  - deception, 553–4
  - dishonesty, 554–5
  - obtaining property, financial advantage or causing financial disadvantage, 554
- empanelment, 98
- English Criminal Law Review Committee, 492
- euthanasia, 7
  - voluntary, *see* voluntary assisted dying
- extended geographic jurisdiction, 657–8
  - Category A, 658
  - Category B, 658, 728
  - Category C, 658, 698
  - Category D, 658–9, 726
- extended joint criminal enterprise, 817–25
- extreme provocation, 12
- fair trial, right to, 87–91
- family violence, *see* domestic violence
- federal geographic jurisdiction, 655–6
  - Commonwealth land, 656–7
  - extended geographic jurisdiction, *see* extended geographic jurisdiction
  - standard geographic jurisdiction, 657
- federal law
  - main sources of, 661–2
  - principles of federal liability, *see* principles of federal liability
- federal offences
  - child pornography, *see* child pornography
  - cybercrime, *see* cybercrime
  - offences against humanity, *see* offences against humanity
  - organised crime, *see* organised crime
  - outlawed motorcycle gangs, 720
  - terrorism, *see* terrorism
- female genital mutilation, 243–5, 246
- fighting, 184
- financial advantage, 524
- firearm and offensive weapon offences, 536–7
- foetal personhood, 236
- foetus
  - destruction of, 236
  - treatment of at law, 341
- force and/or fear of force in robbery, 526–7
  - immediately before or at time of committing theft, 528
  - intention to use force or threat of force in order to steal, 528
- forced labour, 726, 728
- forced marriage, 726, 728
- forced servitude, 726, 728
- fraud offences, 552
  - elements of, *see* elements of fraud offences
  - financial advantage, 524
  - general dishonesty and conspiracy to defraud, 524–5
  - obtaining by deception, 522–4
  - obtaining property and financial advantage by deception, 521–2
- freedom of speech and expression, 156–61
- Ghosh* test, 41
- Global Slavery Index, 721
- graffiti, 177–9
- grievous bodily harm, 235, 239–41, 254, 349, 354, 356
  - dangerous driving causing, 405–6
  - intention to commit, 354–5
- grooming, online child pornography and, 768–71
- guilty plea, sentencing discount for, 114–15
- guilty verdict, conviction appeals against, 101–2
- hacking and other online interference, 747–8
  - ‘computer’ and, 748
  - Division 478 offences, 750–3
  - unauthorised access, modification or impairment, 748–9
  - unauthorised impairment of electronic communication, 749–50
  - unauthorised modification of data to cause impairment, 749
- harm
  - recognition of, 4
  - serious harm, *see* offences of serious harm
  - significant harm, 234–5, 238

- harm principle, 5–6
- High Court of Australia, 100
- hindsight bias, 39
- homicide, 330–3
  - hierarchy of seriousness, 331–3
  - legal tests in, 349
- homosexual conduct, 7
- housebreaking implements, 560
- human organs, trafficking in, 738
- hybrid offences, 129–30
  
- importation of drugs, 636–44
- in loco parentis*, 266, 267
  - schools and, 268–9
- incapacitation, 4
- incapacity
  - consent to sexual intercourse and, 291–2
  - mental incapacity, 19
- incest between consenting parties, 322–3
- incitement, 780, 802–5
- inchoate offences, 779
  - attempt, *see* attempt
  - conspiracy, *see* conspiracy
  - incitement, *see* incitement
- indictable offences, 129
  - distinction between summary offences, 128
- indictable and summary disposal, 665–6
- individualised justice, 109–10
- industrial manslaughter, 390–4
- infanticide, 408–10
  - defence of, 454–5
- informed consent, 251
- infringement notices, 134–5
  - features of, 135
- innocent agency, 834–5
  - commission by proxy, 834
- insanity defence, 19, 48, 422–4
  - availability of, 423
  - elements of in Australian Capital Territory, 436–9
  - elements of in New South Wales, 425–31
  - elements of in Victoria, 432
  - operation of at time of conduct, 423–4
  - rationales for, 422–3
  - test for insanity, 423
- instinctive synthesis approach to sentencing, 107–9
  - individualised justice and, 109–10
- intention, 38
- intention to commit grievous bodily harm, 354–5
- intention to kill, 350–4
- international law, drug offences law and, 580–1
- intervention
  - external events or natural forces, 35–6
  - third party intervention, 34–5
  - victim intervention, 34
- intimate partner violence, *see* domestic violence
- intoxication
  - consent to sexual intercourse and, 292
  - of the accused, 303–4
- intoxication as a defence, 455
  - New South Wales and Australian Capital Territory, 456
  - relevance to fault element, 457–64
  - relevance to voluntariness, 457
  - Victoria, 456–7
- investigation and evidence gathering
  - forensic procedures, 59–60
  - powers to enter and to stop and search, 56–9
  - questioning suspects, 56
- investigation period, 72–3
- safeguards in, 73
- involuntary manslaughter
  - criminal negligence, *see* criminal negligence
  - industrial manslaughter, 390–4
- Islamic State, 674, 680
  
- joint criminal enterprise, 817–25
  - extended joint criminal enterprise, 825–33
  - joint principals, 816–17
  - presence and, 823–4
  - reform of, 833–4
- judicial conduct, 96
- judicial impartiality, 96
- judicial responsibility, 96–7
- judicial role, 96
- juries
  - responsibilities of, 99
  - trial procedures and, 97–8
- jury directions, trials of rape, 304–8
  
- knowledge, 40
  
- larceny, 538–9
  - actus reus* of, *see actus rea* of larceny
  - in possession of another, 540–1
  - mens rea* of, *see mens rea* of larceny
- larceny by bailee, 551–2
  - elements of, 551
- law enforcement agencies, 54, 258, 651, 656, 686, 687, 719
- legal aid, 92
- legal representation, 87
  - fair trial, 87–91
  - legal aid, 92
- levels of harm in contact assaults, 233
  - serious harm, 235–6
  - significant harm, 234–5
  - wounding, 236
- liability offences, strict and absolute, 42–5

- limits of the criminal law, 4–5
  - constructing criminal law, 9–10
  - harm principle, 5–6
  - parsimony principle, 8–9
  - political nature of criminal law, 7–8
  - regulation of public morality, 6–7
- Magistrates Court, 93
- manslaughter, involuntary manslaughter,
  - see* involuntary manslaughter
- manslaughter by unlawful and dangerous acts
  - dangerous act, 372–6
  - elements of, 364
  - general, 364–7
  - unlawful act, 367–71
- manufacture of drugs offences, 622
  - Australian Capital Territory, 622–4
  - Commonwealth, 624
  - elements of, 625–8
  - New South Wales, 624–5
  - Victoria, 625
- medical procedures, consent to physical harm
  - and, 250–1
- mens rea*, 20, 23, 37, 41, 42, 43–4, 45, 46, 48,
  - 132, 281, 286, 297, 301, 311
  - dishonesty and, 40–1
  - intention and, 38
  - knowledge and, 40
  - negligence and, 39–40
  - of incitement, 804
  - offensive behaviour and, 167–70
  - recklessness and, 38–9
  - subjective or objective appraisals, 38
- mens rea* of larceny
  - claim of right, 549–50
  - fraudulently, 551
  - intention to permanently deprive owner, 549
  - larceny by bailee, 551–2
- mens rea* of murder, 349–50
  - intention to inflict grievous bodily harm, 354–5
  - intention to kill, 350–4
  - oblique intention to kill, 352
  - reckless indifference to human life, 355–60
- mens rea* of theft, 513
  - conditional intent, 515–16
  - dishonesty, *see* dishonesty
  - intention to permanently deprive, 514–15
- mental element of assault, 230–1
  - potential over-inclusion of assault definition
    - and, 231–2
- mental impairment, criminal liability and, 19–20
- mental impairment defence (Victoria), 484
  - components of, *see* components of mental impairment (Victoria)
  - raising of, 432
- mental state defences
  - insanity defence, *see* insanity defence
  - substantial defences by abnormality of mind,
    - 48
  - substantial impairment by abnormality of
    - mind, 19, 332
- Mill, John Stuart, 5
- minors
  - body modification and, 251
  - tattooing of, 252
  - see also* children
- M'Naghten Rules*, 423, 425, 436
- mobile phone use while driving, 208–9
  - Australian Road Rule, 208
- Model Criminal Code, 11, 13, 24, 603
- Model Criminal Code Officers Committee, 219,
  - 239, 243, 414, 748
- Model Criminal Law Officers Committee, 13
- moral panics, 219
- motive, 38
- motor vehicle defects, 200–3
- motorcycle gangs, outlawed, 720
- murder
  - causation and, 344–9
  - child 'born alive' and, 341–2
  - constructive murder, 360–3
  - contemporary context and incidence of,
    - 333–6
  - omission and, 349
  - substantive law of, 336–9
  - voluntariness and, 342–4
  - where body not found, 340–1
- necessity, 477–84
  - law of, 485–6
- negligence, 39–40
- negligent driving, 209–12
- New South Wales Crime Commission, 78
- New South Wales Law Reform Commission
  - bail recommendation, 86
  - cognitive and mental impairment
    - recommendations, 430–1
  - corporate criminal liability and, 20
  - extended joint criminal enterprise and, 833
  - infanticide recommendation, 409
- New South Wales Police Force
  - Code of Conduct and Ethics, 55
  - Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence)*, 55
  - Standard of Professional Conduct, 55
- non-contact assaults
  - stalking and intimidation, 255–9
  - threats, 252–5
- novus actus interveniens*, 34, 35, 345, 346



- offences, classes of, 128
- offences against humanity, 721–9
  - child exploitation, 741–6
  - people smuggling, 729–35
  - trafficking in human beings, 735–40
- offences of serious harm, 238
  - intentionally causing, 240–1
  - negligently causing, 238–9
  - recklessly causing, 239–40
- offensive behaviour, 143–8
  - freedom of speech and expression and, 156–61
  - meaning of ‘offensiveness’, 143–4
  - mens rea* and, 167–70
  - offensive conduct, 148–50
  - offensive language, 150–6
  - reasonable excuse and, 163–7
  - reasonable person and, 161–3
- offensive conduct, 148–50
- offensive language, 150–6
  - layering of primary and secondary offences and, 152
  - linguistic aspects of, 151
  - reasons for criminalisation of speech, 151–2
- offensive weapon offences, *see* firearm and offensive weapon offences
- Offices of the Director of Public Prosecutions, 95
- Oliver Scale, 754
- omission, murder and, 349
- one-punch deaths, *see* assault, causing death
- online child pornography, 763–5
  - aggravated offences, 767
  - defences, 771
  - fault elements, 766
  - interpretation principles, 765–6
  - meaning of carriage service, 766–7
  - planning and grooming, 768–71
  - streaming offences, 768
- organised crime, 692–8
  - Commonwealth law concerning, *see* criminal associations and organisations
- parsimony principle, 5, 8–9
- particularism, criticisms of, 243
- penalty notice offences, 130
- penalty units, 133–4
- people smuggling, 729–35
  - related elements of, 732
- Peters* test, 41
- physical element of assault, 220–1
  - imminence, fear and conditional threats, 221–30
- physical elements of crime, 24
  - act or omission, 27
  - causation, *see* causation
  - duty to act, *see* duty to act
  - voluntariness, 24–7
- plants, prohibited, *see* prohibited plants
- poisons and restricted substances, 587–8
- police
  - codes of conduct, 54–5
  - powers of, 54
  - professional standards framework, 54–5
- police bail, 83
- policing, use of technology and surveillance in, 54
- possession, 590
  - for the purpose of supply, 599–600
  - mental elements of, 597–9
  - physical elements of, 590–7
  - theorising the elements of, 600
- Prasad* direction, 99
- preliminary hearings, 94
- prescribed concentration of alcohol, 205
- pre-trial procedures, 54–5
  - arrest, *see* arrest
  - investigation and evidence gathering, *see* investigation and evidence gathering
- preventative detention, 689–90
- primary and derivative complicity liability, 805–6
  - accessorial liability, *see* accessorial liability
- principle of last resort, sentencing and, 117
- principle of proportionality, 105–6
- principles of federal liability, 662–5
  - indictable and summary disposal, 665–6
  - terrorism, *see* terrorism
- procuring, 806
- prohibited drugs, 583
  - admixtures, 585–7
  - analogues, 585
  - certification and analysis of suspected substances, 589
  - defined substances, 583–5
  - poisons and restricted substances, 587–8
  - prohibited plants, 585
  - psychoactive substances, 587
  - representations, 587
- prohibited plants, 585
  - cultivation of, *see* cultivation of prohibited plants
- property
  - abandoned property, 504
  - actus reus* of theft and, *see* *actus reus* of theft
  - belonging to another, 494–502
  - capable of being stolen, larceny and, 540
  - damage to, *see* damage to property
  - held under an obligation, 502–3
  - innocent acquisition of, 513



- property (*cont.*)
  - stolen, receiving, 560–1
  - subject to a restoration obligation, 504
- property belonging to another, 500–1
  - cheques, bank deposits and electronic funds transfer, 495–500
  - confidential information, 495
  - definition of property, 495
  - special circumstances of, 501–2
- property offences, 490–2
  - aggravated offences, *see* aggravated offences
  - burglary, *see* burglary
  - framework in New South Wales, 538
  - framework in Victoria and Australian Capital Territory, 492–3
  - fraud offences, *see* fraud offences
  - offence of larceny, *see* larceny
- prosecution, the, 95
- prostitution, 185
  - age of consent and, 186–7
  - child prostitution, 185, 186, 187
  - concept of, 186
  - soliciting and, 187–8
- provocation, 12, 446–7
  - Australian Capital Territory, 447–8
  - extreme provocation, 12
  - New South Wales, 448–54
  - Victoria, 447
- proximity test, 782
- psychoactive substances, 587
- public order offences, 135–6
  - breach of peace, 136–8
  - offensive behaviour, *see* offensive behaviour
  - public places, 138–43
- public places, 138–43
  - principles when considering meaning of, 143
- public violence, 179
  - affray, 182–3
  - riot, 180–2
  - violent disorder, 183–5
- purposes of the criminal law, 3
  - accountability and denunciation, 4
  - deterrence, 4
  - incapacitation, 4
  - recognition of harm, 4
  - rehabilitation, 4
  - retribution, 3–4
- rape
  - belief and knowledge about consent and, *see* belief and knowledge about consent
  - circumstances vitiating consent, *see* circumstances vitiating consent to sexual intercourse
  - common law and, 278–81
  - common law requirement of force, 279
  - complainant does not have to offer physical resistance, 290
  - consent to the sexual intercourse, 287–9
  - criticisms of ‘against her will’, 279
  - elements of, 281–3
  - inadequacy of definition of carnal knowledge at common law, 278–9
  - intentional sexual penetration, 297
  - intoxication of the accused and, 303–4
  - jury directions in criminal trials, 304–8
  - role of consent in, 286
  - sexual history evidence and, 279–81
  - sexual penetration or intercourse and, 283–6
  - spousal immunity and, 279
  - withdrawal of consent, 289
- rape shield laws, 280
- reasonable excuse, 163–7
- reasonable person, 161–3
- receiving stolen property, 560–1
- reckless indifference to human life, 355–60
- recklessness, 38–9
  - non-advertent, 301
  - rape and, 300–2
- rehabilitation, 4
- representations, drug offences and, 587
- restraining orders, 264–5
- retribution, 3–4
- revenge porn, 325, 774–5
- right to silence and caution, 76–7
  - crime commissions and, 78
  - meaning of ‘under arrest’, 77
  - requirements to provide details, 77
  - special caution, 77
- riot, 180–2
  - elements differing riot from affray, 182
- road
  - Australian Road Rules definition of, 192
  - conduct on, *see* conduct on the road
  - traffic offences and, 192–4
  - use of, *see* use of the road
- road rage, 212
- road worthiness, 199–200
- robbery, 526, 556–7
  - breaking and entering, *see* breaking and entering
  - force and/or fear of force, *see* force and/or fear of force in robbery
  - receiving stolen property, 560–1
- role of the Commonwealth in criminal law
  - constitutional framework, 652–5
  - federal geographic jurisdiction, *see* federal geographic jurisdiction
  - federal law, *see* federal law
- Royal Commission into Aboriginal Deaths in Custody, 150

- Royal Commission into Institutional Responses to Child Sexual Abuse, 309
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 20
- schools, 268–9
- self-defence, 465
  - Australian Capital Territory, 470–4
  - New South Wales, 466–8
  - Victoria, 468–9
- self-help defences, 464
  - duress, 474–7
  - necessity, *see* necessity
  - self-defence, *see* self-defence
- sentencing, 103–4
  - breaking and entering and circumstances of aggravation, 559–60
  - drug matters, 575–8
  - instinctive synthesis approach to, *see* instinctive synthesis approach to sentencing
  - as judicial function, 112–13
  - principle of proportionality and, 105–6
  - purposes of, 104–5
  - ‘reasonable consistency’ aim in, 111–12
- sentencing appeals, 117–19
  - common law principles governing appellate review, 119–20
- sentencing factors
  - aggravating and mitigating factors, 113–14
  - common law principle of last resort, 117
  - current sentencing factors, 116–17
  - discount for guilty plea, 114–15
  - sentencing options, 117
  - victim impact statements, 115
- serious harm, offences, *see* offences of serious harm
- sexting, 762–3
- sexual assault, 309, 787–8
- sexual intercourse without consent, *see* rape
- sexual offences, 40
  - aggravated offences, 308
  - assault with intent to have sexual intercourse, 308–9
  - incest between consenting parties, 322–3
  - offences against children, *see* sexual offences against children
  - people with cognitive impairments and, 321–2
  - ranges of imprisonment for, 276–7
  - sexual assault, 309, 787–8
  - sexual touching, 309–13
  - stealthing, 295–6
  - technology and sexual misconduct, 323–6
- sexual offences against children, 187, 313–14
  - age of consent, 314–18
  - child exploitation, 741–6
  - children under care, supervision or authority, 319–20
  - sexual activity in the presence of a child, 320–1
- sexual servitude, *see* prostitution
- sexual slavery, 738–40
- sexual touching, 309–13
- slavery, 721–9
  - definition, 721
  - indicia of, 724
  - sexual, 738–40
  - supply chains and, 728
- soliciting, 187–8
- sources of conspiracy offences, 790–2
  - statutory sources fault element, 793–5
  - statutory sources physical element, 792–3
- sources of criminal law, 11
  - code and hybrid jurisdictions, 11
  - code or common law, 12–13
  - common law jurisdictions, 12
- speeding
  - Australian Road Rules definition, 203
  - detection of, 204
- sports violence, 247–50
- spousal immunity, 279
- stages of a trial on indictment
  - arraignment, 98
  - closing addresses, 99
  - determination of a prima facie case to answer, 99
  - empanelment, 98
  - evidence, 99
  - opening addresses, 99
  - outline of jury responsibilities, 99
  - re-examination of witnesses, 99
  - summing up and jury directions, 99
  - voir dire*, 98
- stalking and intimidation, 255–9
- state laws concerned with criminal associations and organisations, 712, 719
  - Australian Capital Territory, 712
  - conditions for individuals, 718–19
  - conditions for organisations, 718
  - New South Wales, 712–17
  - unlawful association, 719
  - Victoria, 717–18
- statutory interpretation, summary offences and, 131–3
- statutory offences, penalty units and, 133–4
- stealthing, 295–6
- steroids, 644–5
- strangulation, non-fatal, 245
- streaming, child pornography offences and, 768
- strict liability offences, 42–5

- strictly indictable matters, 93
- substantial impairment, by abnormality of mind, 415, 444
- substantive criminal law, 2, 11, 218
  - criminal responsibility and, 14
  - drug law and, 574
  - euthanasia and, 7
  - insanity defence and, 422
  - intoxication and, 455
  - self-defence and, 465
- suicide, 7
  - aiding and abetting, 411–12
  - suicide pact offences, 410–11
- summary matters, 93, 128, 130–1
  - defended matters, 130–1
  - penalty notices, 131
  - sentencing matters, 131
- summary offences, 129
  - damage to property, *see* damage to property
  - distinction between indictable offences, 128
  - infringement notices and, 134–5
  - nature of, 127–31
  - prostitution, *see* prostitution
  - public order offences, *see* public order offences
  - public violence, *see* public violence
  - statutory interpretation and, 131–3
  - traffic offences, *see* traffic offences
- summons, 63
- supply chains, slavery in, 728
- supply of drugs causing death, 400–2
- supply and trafficking of drugs, 601
  - Australian Capital Territory, 601–2
  - Commonwealth, 603
  - escalating quantities and liability, 617
  - mental elements of, 610–15
  - nature of the substance and, 609–10
  - New South Wales, 603–4
  - offences involving children, 615–17
  - physical activity constituting supply and, 607–8
  - physical elements of, 607–10
  - Victoria, 604–5
- suspects, questioning of, 56
- swarming, 184–5
- tattooing, 251
  - of minors, 252
- terrorism, 666–8
  - definitions, 668–71
  - physical and mental elements of ‘terrorist act’, 671
  - terrorist acts and organisations, 671–83
  - terrorist financing and support, 683–5
- terrorism prevention, 686
  - continuing detention, 690–2
  - control orders, 688–9
  - links with intelligence agencies, 687
  - overlapping state investigations law, 687–8
  - preventative detention, 689–90
- test for insanity, 423
- theft, 493–4
  - actus reus* of, *see* *actus reus* of theft
  - mens rea* of, *see* *mens rea* of theft
- third party intervention, 34–5
- threats, 252–5
- traffic offences, 189
  - conduct on the road, *see* conduct on the road
  - drink and drug driving, 207–8
  - driver and, 194–5
  - key legislation and definitions, 190–1
  - mobile phone use while driving, 208–9
  - negligent driving, 209–12
  - road and, 192–4
  - road rage, 212
  - use of the road and, *see* use of the road
  - vehicle and, 195
- trafficking in human beings, 735–40
- trespasser, entry as a trespasser, 529–31
- trial procedures
  - appeals, *see* appeals
  - the judge, 96–7
  - jury and, 97–8
  - the prosecution, 95
  - stages of a trial on indictment, *see* stages of a trial on indictment
- unlawful act, manslaughter by, 367–71
- unlawful association, 367–71
- unlawful conduct causing death
  - assault, 396–400
  - assisted suicide and euthanasia, 410–13
  - culpable or dangerous driving, 402–8, 414
  - dangerous conduct, 414
  - infanticide, 408–10
  - supply of drugs, 400–2
- use of the road, 197
  - defects, 200–3
  - licensing, 197
  - registration, 199
  - road worthiness, 199–200
- vehicle, traffic offences and, 195
- vehicle registration, 199
- vicarious liability, corporations, 21
- victim impact statements, 115
- victim intervention, 34

victims, vulnerable, 241–3	voluntariness, 24–7, 38, 342
Victoria Police Code of Conduct, 55	murder and, 342–4
Victorian Law Reform Commission	relationship to intoxication as a defence,
definition of mental impairment and, 433	457
diminished responsibility and, 444	voluntary assisted dying, 246, 412–13
violent disorder, 183–5	
fighting, 184	weapon, contact assault use of, 241
swarming, 184–5	wicked negligence, 382
<i>voir dire</i> , 98	wounding, 236