

South Australia



ANNO QUINQUAGESIMO PRIMO
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A.D. 2002

**CRIMINAL LAW CONSOLIDATION (TERRITORIAL APPLICATION OF
THE CRIMINAL LAW) AMENDMENT ACT 2002**

No. 28 of 2002

[Assented to 7 November 2002]

An Act to amend the Criminal Law Consolidation Act 1935.

SUMMARY OF PROVISIONS

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2. Commencement
3. Repeal of s. 5C
4. Insertion of Part 1A

PART 1A

TERRITORIAL APPLICATION OF THE CRIMINAL LAW

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The Parliament of South Australia enacts as follows:

Short title

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

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

Commencement

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

Repeal of s. 5C

3. Section 5C of the principal Act is repealed.

Insertion of Part 1A

4. The following new Part is inserted in the principal Act after section 5D:

**PART 1A
TERRITORIAL APPLICATION OF THE CRIMINAL LAW**

Interpretation

5E. (1) In this Part—

"necessary territorial nexus"—*see* section 5G(2);

"State" includes the Northern Territory and the Australian Capital Territory;

"relevant act" in relation to an offence means—

- (a) an act or omission that is, or causes or contributes to, an element of the offence; or
- (b) an act or omission that is, or causes or contributes to, something that would, assuming the necessary territorial nexus existed, be an element of the offence; or
- (c) a state of affairs that is an element of the offence, or would, assuming the necessary territorial nexus existed, be an element of the offence.

(2) The question whether the necessary territorial nexus exists in relation to an alleged offence is a question of fact to be determined, where a court sits with a jury, by the jury.

Application

5F. (1) The law of this State operates extra-territorially to the extent contemplated by this Part.

(2) However—

- (a) this Part does not operate to extend the operation of a law that is expressly or by necessary implication limited in its application to this State or a particular part of this State; and
- (b) this Part operates subject to any other specific provision as to the territorial application of the law of the State; and
- (c) this Part is in addition to, and does not derogate from, any other law providing for the extra-territorial operation of the criminal law.¹

¹ For example, the *Crimes at Sea Act 1998*.

Territorial requirements for commission of offence against a law of this State**5G. (1) An offence against a law of this State is committed if—**

- (a) all elements necessary to constitute the offence (disregarding territorial considerations) exist; and
- (b) the necessary territorial nexus exists.

(2) The necessary territorial nexus exists if—

- (a) a relevant act occurred wholly or partly in this State; or
- (b) it is not possible to establish whether any of the relevant acts giving rise to the alleged offence occurred within or outside this State but the alleged offence caused harm or a threat of harm in this State; or
- (c) although no relevant act occurred in this State—
 - (i) the alleged offence caused harm or a threat of harm in this State and the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts, or at least one of them, occurred; or
 - (ii) the alleged offence caused harm or a threat of harm in this State and the harm, or the threat, is sufficiently serious to justify the imposition of a criminal penalty under the law of this State; or
 - (iii) the relevant acts that gave rise to the alleged offence also gave rise to an offence against the law of a jurisdiction in which the relevant acts, or at least one of them, occurred and the alleged offender was in this State when the relevant acts, or at least one of them, occurred; or
- (d) the alleged offence is a conspiracy to commit, an attempt to commit, or in some other way preparatory to the commission of another offence for which the necessary territorial nexus would exist under one or more of the above paragraphs if it (the other offence) were committed as contemplated.

Procedural provisions

5H. (1) In proceedings for an offence against a law of the State, the existence of the necessary territorial nexus will be presumed and the presumption is conclusive unless rebutted under subsection (2).

(2) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court will proceed with the trial of the offence in the usual way and if at the conclusion of the trial, the court is satisfied, on the balance of probabilities, that the necessary territorial nexus does not exist, it must, subject to subsection (3), make a finding to that effect and the charge will be dismissed.

(3) If the court would, disregarding territorial considerations, find the person not guilty of the offence, the court must—

- (a) if the finding is based on the defendant's mental impairment—record a finding of not guilty on the ground of mental impairment; and
- (b) in any other case—record a finding of not guilty.

(4) The issue of whether the necessary territorial nexus exists must, if raised before the trial, be reserved for consideration at the trial.

(5) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus exists).

Double criminality

5I. (1) If—

- (a) an offence against the law of another State (the **external offence**) is committed wholly or partly in this State; and
- (b) a corresponding offence (the **local offence**) exists under the law of this State,

an offence (an **auxiliary offence**) arises under the law of this State.

(2) The maximum penalty for an auxiliary offence is the maximum penalty for the external offence or the maximum penalty for the local offence (whichever is the lesser).

(3) If a person is charged with an offence (but not specifically an auxiliary offence) and the court finds that the defendant has not committed the offence as charged but has committed the relevant auxiliary offence, the court may make or return a finding that the defendant is guilty of the auxiliary offence.