



# CRIMINAL LAW of QUEENSLAND

SIXTH EDITION

by

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## FOREWORD

Since the time of Bentham, codification of the law has been the dream of many jurists and statesmen, but it is doubtful whether the problem of codification of the whole of the law of England or of that of the inheritors of the common law is any closer to solution.

Certain branches of the law have been expressed in the form of codes, with consequential benefit to the community, and amongst the most successful of these has been the Queensland Criminal Code, the product of that great jurist, Sir Samuel Griffith.

It is, however, incorrect to suppose that any code can remain complete for long. Cases arise from time to time when its meaning is extended and modified by Judges, and every year produces a crop of legislation, some of which affects the provisions of a code. Queensland is no exception.

None of the judicial extension and modification, and very little of the relevant legislation have been expressed by way of revision of the Queensland Criminal Code, and consequently there has been a great need for a volume in which one may find collated and analysed the appropriate decisions and legislation.

Mr Carter, whose knowledge of the subject has been gained from his considerable forensic and academic experience, has now published his "Criminal Law of Queensland" and by so doing has supplied what has been missing for so long.

His book does not make it possible for every man to be his own lawyer, but it does enable a lawyer to learn the present criminal law with accuracy and comparative ease.

I congratulate Mr Carter on the high standard of his work and I commend to those who would know their Criminal Law, the author's excellent production.

A J MANSFIELD

CHIEF JUSTICES CHAMBERS  
BRISBANE  
17 FEBRUARY 1958

## PREFACE to the SIXTH EDITION

Since the Fifth Edition of this book was published in April 1979 there have been further legislative changes made in the Criminal Law of Queensland.

The Criminal Code has been amended, firstly, by the Criminal Law Amendment Act 1979, which repealed s 312 — Attempting to commit suicide —, provided by s 408c for a new offence — Misappropriation of Property — and amended ss 566, 568 and 581; and, secondly, by the Bail Act 1980 which repealed ss 555, 555A and 593B, substituted a new s 593A — Enlargement of Notices to Witnesses on adjournment of trial — and amended ss 559, 562, 597A, 650, 668B, 671G, 671L, 672, 697, 698, 705 and 707. The Bail Act 1980 which commenced on 1 July 1980 and the Bail Regulations 1980 are set out in the Appendix to this edition.

Legislative changes have been made in most of the Acts set out in the Appendix to the Fifth Edition of this book. The Offenders Probation and Parole Act 1959-1974 has been repealed by the Offenders Probation and Parole Act 1980 which came into operation on 1 November 1980. This Act, which is also set out in the Appendix to this edition, has consolidated and amended the laws relating to the probation and parole of offenders and has made provision for the release of offenders under Community Service Orders. The Offenders Probation and Parole Regulations 1980, which repealed The Offenders Probation and Parole Regulations of 1959, are also set out in the Appendix. Amendments to other Acts included in the Appendix are indicated in the text of the Acts concerned.

The Index has again been revised and enlarged.

The preparation of the Table of Cases has been the sole responsibility of the Publishers and once again I acknowledge my indebtedness to them.

R F C

CHAMBERS  
BRISBANE  
JANUARY 1982

## PREFACE to the FIRST EDITION

Three of the Australian States have now codified their Criminal Law. Queensland led the way in 1899, Western Australia followed suit in 1902 and Tasmania in 1924. The Criminal Code of Queensland, which came into force on 1 January, 1901, was essentially the work of Sir Samuel Walker Griffith, then Chief Justice of Queensland and subsequently the first Chief Justice of the High Court of Australia. He stated in his letter to the Attorney-General, dated 29 October, 1897, that he "derived very great assistance" from the Italian Penal Code of 1888, and that he "had frequent recourse to the Penal Code of the State of New York." The Code has been amended on twenty-one occasions, the principal amendments being those relating to Criminal appeals, the abolition of the death penalty (in 1922), habitual criminals and Secret Commissions. The Code does not contain the whole of the substantive criminal law of Queensland—offences punishable on summary conviction are also provided for in various other statutes, notably The Vagrants, Gaming and Other Offences Acts, 1931 to 1955—but rarely are indictable offences to be found outside the provisions of the Code. Certain Imperial statutes dealing with Criminal Law which are still operative in Queensland may be found in Volume II of The Public Acts of Queensland Reprint 1828-1936.

The Criminal Code of Western Australia, which was first enacted in 1902 and re-enacted in 1913, followed closely the Queensland Code, and although it also has been amended on numerous occasions, the two Codes are substantially the same. References to Western Australian case law have, accordingly, been included in this book wherever possible and a Comparative Table has been prepared in the hopes that this volume may be of assistance to persons dealing with the criminal law in that State. The Tasmanian Criminal Code, however, follows the Queensland Code much less closely.

It is now fifty-seven years since Wilson and Graham's edition of The Criminal Code of Queensland was first published, and forty-three years since MacLeod's The Queensland Criminal Code Supplement appeared. Both Volumes have long been out of print. The first annotated consolidation of the Code, with amendments as at 1 January, 1937, appeared in Volume II of the Reprint above mentioned. Subsequent amendments, however, made it necessary to have recourse to several Sessional Volumes as well, in order to ascertain the existing state of the law. The Publishers therefore considered the time was opportune to bring out a work dealing with the Criminal Law of Queensland in a single volume, and invited me to undertake the task, suggesting that existing annotations be used, where suitable, in the interests of a speedier publication.

This book contains not only The Criminal Code and The Criminal Practice Rules, but also the several Criminal Law Amendment Acts, the Oaths Acts, the Children's Courts Acts and the relevant sections dealing with criminal law in the Jury Acts and the State Children Acts.

I am indebted to the Publishers for preparation of the Table of Cases and for assistance in the preparation of the Index, which I trust will enable ready reference to be made to the particular subject-matter being sought.

R F C

CHIEF CROWN PROSECUTOR'S CHAMBERS  
SUPREME COURT  
BRISBANE  
FEBRUARY 1958



# COMPARATIVE TABLE of the CRIMINAL CODE OF WESTERN AUSTRALIA and THE CRIMINAL CODE OF QUEENSLAND

The original Criminal Code of Western Australia was enacted in 1902 and followed closely The Criminal Code of Queensland. The current Criminal Code of Western Australia was enacted in 1913 and with amendments, as at 29 June 1955, is published in Volume 8 of The Reprinted Acts of the Parliament of Western Australia. A second reprint was approved on 9 July 1969 and the Criminal Code with amendments, including Act No 1 of 1969, has been reprinted pursuant to the Amendments Incorporation Act 1938. A third reprint was approved on 9 July 1974 and the Criminal Code with amendments, including Acts No 21 of 1972, No 41 of 1972 and No 19 of 1973, has been reprinted pursuant to the Amendments Incorporation Act 1938. A fourth reprint was approved on 8 December 1978 and the Criminal Code with amendments including Acts No 58 of 1974, No 49 of 1975, No 35 of 1976, No 62 of 1976, No 133 of 1976, No 38 of 1977 and No 71 of 1977 has been reprinted pursuant to the Amendments Incorporation Act 1938. Since this fourth reprint further amendments have been made by Acts No 67 of 1979, No 68 of 1979, No 107 of 1979 and No 96 of 1980. The Criminal Code of Western Australia and The Criminal Code of Queensland are still basically the same.

In this table where the sections shown as corresponding are not either exactly the same or substantially the same, the Queensland section is printed in italics.

Where a Western Australian section has been (i) amended; or (ii) repealed and re-enacted, since 29 June 1955, it is shown in square brackets. Where a Western Australian section has been repealed either before or since that date, it is shown in square brackets followed by the abbreviation "rep.".

The respective Acts are:

Western Australia: Criminal Code Act, 1913;

Queensland: The Criminal Code Act, 1899;

and their comparative sections are:

| W.A. | Qld.     |
|------|----------|
| 1    | 1        |
| 2    | 2        |
| —    | 3        |
| 3    | 4        |
| 4    | 5        |
| 5    | 6        |
| 6    | 7        |
| 7    | 8        |
| 8    | [9] rep. |

## CRIMINAL CODE

| W.A. | Qld. | W.A. | Qld.      | W.A. | Qld. |
|------|------|------|-----------|------|------|
| [1]  | 1    | 15   | 15        | 28   | 28   |
| 2    | 2    | [16] | <i>16</i> | 29   | 29   |
| [3]  | 3    | 17   | 17        | 30   | 30   |
| 4    | 4    | [18] | <i>18</i> | 31   | 31   |
| 5    | 5    | [19] | <i>19</i> | 32   | 32   |
| 6    | 6    |      | 20        | 33   | 33   |
| 7    | 7    | 20   | 671G (3)  | 34   | 34   |
| 8    | 8    |      | 21        | 35   | 35   |
| 9    | 9    | [21] | 672A      | 36   | 36   |
| 10   | 10   | 22   | 22        | 37   | 37   |
| 11   | 11   | 23   | 23        | 38   | 38   |

| W.A.  | Qld. | W.A.  | Qld.    | W.A.  | Qld.       |
|-------|------|-------|---------|-------|------------|
| 12    | 12   | 24    | 24      | 39    | 39         |
| 13    | 13   | 25    | 25      | 40    | 40         |
| 14    | 14   | 26    | 26      | 41    | 41         |
| [14A] | 14A  | 27    | 27      | 42    | 42         |
| 43    | 43   | —     | 104     | —     | 165        |
| 44    | 44   | [101] | 105     | —     | to         |
| 45    | 45   | [102] | 106     | —     | 191        |
| 46    | 46   | 103   | 107     | 168   | [192] rep. |
| 47    | 47   | [104] | 108     | 169   | 193        |
| 48    | 48   | [105] | 109     | 170   | 194        |
| 49    | 49   | 106   | 110     | 171   | 195        |
| 50    | 50   | 107   | 111     | —     | 196        |
| 51    | 51   | 108   | 112 (2) | —     | to         |
| 52    | 52   | 109   | 113     | —     | 198        |
| 53    | 53   | 110   | 114     | 172   | 199        |
| 54    | 54   | 111   | 115     | 173   | 200        |
| 55    | 55   | [112] | 116     | 174   | 201        |
| 56    | 56   | 113   | 117     | 175   | 202        |
| 57    | 57   | [114] | —       | 176   | 203        |
| 58    | —    | 115   | —       | 177   | 204        |
| 59    | 58   | to    | —       | 178   | 205        |
| 60    | 59   | 118   | —       | 179   | 206        |
| 61    | 60   | 119   | 118     | [180] | 207        |
| 62    | 61   | 120   | 119     | 181   | 208        |
| 63    | 62   | 121   | 120     | 182   | 209        |
| 64    | 63   | 122   | 121     | [183] | 210        |
| 65    | 64   | 123   | 122     | 184   | 211        |
| 66    | 65   | 124   | 123     | 185   | 212        |
| 67    | 66   | 125   | 124     | 186   | 213        |
| —     | 67   | 126   | 125     | —     | 214        |
| —     | 68   | 127   | —       | 187   | 215        |
| 68    | 69   | 128   | —       | 188   | —          |
| 69    | 70   | 129   | 126     | [189] | 216        |
| 70    | 71   | 130   | 127     | 190   | —          |
| 71    | 72   | 131   | 128     | 191   | 217        |
| 72    | 73   | 132   | 129     | 192   | 218        |
| 73    | 74   | 133   | 130     | 193   | 219        |
| 74    | 75   | 134   | 131     | 194   | 220        |
| —     | 76   | 135   | 132     | 195   | —          |
| —     | 77   | 136   | 133     | 196   | 221        |
| 75    | 78   | 137   | 134     | 197   | 222        |
| 76    | 79   | [138] | 135     | 198   | 223        |
| 77    | 80   | 139   | 136     | 199   | 224        |
| 78    | 81   | 140   | 137     | 200   | 225        |
| 79    | 82   | 141   | 138     | 201   | 226        |
| 80    | 83   | 142   | 139     | 202   | —          |
| —     | 84   | 143   | 140     | 203   | 227        |
| —     | 85   | 144   | 141     | 204   | 228        |
| 81    | 86   | 145   | 142     | 205   | 229        |
| 82    | 87   | 146   | 143     | 205A  | —          |
| 83    | 88   | 147   | 144     | 206   | —          |
| 84    | 89   | [148] | 145     | 207   | 230        |
| 85    | 90   | [149] | 146     | [208] | —          |
| 86    | 91   | 150   | 147     | 209   | 231        |
| 87    | 92   | [151] | 148     | [210] | 232        |
| 88    | 93   | 152   | 149     | [211] | 233        |
| 89    | 94   | 153   | 150     | [212] | 234        |
| 90    | 95   | 154   | 151     | 213   | 235        |
| 91    | 96   | 155   | 152     | 214   | 236        |

| W.A.          | Qld.       | W.A.        | Qld. | W.A.          | Qld.        |
|---------------|------------|-------------|------|---------------|-------------|
| 92            | 97         | 156         | 153  | [215]         | 237         |
| 93            | 98         | 157         | 154  | 216           | 238         |
| 94            | 99         | 158         | 155  | 217           | 239         |
| 95            | 100        | 159         | 156  | [218]         | 240         |
| [96]          | —          | 160         | 157  | [219]         | 241         |
| [97]          | 101        | 161         | 158  | 220           | 242         |
| [98]          | 102        | 162         | 159  | 221           | 243         |
| [99]          | 103        | 163         | 160  | —             | 244         |
| [103(7)] rep. | (1) to (6) | 164         | 161  | 222           | 245         |
| [100](1)      | —          | [165]       | 162  | 223           | 246         |
| 100 (2)       | —          | [166]       | 163  | 224           | 247         |
| and (3)       | —          | 167         | 164  | 225           | 248         |
| 226           | 249        | [291A] rep. | —    | 350           | 370         |
| 227           | 250        | 292         | 315  | 351           | 371         |
| 228           | 251        | 293         | 316  | 352           | 372         |
| 229           | 252        | 294         | 317  | 353           | 373         |
| 230           | 253        | [294A]      | 317A | [354]         | 374         |
| 231           | 254        | 295         | 318  | 355           | 375         |
| 232           | 255        | 296         | 319  | 356           | 376         |
| 233           | 256        | [296A]      | 319A | 357           | 377         |
| 234           | 257        | 297         | 320  | 358           | 378         |
| 235           | 258        | 298         | —    | 359           | 379         |
| 236           | 259        | 299 (1)     | —    | [360]         | 380         |
| 237           | 260        | and (2)     | —    | [361]         | 381         |
| 238           | 261        | 299 (3)     | 321  | 362           | 382         |
| 239           | 262        | 300         | 322  | 363           | 383         |
| 240           | 263        | 301         | 323  | 364           | 384         |
| 241           | 264        | 302         | 324  | 365           | 385         |
| 242           | 265        | 303         | 325  | 366           | 386         |
| 243           | 266        | 304         | 326  | 367           | 387         |
| 244           | 267        | 305         | 327  | 368           | 388         |
| 245           | 268        | 306         | 328  | [369]         | 389         |
| 246           | 269        | 307         | 329  | 370           | 390         |
| 247           | 270        | 308         | 330  | 371           | 391         |
| 248           | 271        | 309         | 331  | (1) to (6)    | (1) to (6)  |
| 249           | 272        | [310]       | 332  | (7)           | —           |
| 250           | 273        | 311         | 333  | —             | (7)         |
| 251           | 274        | 312         | 334  | 372           | 392         |
| 252           | 275        | [313]       | 335  | 373           | 393         |
| 253           | 276        | 314         | 336  | 374           | 394         |
| 254           | 277        | 315         | 337  | 375           | 395         |
| 255           | 278        | 316         | 338  | 376           | 396         |
| 256           | 279        | 317         | 339  | 377           | 397         |
| 257           | 280        | 318         | 340  | [378]         | 398         |
| [258]         | 281        | [318A]      | 338A | (1) to [(3) ] | (1) to (3)  |
| 259           | 282        | [319]       | 341  | (4)           | —           |
| 260           | 283        | [320]       | 342  | [(4a)]        | 398 (12)    |
| 261           | 284        | [321]       | 343  | (5) to (12)   | (4) to (11) |
| 262           | 285        | [322]       | 344  | 379           | 399         |
| 263           | 286        | [323]       | 345  | 380           | 400         |
| 264           | 287        | 324         | 346  | 381           | 401         |
| 265           | 288        | [324A]      | —    | 382           | 402         |
| 266           | 289        | [325]       | 347  | 383           | 403         |
| 267           | 290        | 326         | 348  | 384           | 404         |
| 268           | 291        | 327         | 349  | 385           | 405         |
| 269           | 292        | [328]       | 350  | 386           | —           |
| 270           | 293        | 329         | 351  | 387           | —           |
| 271           | 294        | 330         | 352  | 388           | 406         |
| 272           | 295        | 331         | 353  | 389           | 407         |

| W.A.       | Qld.       | W.A.       | Qld.   | W.A.       | Qld.    |
|------------|------------|------------|--------|------------|---------|
| 273        | 296        | 332        | 354    | 390        | 408     |
| 274        | 297        | —          | 354A   | [390A]     | 408A    |
| 275        | 298        | [333]      | 355    | [390B]     | 417A    |
| 276        | 299        | [334]      | 356    | 391        | 409     |
| [277]      | 300        | [335]      | 357    | 392        | 410     |
| 278        | [301] rep. | [336]      | —      | 393        | 411     |
| 279        | 302        | [337]      | 358    | 394        | 412     |
| 280        | 303        | [338]      | 359    | 395        | 413     |
| 281        | 304        | 339        | 360    | 396        | 414     |
| —          | 304A       | [340]      | 361    | [397]      | 415     |
| [282]      | 305        | [341]      | —      | 398        | 416     |
| 283        | 306        | [342]      | 362    | 399        | 417     |
| 284        | 307        | [343]      | 363    | [399A]     | —       |
| 285        | 308        | [343A]     | —      | 400        | 418     |
| 286        | 309        | 344        | 364    | [401]      | 419     |
| 287        | 310        | 345        | 365    | [402]      | 420     |
| 288        | 311        | 346        | 366    | [403]      | 421     |
| [289] rep. | 312        | 347        | 367    | [404]      | 422     |
| 290        | 313        | 348        | 368    | [405] rep. | 423     |
| 291        | 314        | 349        | 369    | [406] rep. | 424     |
| 407        | 425        | 458        | 473    | 525        | 528     |
| —          | 425A       | 459        | 474    | [526]      | 529     |
| [407A]     | —          | 460        | 475    | 527        | 530     |
| [408]      | 426        | 461        | 476    | [528]      | —       |
| [409]      | 427        | 462        | 477    | 529        | 442B    |
| 410        | 428        | 463        | 478    | 530        | —       |
| 411        | 429        | [463A]     | —      | 531        | 442C    |
| 412        | 430        | [463B]     | —      | 532        | 442D    |
| 413        | 431        | 464        | 479    | 533        | 442E    |
| —          | 432        | [465]      | 480    | 534        | —       |
| 414        | 433        | [466]      | 481    | 535        | 442F    |
| 415        | 434        | 467        | 482    | 536        | —       |
| 416        | 435        | [468] rep. | 483    | 537        | 442G    |
| 417        | 436        | 469        | 484    | [538]      | 442I    |
| [418]      | —          | 470        | 485    | 539        | 442J    |
| 419        | 437        | 471        | 486    | 540        | 442K    |
| 420        | 438        | 472        | 487    | —          | 442L(1) |
| [421]      | —          | 473        | 488    | 541        | 442L(2) |
| 422        | 439        | 474        | 489    | 542        | 442M(1) |
| 423        | 440        | 475        | 490    | 543        | 442M(2) |
| 424        | 441        | 476        | 491    | 544        | 442H    |
| 425        | 442        | 477        | 492    | 545        | 442M(3) |
| [426]      | 443        | 478        | 493    | 546        | 442A    |
| [427]      | 444        | 479        | 494    | 547        | 531     |
| [427A]     | —          | 480        | 495    | 548        | 532     |
| [428]      | 445        | 481        | 496    | 549        | 533     |
| [429]      | 446        | 482        | 497    | [550]      | —       |
| [430]      | 447        | 483        | 498    | [551]      | —       |
| [431]      | 448        | 484        | 499    | —          | 534     |
| —          | 448A       | 485        | 500    | 552        | 535     |
| [432]      | 449        | [486] rep. | 501    | 553        | 536     |
| [433]      | 450        | [487]      | —      | 554        | 537     |
| [434]      | 451        | 488 (1) }  | 502    | 555        | 538     |
| [435]      | 452        | to (3) }   | —      | 556        | 539     |
| 436        | 453        | (4)        | —      | 557        | 540     |
| [437]      | 454        | —          | 503    | 558        | 541     |
| 438        | 455        | 489        | 504    | 559        | 542     |
| 439        | 456        | [489A]     | [489A] | 560        | 543     |
| 440        | 457        | —          | 505    | 561        | 543A    |

| W.A.       | Qld.     | W.A.       | Qld.       | W.A.        | Qld. |
|------------|----------|------------|------------|-------------|------|
| 441        | 458      | [490]      | 506        | 562         | 544  |
| 442        | 459      | [491]      | 507        | 563         | 545  |
| 443        | 460      | [492]      | 508        | 564         | 546  |
| 444        | 461 (a), | 493        | 509        | 565         | 547  |
|            | (b), (d) | 494        | 510        | [565A]      | 547A |
| 445        | 462      | 495        | 511        | 566         | 548  |
| 446        | 461 (c)  | —          | 512        | 567         | 549  |
| 447        | 463      | —          | 513        | 568         | 550  |
| 448        | 464      | [496]      | —          | 569         | 551  |
| 449        | 465      | 497        | —          | 570         | 552  |
| 450        | 466      | to         |            | 571         | 553  |
| 451        | 467      | 508        |            | 572         | 554  |
| [451A]     | 467A     | [509]      |            | 573         | 555  |
| [451B]     | —        | 510        | 514        | [574]       | 556  |
| 452        | 468      | 511        | —          | 575         | 557  |
| [453]      | 469      | 512        | 515        | 576         | 558  |
| I-V        | I-V      | 513        | 516        | [577]       | 559  |
| VI         | —        | 514        | 517        | 578         | 560  |
| VII        | VII      | 515        | 518        | [599]       | 561  |
| VIIA       | VI       | [516]      | 519        | 580         | 562  |
| VIII       | VIII     | [517]      | 520        | 581         | 563  |
| 454        | —        | [518]      | 521        | 582         | 564  |
| 455        | —        | 519        | 522        | 583         | 565  |
| (1), (2),  |          | 520        | 523        | 584         | 566  |
| (3)        | 470      | 521        | 524        | 585         | 567  |
| —          | 470A     | 522        | 525        | [586]       | 568  |
| 456        | 471      | 523        | 526        | 587         | 569  |
| 457        | 472      | 524        | 527        | 588         | 570  |
| [589] rep. | —        | 644        | 626        | [695]       | 671  |
| 590        | 571      | 645        | 627        | 696         | 671A |
| 591        | 572      | 646        | 628        | 697         | 671B |
| 592        | 573      | 647        | 629        | [698]       | 671C |
| [593]      | 574      | 648        | 630        | [699]       | 671D |
| 594        | 575      | [649] rep. | —          | 700         | 671G |
| 595        | 576      | 650        | —          | 701         | 671H |
|            | 577      | 651        | 631        | 702         | 671L |
| [595A]     | —        |            | 632        | 703         | 668  |
| 596        | 578      | —          | to         | [704] rep.  | —    |
| 596A       | —        |            | 644        | [705]       | 675  |
| 597        | 579      | 652        | 645        | 706         | 676  |
| 598        | 580      | 653        | 646        | [706A] rep. | —    |
| [599]      | 581      |            | 647        | 707         | 677  |
| 600        | 582      | 654        | 648        | [708]       | 678  |
| 601        | 583      | 655        | 649        | (1) to (5)  |      |
| 602        | 584      | [656]      | 650        | (6) rep.    | —    |
| 603        | 585      | [657]      | [651, 652] | [709] rep.  | —    |
| 604        | 586      |            | rep.       | [710] rep.  | —    |
| 605        | 587      | 658        | [653] rep. | [711]       | 679  |
| 606        | 588      | —          | 654        | [711A]      | 679A |
| 607        | 589      | [659]      | 655        | 712         | 680  |
| 607A       | —        | 660        | —          | —           | 680A |
| 608        | 590      | 661        |            | 713         | 681  |
| 609        | 591      | 662        |            | 714         | 682  |
| 610        | 592      | 663        | Cf.        | 715         | 683  |
| 611        | 593      | 664        | 659A       | 716         | 684  |
| 612        | 594      | 665        | to         | 717         | 685  |
| 613        | 595      | [666] rep. | 659I       | 718         | —    |
| 614        | 596      | [667] rep. |            | [719]       | —    |
| 615        | 597      | [668] rep. |            | 720         | 686  |

| W.A.       | Qld. | W.A.        | Qld.       | W.A.       | Qld. |
|------------|------|-------------|------------|------------|------|
| 616        | 598  | [668A] rep. | —          | 721        | 687  |
| 617        | 599  | [669]       | 656        | 722        | 688  |
| [617A]     | —    | [669A] rep. | —          | 723(1)     | 689  |
| [618]      | 600  | [670]       | —          | (2)        | —    |
| 619        | 601  | [671]       | 657        | 724        | 690  |
| 620        | 602  | 672         | 658        | 725        | 691  |
| 621        | 603  | 673         | 659        | 726        | 692  |
| 622        | 604  | 674         | 660        | 727        | 693  |
| 623        | 605  | 675         | 661        | 728        | 694  |
| 624        | 606  | [676]       | 662        | [729]      | 695  |
| 625        | 607  | [677]       | 663        | 730        | 696  |
| 626        | 608  | [678]       | [664] rep. | 731        | 697  |
| 627        | 609  | [679]       | [665] rep. | 732        | 698  |
| 628        | 610  | [680]       | 666        | 733        | 699  |
| [629] rep. | 611  | 681         | 667        | 734        | 700  |
| 630        | 612  | [682]       | —          | [735] rep. | —    |
| 631        | 613  | 682A        | —          | 736        | 701  |
| 632        | 614  | 683         | —          | 737        | 702  |
| 633        | 615  | to          | —          | 738        | —    |
| 634        | 616  | [686]       | —          | 739        | 703  |
| 635        | 617  | [687]       | 668A       | 740        | 704  |
| 635A       | —    | 688(1)      | 668D       | 741        | —    |
| [635B]     | —    | (1a)        | —          | 742        | —    |
| 636        | 618  | (2)         | —          | [743]      | —    |
| 637        | 619  | 689         | 668E       | 744        | —    |
| 638        | 620  | 690         | 668C       | 745        | 705  |
| 639        | 621  | 691         | 669        | 746        | 706  |
| 640        | 622  | 692         | 668        | [746A]     | —    |
| 641        | 623  | 693         | 668F       | 747        | 707  |
| 642        | 624  | [693A]      | 669A       | [748]      | —    |
| 643        | 625  | 694         | 670        | —          | —    |

## TABLE OF CASES

|                                             |               |                                            |                   |
|---------------------------------------------|---------------|--------------------------------------------|-------------------|
| Aaron's Reefs v Twiss [1896] .....          | 358           | —, Ex parte; R v Harstorff [1980] .....    | 272, 578          |
| Abbott v R [1976] .....                     | 103           | —, Ex parte; R v His Honour Judge          |                   |
| — v Smith [1964] .....                      | 191           | Kimmins [1980] .....                       | 458, 604          |
| Abernethy v R (1916) .....                  | 180           | —, Ex parte; R v Lihou [1975] .....        | 76, 1019          |
| Adam v Ward [1917] .....                    | 311, 318      | —, Ex parte; R v Lockwood [1981] .....     | 4, 42,            |
| Adams v Burton (1976) .....                 | 578           | 399, 400, 401, 405, 407, 408, 613          |                   |
| Addis v Odhams Press Ltd [1957] .....       | 315           | —, Ex parte; R v Murdock [1980] .....      | 580, 585          |
| — v — [1958] .....                          | 315           | —, Ex parte; R v Netz [1973] .....         | 262, 648          |
| Adel Muhammed el Dabbah v Attorney-         |               | —, Ex parte; R v Rosser [1980] .....       | 592               |
| General for Palestine [1944] .....          | 515, 686      | —, Ex parte; R v Snell and McGregor        |                   |
| Admiralty Commissioners v SS Volute         |               | [1979] .....                               | 577, 583, 990     |
| [1922] .....                                | 91            | —, Ex parte; R v Starr and Kiriazis        |                   |
| Advocate HM v Quinn and Macdonald           |               | [1973] .....                               | 583               |
| [1921] .....                                | 1073          | —, Ex parte; R v Taylor [1977] .....       | 581, 585          |
| — v Watson (1885) .....                     | 177           | —, Ex parte; R v Warren [1979] .....       | 186, 980          |
| — (Lord) v A E [1937] .....                 | 567           | —, Ex parte; R v Wyles [1977] .....        | 42, 49, 648       |
| Ahles v White Mercantile Agency [1902] ...  | 317           | — v James [1962] .....                     | 9                 |
| Aird v Skelton [1903] .....                 | 205, 271      | — v London and North Western Railway       |                   |
| Ajodha v The State [1981] .....             | 701           | Co [1900] .....                            | 166               |
| Akerele v R [1943] .....                    | 231, 662      | — v Martin (1909) .....                    | 687, 688          |
| Aladesuru v R [1956] .....                  | 618, 625, 662 | — v New Statesman and Nation Pub-          |                   |
| Albert v Lavin [1981] .....                 | 224, 594      | lishing Co Ltd [1980] .....                | 9, 553, 561       |
| Alderson v Booth [1969] .....               | 47, 214, 451  | — (Ceylon) v Perera [1953] .....           | 245, 247          |
| Aleksovski v R [1979] .....                 | 221, 222, 245 | — (Ceylon) v Kumarasinghage Don John       |                   |
| Alexander v R (1981) .....                  | 181           | Perera [1953] .....                        | 661               |
| Allchurch v Cooper [1923] .....             | 89            | — (Hong Kong) v Kwok-a-Sing (1873) ...     | 129               |
| Allen v Redding [1934] .....                | 232           | — (Hong Kong) v Pat Chiuk-Wah [1971] ..    | 42                |
| Amalgamated Society of Railway Servants     |               | — (NSW) v Dawes [1976] .....               | 664               |
| v Osborne [1911-13] .....                   | 115           | — (NSW) v Jackson (1906) .....             | 545, 616          |
| Ambrose v Hickey [1922] .....               | 111           | — (NSW) v Martin (1909) .....              | 700               |
| Anderson, Ex parte (1880) .....             | 136           | — (Northern Ireland) v Gallagher [1961] .. | 99                |
| Anderson, Re [1978] .....                   | 656, 1070     | — (South Australia) v Brown [1960] .....   | 96, 542           |
| Anderson v Basile [1979] .....              | 84, 90, 106   | Attorney-General's Reference (No 1 of      |                   |
| — v DPP [1978] .....                        | 468           | 1975) [1975] .....                         | 187, 290, 648     |
| — v Nystrom [1941] .....                    | 84, 90, 91    | Attorney-General's Reference (No 2 of      |                   |
| — v R [1971] .....                          | 632           | 1975) (1976) .....                         | 649               |
| Andrews v Director of Public Prosecutions   |               | Attorney-General's Reference (No 1 of      |                   |
| [1937] .....                                | 231, 243      | 1977) [1979] .....                         | 533               |
| — v R [1969] .....                          | 623, 633      | Attorney-General's Reference (No 4 of      |                   |
| Angus, Re (1907) .....                      | 598           | 1979) (1980) .....                         | 649               |
| Ansell v R [1966] .....                     | 618           | Attwood v R [1960] .....                   | 541, 941          |
| Antonovich v West Australian News-          |               | Au Pui Kuen v A-G for Hong Kong            |                   |
| papers Ltd [1960] .....                     | 7, 317        | [1980] .....                               | 641               |
| Appuhamy v R [1963] .....                   | 9             | Australian Estates and Mortgage Co Ltd v   |                   |
| Armanasco v R (1914) .....                  | 624, 658      | McCulloch [1921] .....                     | 391               |
| — v R (1951) .....                          | 92, 93        | Aylett v R [1956] .....                    | 663               |
| Armat v Little [1909] .....                 | 226           | Ayre and Ayre, Ex parte; Loveday v Ayre    |                   |
| Arnold v King-Emperor [1914] .....          | 661           | and Ayre [1955] .....                      | 91                |
| — v R (1946) .....                          | 552, 644, 653 |                                            |                   |
| — v Samuels (1972) .....                    | 635, 654      | B v R (1958) .....                         | 101               |
| Arthur v A-G for Northern Ireland (1970) .. | 537           | Bailey v Truth and Sportsman Ltd (1938) .. | 315               |
| A-G, Ex parte; Re Goodwin [1969] .....      | 8             | Bain, Ex parte; Re Swanwick (1883) .....   | 348               |
| —, Ex parte; R v Gordon [1975] .....        | 65, 268, 613  | Baker v Bulley (1933) .....                | 39, 180, 564, 567 |
| —, Ex parte; R v Groning [1972] .....       | 272, 648      | Balcombe v De Simoni [1972] .....          | 359               |

|                                                                             |                         |                                                                                        |                         |
|-----------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------|-------------------------|
| Baldock v Douglas (1953) .....                                              | 700                     | Blacker v R (1910) .....                                                               | 521                     |
| Ball v Humphreys; Carroll v Hasz [1903] .....                               | 393                     | Blackie v Police [1966] .....                                                          | 271                     |
| — v Murphy (1908) .....                                                     | 68                      | Blacklock, Ex parte; R v Loewenthal<br>(1974) .....                                    | 405                     |
| Balogh v Crown Court at St Albans [1974] .....                              | 8                       | Blomfield, Re (1913) .....                                                             | 6                       |
| Bank of Australasia, Ex parte; Re Cardew<br>(1901) .....                    | 138                     | Board of Trade v Owen [1957] .....                                                     | 443                     |
| Bank of England v Vagliano [1891-4] .....                                   | 3, 412                  | Bone v R [1968] .....                                                                  | 497                     |
| Bank of New South Wales v Piper<br>[1897] .....                             | 88, 89                  | Bookless v Buck [1922] .....                                                           | 203                     |
| Banks, Ex parte; Cain v Banks [1959] .....                                  | 326                     | Borg v R [1972] .....                                                                  | 50, 51, 54, 55, 57, 58  |
| Barca v R (1975) .....                                                      | 238, 707                | Boston v W S Bagshaw & Sons [1967] .....                                               | 556                     |
| Barnacle v Clark [1900] .....                                               | 136                     | Bowden v R [1968] .....                                                                | 296                     |
| Barnes v Cameron; Ex parte Cameron<br>[1975] .....                          | 63                      | Bowman v R [1980] .....                                                                | 3, 326                  |
| Barnes v Gougousis [1969] .....                                             | 67                      | Bowron Bros v Bishop (1910) .....                                                      | 178                     |
| — v Polito; Ex parte Polito [1967] .....                                    | 286, 476                | Boyd, Ex parte; Breene v Boyd [1970] .....                                             | 89                      |
| — & Co Ltd v Sharpe (1910) .....                                            | 36, 310, 444            | Bracegirdle v Oxley [1947] .....                                                       | 211, 269                |
| Barronet and Allain, Re (1852) .....                                        | 81                      | Brady v Schatzel [1911] .....                                                          | 211                     |
| Barry v Samuels (1975) .....                                                | 578                     | Bratty v A-G for Northern Ireland<br>[1961] .....                                      | 86, 95                  |
| Barton v R (1980) .....                                                     | 461, 462                | Brazil v Bielefield; Ex parte Bielefield<br>[1964] .....                               | 214, 281                |
| Baskerville v R [1916] .....                                                | 564                     | Breen v R (1976) .....                                                                 | 293, 660                |
| Bastable v Little [1907] .....                                              | 280                     | Breene v Boyd; Ex parte Boyd [1970] .....                                              | 89                      |
| Basto v R (1954) .....                                                      | 700, 701, 703, 705      | Brennan v R [1936] .....                                                               | 6, 50, 54, 499          |
| Bataillard v R (1907) .....                                                 | 660                     | — v Williams (1951) .....                                                              | 68                      |
| Bateman's Case .....                                                        | 545                     | Bridge v Tozer and West Australian<br>Newspapers Ltd [1978] .....                      | 7, 318                  |
| Battista and Ors v Cooper and Ors<br>(1976) .....                           | 605, 607                | Bridges, Ex parte; Dwyer v Bridges;<br>Dwyer v Brough; Ex parte<br>Brough [1951] ..... | 177                     |
| Beahr, Ex parte; Hocken v Beahr [1955] .....                                | 392                     | Bridges v R [1943] .....                                                               | 177                     |
| Beal v Kelley [1951] .....                                                  | 277, 297                | Brimblecombe v Duncan; Ex parte Duncan<br>[1958] .....                                 | 91                      |
| Beamish v R [1962] .....                                                    | 241, 540, 689, 693, 706 | Brisbane Shipwrights Provident Union v<br>Heggie (1906) .....                          | 88, 448                 |
| Beardsley v Giddings [1904] .....                                           | 178                     | Britcher v Williams (1893) .....                                                       | 393                     |
| Beaton v McGinty (1939) .....                                               | 78                      | Broadhurst v R [1964] .....                                                            | 98, 529, 535, 662       |
| Beatty v Gilbanks (1882) .....                                              | 119                     | Brodie v R (1977) .....                                                                | 583, 586, 635, 661      |
| Beavan v R [1954] .....                                                     | 243, 478                | Broken Hill South Ltd v Commissioner of<br>Taxation (1936) .....                       | 63                      |
| Beckett v R (1922) .....                                                    | 667                     | Brotherson, Re; Ex parte Parker [1957] .....                                           | 51                      |
| Beckwith v Philby (1827) .....                                              | 452                     | Brough, Ex parte; Dwyer v Brough; Dwyer<br>v Bridges; Ex parte Bridges<br>[1951] ..... | 177                     |
| Bedder v DPP [1954] .....                                                   | 246, 247                | Brown v A-G for New Zealand [1898] .....                                               | 104                     |
| Bedford v Western Sun Newspaper Co Ltd<br>[1929] .....                      | 312                     | — v Brisbane Newspaper Co Ltd [1902] .....                                             | 312                     |
| Beese and Anor v Governor of Ashford<br>Remand Centre [1973] .....          | 697, 698                | — v Courtney (1917) .....                                                              | 40, 180                 |
| Beetham v Tremearne (1905) .....                                            | 90                      | — v Lizars (1905) .....                                                                | 63, 452                 |
| Behn v R (1936) .....                                                       | 366, 466                | — v McCarthy [1911] .....                                                              | 212                     |
| Bell v James (1912) .....                                                   | 205, 470                | — v R (1913) .....                                                                     | 477, 478, 518, 538, 557 |
| — v Leon (1913) .....                                                       | 205                     | — v — (1959) .....                                                                     | 542                     |
| — v Sharpe [1912] .....                                                     | 205                     | — v Ween (1979) .....                                                                  | 608                     |
| Bellanto, Ex parte; Re Prior [1963] .....                                   | 7                       | Browne v Aylett (1916) .....                                                           | 393                     |
| Bennett, Ex parte; Re Cunningham<br>[1967] .....                            | 63, 523, 934            | — v Dunn (1894) .....                                                                  | 508                     |
| Bensegger v R [1979] .....                                                  | 580                     | Brownlow, Ex parte; R v Crown Court at<br>Sheffield [1980] .....                       | 896, 903                |
| Bernecker v White (1890) .....                                              | 395                     | Brunsgard v Jennings [1974] .....                                                      | 181, 298                |
| Berwin v Donohoe (1915) .....                                               | 47                      | Bryant v R (1946) .....                                                                | 686                     |
| Betts v Stevens [1910] .....                                                | 280                     | Buckley and Toronto Transportation<br>Commission v Smith Transport<br>Ltd (1946) ..... | 96                      |
| Bidwell v R (1916) .....                                                    | 472, 572                | Bullard v R [1961] .....                                                               | 247                     |
| Bielefield, Ex parte; Brazil v Bielefield<br>[1964] .....                   | 214, 281                | Burke v Copper [1962] .....                                                            | 198                     |
| Bilby v Hartley (1892) .....                                                | 438                     | — v Williams [1918] .....                                                              | 393                     |
| Billing v Pill [1953] .....                                                 | 323                     | Burns, Ex parte (1893) .....                                                           | 615                     |
| Birch v Fitzgerald (1975) .....                                             | 578                     |                                                                                        |                         |
| Bird, Re (1979) .....                                                       | 605, 608                |                                                                                        |                         |
| Bishop v Chung Bros (1907) .....                                            | 54                      |                                                                                        |                         |
| Black v Turner (1895) .....                                                 | 410                     |                                                                                        |                         |
| Blackburn (No 2), Ex parte; R v Metro-<br>politan Police Commr [1968] ..... | 8, 203                  |                                                                                        |                         |



|                                                                                                          |                    |                                                                                                |                                      |
|----------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------|--------------------------------------|
| Burns v R (1975) .....                                                                                   | 687, 703           | Chappell v A Ross & Sons Pty Ltd and<br>MacLennan v Hastings Transport<br>Pty Ltd [1969] ..... | 104                                  |
| — v Ransley [1949] .....                                                                                 | 111, 112           | Cheers v Porter (1931) .....                                                                   | 925                                  |
| Burnside v R [1963] .....                                                                                | 553, 561           | Chia Gee v Martin (1905) .....                                                                 | 67                                   |
| Burrowes v Balderston (1934) .....                                                                       | 4                  | Chic Fashion (West Wales) Ltd v Jones<br>[1968] .....                                          | 669                                  |
| Burrows v R (1937) .....                                                                                 | 538, 644           | Chin and Others v R [1980] .....                                                               | 172, 192, 518                        |
| Burt v Burt (1860) .....                                                                                 | 306                | Christie v Leachinsky [1947] .....                                                             | 452                                  |
| Burton v Davies [1953] .....                                                                             | 212                | Chung Kum Moey v Public Prosecutor<br>(Singapore) [1967] .....                                 | 662                                  |
| Button v Director of Public Prosecutions,<br>and Swain v Director of Public<br>Prosecutions [1965] ..... | 125                | Churchill v Walton [1967] .....                                                                | 444                                  |
| Byczko v R (1977) .....                                                                                  | 657                | Clark v R [1971] .....                                                                         | 243, 479                             |
| Byrne v Gibbons; Ex parte Gibbons<br>[1966] .....                                                        | 389, 592           | — v Ratnik; Ex parte Ratnik [1956] .....                                                       | 283                                  |
| — v Hebden [1913] .....                                                                                  | 226, 283           | Clarkson v Aspinall [1950] .....                                                               | 82                                   |
|                                                                                                          |                    | — v McCarthy [1917] .....                                                                      | 198                                  |
| Cadwaller v Webster (1909) .....                                                                         | 312                | Cleary v Booth [1893] .....                                                                    | 226                                  |
| Cahill v Phillips [1930] .....                                                                           | 667, 981           | Clemesha v R [1978] .....                                                                      | 326, 359, 481, 640, 641              |
| Cain v Banks; Ex parte Banks [1959] .....                                                                | 326                | Clifford v White [1910] .....                                                                  | 391                                  |
| — v Doyle [1946] .....                                                                                   | 54                 | Clout v Hutchinson (1950) .....                                                                | 271                                  |
| Calder (John) (Publications) Ltd v Powell<br>[1965] .....                                                | 198                | Clutton v Attenborough [1897] .....                                                            | 412                                  |
| Caldwell v Leech (1913) .....                                                                            | 190, 191           | Cobiac v Liddy [1969] .....                                                                    | 66, 493, 570, 618                    |
| Callaghan v R [1952] .....                                                                               | 231                | Cochran v Price; Ex parte Price [1943] .....                                                   | 476                                  |
| Cameron, Ex parte; Barnes v Cameron<br>[1975] .....                                                      | 63                 | Cock v A-G (1909) .....                                                                        | 150                                  |
| Cameron v Carrington [1907] .....                                                                        | 393                | Coffey, Ex parte; Re Evans [1971] .....                                                        | 443                                  |
| — v Holt (1980) .....                                                                                    | 103                | Coffin and Anor v Smith and Anor (1980) .....                                                  | 281                                  |
| — v Josey [1970] .....                                                                                   | 580                | Cohen v March [1951] .....                                                                     | 369                                  |
| Caminada v Hulton (1891) .....                                                                           | 206                | Colefax v R [1962] .....                                                                       | 661                                  |
| Campbell, Ex parte; Croft v Campbell<br>[1940] .....                                                     | 82, 389            | Collis v Macgroarty and O'Sullivan [1913] .....                                                | 206                                  |
| —, Ex parte; Campbell v Croft<br>[1940] .....                                                            | 82, 389            | Comer v Bloomfield (1970) .....                                                                | 46                                   |
| —, Ex parte; Veivers v Campbell<br>[1976] .....                                                          | 65, 66             | Comino, Ex parte; Horne v Comino<br>[1966] .....                                               | 369, 706                             |
| Campbell v Associated Newspapers Ltd<br>(1948) .....                                                     | 314                | Commr of Police for the Metropolis v Hills<br>[1978] .....                                     | 943                                  |
| — v Croft; Ex parte Campbell<br>[1940] .....                                                             | 82, 389            | Comptroller of Customs v Western Electric<br>Co Ltd [1965] .....                               | 377, 706                             |
| — v R [1954] .....                                                                                       | 526, 532           | Connelly v DPP [1964] .....                                                                    | 68, 69                               |
| — v Rankin; Ex parte Rankin [1943] .....                                                                 | 392                | Connolly v Meagher (1906) .....                                                                | 65, 77                               |
| — and Bradley v Ward [1955] .....                                                                        | 46                 | Connor v Macdonald (1912) .....                                                                | 211, 226                             |
| Cane v R [1968] .....                                                                                    | 158                | Conroy, Warn and Sisson v R [1976] .....                                                       | 624                                  |
| Capital and Counties Bank v Henty (1882) .....                                                           | 311                | Consolidated Trust Co Ltd v Browne<br>(1949) .....                                             | 312                                  |
| Cardew, Re; Ex parte Bank of Australasia<br>(1901) .....                                                 | 138                | Conteh v R [1956] .....                                                                        | 154                                  |
| Carmichael v McGowan [1967] .....                                                                        | 280                | Conway v Hotten [1976] .....                                                                   | 699                                  |
| Carr v R (1973) .....                                                                                    | 216, 521           | Cook v Corrie (1906) .....                                                                     | 676                                  |
| Carroll, Ex parte; R v The Children's<br>Court [1951] .....                                              | 389                | Cooper v McKenna; Ex parte Cooper<br>[1960] .....                                              | 87, 269                              |
| Carroll v Moore (1907) .....                                                                             | 195                | — v R [1961] .....                                                                             | 114                                  |
| — v R [1956] .....                                                                                       | 939                | Copeland v Cummings [1921] .....                                                               | 366                                  |
| Caruchet, Re (1899) .....                                                                                | 62                 | Coppen v Moore (No 2) [1898] .....                                                             | 89                                   |
| Catterall v Sweetman (1845) .....                                                                        | 305                | Corbett v R (1932) .....                                                                       | 280, 502                             |
| Caxton Publishing Co v Sutherland Pub-<br>lishing Co [1938] .....                                        | 326, 373           | Cordon-Cuenca v R [1944] .....                                                                 | 661                                  |
| Chalmers, Ex parte; Hall v Chalmers<br>[1942] .....                                                      | 405                | Cordwell v Lincoln [1914] .....                                                                | 328                                  |
| Champion v Seymour [1913] .....                                                                          | 205                | Corfield v Hodgson [1966] .....                                                                | 39, 180, 294                         |
| Chan Kau alias Chan Kai v R<br>[1955] .....                                                              | 221, 239, 640, 662 | Cornelius v R (1936) .....                                                                     | 660, 692, 693,<br>699, 700, 702, 703 |
| Chan Wei-Keung v R [1967] .....                                                                          | 701, 702           | Costar v Hetherington (1859) .....                                                             | 287                                  |
| Chapman & Co Ltd v Rose [1914] .....                                                                     | 131                | Coulter and Treffene v R (1926) .....                                                          | 526, 564                             |
|                                                                                                          |                    | Counsell, Ex parte; Montgomery v Coun-<br>sell [1956] .....                                    | 286                                  |
|                                                                                                          |                    | Counsins v Hanslow (1926) .....                                                                | 405                                  |
|                                                                                                          |                    | Cox v Cordingly (1933) .....                                                                   | 67                                   |
|                                                                                                          |                    | Coyle, Ex parte; Horne v Coyle [1965] .....                                                    | 90                                   |
|                                                                                                          |                    | Coyle v R [1972] .....                                                                         | 544                                  |