

The Parliament of AustraliaSim

House of Representatives

Code of Conduct Bill 2017

A Bill for an Act to outline a Code of Conduct for all participants of AustraliaSim, and for related matters.

(General_Rommel MP)

A Bill for an Act to outline a Code of Conduct for all participants of AustraliaSim, and for related matters.

The Parliament of AustraliaSim enacts:

1 Short Title

This Act may be cited as the *Code of Conduct Act 2017* ('the Act').

2 Commencement

This Act commences as soon as it receives the Royal Assent.

3 Supremacy of Act

Except as expressly provided, if any other law contains a civil or criminal offence that is also covered whether in part or by full by this Act, that offence must not be considered operable to the extent of the coverage of this Act.

4 Authority of Parliament to make laws etc.

- (1) The Act derives power from section 142 of the AustraliaSim Constitution that grants Parliament the ability to make laws governing the regulation of discourse.
- (2) The Act may derive power from any other part of the AustraliaSim Constitution, whether in part or in full.

5 Transitional provisions

- (1) Any person who has been sentenced based on a superseded version of this Act, shall continue to serve their sentence under the superseded version of this Act, and any appeal raised shall be based on any procedure outlined under the superseded version of this Act.
- (2) The *Code of Conduct Act 2017* which currently is in force is to be repealed and replaced with this Act immediately after the commencement of this Act.

Part 1 - Introduction

6 Object of Act

The objects of this Act are to:

- (a) introduce a Code of Conduct for all members to follow;
- (b) encourage a civil environment, free of abusive behaviour, while preventing excess violation of civil liberties;
- (c) introduce targeted offences for members who breach certain guidelines; and
- (d) ensure that there are a variety of methods available to prevent punitive sanctions being applied, where possible.

7 Application to members

All members must follow this Act.

8 Definition of member

In the Act, a member shall be a person who:

- (a) is an elector in AustraliaSim within the meaning of the *Commonwealth Electoral Act 1918*; or

- (b) performs any activity (other than, and only, to read) on the official AustraliaSim Discord server; or
- (c) performs any activity (other than, and only, to read) on any reddit subreddit (regardless of whether the subreddit is about AustraliaSim or not); or
- (d) performs any activity (other than, and only, to read) on any other platform that is being used by other members for the purposes of doing anything majorly or dedicated to AustraliaSim activities; or
- (e) Engages in direct electronic messaging with other members.

9 Defining account types and changing publicly recognised account

- (1) The following definitions shall apply within this Act:
 - account** means an identifiable username or similar that is under the ownership of a member.
 - alternative account** means the defendant operates another account (in addition to their original account) on any platform given in section 10 of the *AustraliaSim Constitution Act* without explicitly declaring that the alternative account is under the control of the member.
 - original account** means the first account created on any platform given in section 10 of the *AustraliaSim Constitution Act* by a member to exclusively use.
- (2) An alternative account may be made an original account by the following mechanism:
 - (a) the member unambiguously, publicly and widely informs AustraliaSim members that an alternate account or otherwise is to become their main account; and
 - (b) ceases to use the main account, which now becomes the alternate account; and
 - (c) there is no evidence to suggest that it is to evade scrutiny.

10 Definitions

In the Act, the following definitions shall apply:

appellant is the person filing an appeal claim in response to the judgment and sentencing of the defendant in the original claim.

AustraliaSim is the Commonwealth of AustraliaSim, contained within the bounds of section 10 of the *AustraliaSim Constitution Act*.

ban is where the defendant is prohibited to access any area within the bounds of section 10 of the *AustraliaSim Constitution Act* including, but not limited to, registering to run in an election, vote, campaign, etc.

circumvention is where the defendant uses an alternative account to conduct any activity that falls under the definition of a member.

complainant is the member filing a claim against the defendant in the first instance.

court means any authorised court that holds judicial power to determine claims arising from this Act.

Court means the High Court of AustraliaSim only.

defendant means the person charged with an offence under this Act in the original case.

mute is where the defendant is prohibited to engage in any activity (other than, and only, to read) within the bounds of section 10 of the *AustraliaSim Constitution Act* including, but not limited to, registering to run in an election, vote, campaign, etc.

Parliament is the Parliament of AustraliaSim.

parliamentarian means a member who, at the time of the offence, is a validly elected member of the AustraliaSim Parliament and continuously holds a position in the AustraliaSim Parliament as a validly elected member up till the time of sentencing.

party refers to the complainant and the defendant, or the appellant and the respondent.

person is anyone, regardless of whether they are a member or not.

respondent is the person with whom the appeal claim refers to.

third-party refers to any member who is not part of the party and is not a witness who nonetheless makes a submission to the court.

voting rights is where a member is given the right to vote in a vote conducted by the Australian Electoral Commission.

witness is a member who has knowledge of any information relevant to the offence in which the defendant has been charged with.

11 Applicability of Act

The Act is to apply to any activity that is conducted within the area listed in section 9 of the *AustraliaSim Constitution Act*, regardless of the circumstances of the activity.

Part 2 – Offences

12 Rationale and objective of offences

The objective of this Part is to encourage members to treat each other with respect at all times, regardless of political or personal differences, whilst drawing a line between individual autonomy and penalties to punish harmful behaviour.

13 Defendant can be charged multiple times for offence

- (3) A defendant can be accused and convicted multiple times for committing the same offence against multiple members.
- (4) A defendant can be accused and convicted multiple times for committing the same offence multiple times over a period of time.

14 Standard of proof required for offences

The following standards of proof must be met for offences under this Act:

- (1) Unless otherwise stated in the Act, the complainant must prove beyond reasonable doubt that the defendant committed the act, unless the defendant is charged with an offence in:

- (a) Section 24

in which the complainant must prove beyond the balance of probabilities that the defendant committed the act.

- (2) Unless otherwise stated in the Act, the complainant does not need to prove that the defendant had the intention to commit the act unless the defendant is charged with an offence in:

- (a) Section 19
- (b) Section 24

in which the complainant must prove beyond reasonable doubt (unless the offence requires proof of beyond the balance of probabilities, in which case it shall be that standard) that the defendant had the mind of committing the act.

Division 1 – Offences against members

15 Harassment of other members

(1) A member shall not harass another member.

Maximum penalty: muted for one week, or banned for two weeks, per offence.

(2) A member shall not use an alternative account to harass another member.

Maximum penalty: muted for two weeks, or banned for four weeks, per offence.

16 Abuse of other members

(1) A member shall not abuse another member.

Maximum penalty: muted for two weeks, or banned for four weeks, per offence.

(2) A member shall not use an alternative account to abuse another member.

Maximum penalty: muted for four weeks, or banned for eight weeks, per offence.

17 Threatening other members

(1) A member shall not threaten another member.

Maximum penalty: muted for four weeks, or banned for eight weeks, per offence.

(2) A member shall not use an alternative account to threaten another member.

Maximum penalty: muted for eight weeks, or banned for sixteen weeks, per offence.

18 Impersonation of other members

(1) A member shall not impersonate another member.

Maximum penalty: muted for one week, or banned for two weeks, per offence.

(2) A member shall not use an alternative account to impersonate another member.

Maximum penalty: muted for two weeks, or banned for four weeks, per offence.

19 Releasing real life member details without reason

(1) A member shall not release real life member details without a compelling reason.

Maximum penalty: muted for four weeks, or banned for one year, per offence.

(2) A member shall not use an alternative account to release real life member details without a compelling reason.

Maximum penalty: muted for eight weeks, or banned for two years, per offence.

(3) For the purposes of this section, the fact that a member has made their real life member details publicly is not by itself a compelling reason.

Division 2 – Offences against the community

20 Spam

- (1) A member shall not spam another member.

Maximum penalty: muted for one week, or banned for two weeks, per offence.

- (2) A member shall not use an alternative account to spam another member.

Maximum penalty: muted for two weeks, or banned for four weeks, per offence.

21 Vexatious claims of breach of Act

- (1) A member shall not attempt to use this Act to vexatiously launch proceedings against those they disagree with, unless a reasonable person finds a probable basis to launch proceedings.

Maximum penalty: banned for four weeks, per offence.

- (2) A member shall not use an alternative account to attempt to use this Act to vexatiously launch proceedings against those they disagree with, unless a reasonable person finds a probable basis to launch proceedings.

Maximum penalty: banned for eight weeks, per offence.

22 Voting more than once in vote held by the Australian Electoral Commission

- (1) A member shall not vote more than once in a vote held by the Australian Electoral Commission that is being conducted within the rules outlined in the *Commonwealth Electoral Act 1918*.

Maximum penalty: banned for 8 weeks, or loss of voting rights for 12 weeks, or both, per offence.

- (2) A member shall not vote more than once in a vote held by the Australian Electoral Commission that is being conducted within the rules outlined in the *Commonwealth Electoral Act 1918*.

Maximum penalty: banned for 8 weeks, or loss of voting rights for 12 weeks, or both, per offence.

23 Circumvention of penalties imposed under this Act

A member shall not attempt to circumvent a sentence based on this Act against themselves by means of an alternative account.

Maximum penalty: banned for one year, per offence.

24 Conspiracy with another member to circumvent offences under this Act

A member shall not conspire with another member to circumvent an offence under this Act.

Maximum penalty: muted for four weeks, or banned for four weeks, per offence.

25 False statements, tampering with evidence, etc.

A member shall not knowingly make a false statement during trial or ADR, or knowingly present evidence that has been made materially different from the original.

Maximum penalty: muted for four weeks, or banned for four weeks, per offence.

Part 3 - Defences

26 Rationale and objective of defences

The rationale of defences in the Act is to allow the defendant a reasonable opportunity to be found not guilty for offences listed in the Act, in light of the objectives of the Act as a whole to strike a reasonable balance between freedom of political communication and the need to ensure the wellbeing and good governance of AustraliaSim.

27 Standard of proof required by prosecution to negate defence

To raise a defence, the defendant is to give reasonable cause for the defence. If successful, in order to find the defendant guilty, the complainant must negate the defence beyond reasonable doubt.

28 Defences listed in Act are not exhaustive

The list of defences contained in this part are not exhaustive, and the defendant may raise any other relevant defence, so long as it is not explicitly excluded as a defence for an offence in this Act.

29 Defence of Political Commentary

- (1) The defendant may successfully raise the defence that their action was an act of political commentary, provided that the following guidelines are met:
 - (a) it was part of a publication; and
 - (b) the publication was not directed against a single member or a group of members; and
 - (c) the act of the defendant was not intended to evade the fact that without this defence, the act of the defendant would have been to commit the offence.
- (2) If the defendant successfully raises this defence, the defendant is to be found not guilty for that particular offence.
- (3) The defence of political commentary cannot be raised by the defendant if the offence charged is contained within part 2 division 2 of this Act.

30 Defence of Truth

The defendant may successfully raise the defence of truth, provided that the following guidelines are met:

- (1) The defendant acted in good faith in discussion or debate; and
- (2) The information given by the defendant is shown to be the truth.

If the defendant successfully raises this defence, the defendant is to be found not guilty for the particular offence.

31 Defence that actions of account not committed by the defendant

The defendant may not raise the defence that the actions of the account was not committed by the defendant because the defendant failed to reasonably secure the account via physical and electronic means, unless the defendant can prove beyond reasonable doubt that the defendant reasonably secured the account via physical and electronic means.

32 Defences explicitly outlawed with respect to offences listed in Act etc.

The following defences are explicitly outlawed with respect to offences listed in the Act:

- (1) Any form of provocation;
- (2) Any form of intoxication;
- (3) Any form of incapacity of the mind, whether temporary or permanent;

Part 4 – Trial Procedures

33 General principles and outline of part

- (1) The general principles of this part are to ensure that the sentencing procedures are as uniform as possible, clear, concise and deliver justice.
- (2) The outline of this part is as follows:
 - (a) Outline the procedure before a trial; and
 - (b) Outline the procedure during a trial.

34 Ability for defendant to reasonably defend actions despite any penalty

The defendant, despite any penalty against them that prevents them from performing any act within the bounds of section 10 of the *AustraliaSim Constitution Act*, may participate only to perform acts that the defendant is allowed to do within this Act.

Division 1 – Before a trial

35 Any member may file a claim

- (1) Any member may file a claim.
- (2) The member filing the claim does not need show that they have any relationship or are otherwise affected by the act of the defendant.

36 High Court of AustraliaSim has original jurisdiction

- (1) The High Court of AustraliaSim shall, unless otherwise provided, have original jurisdiction over any offence under this Act.
- (2) The Governor-General may make regulations that allow a lower court to hear claims that arise over any offence under this Act.
 - (a) This does not apply to any offence provided in part 2 division 2 of the Act.
- (3) The Full Bench of the High Court of AustraliaSim shall have appellant jurisdiction over all appellant cases over any offence under this Act.

37 Procedure for member to file claim

- (1) In order for the relevant court to hear a claim arising from a suspected offence committed by a defendant, the member filing the claim (the complainant) must submit to the court:
 - (a) a document outlining the offence committed by the defendant;
 - (b) evidence that supports the claim that the defendants action constituted the offence; and
 - (c) if relevant, file the claim against the original account of the defendant.
- (2) The totality of the file submitted shall constitute the appellant's submission.
- (3) The court may make rules prescribing, in addition to (1), standards required before accepting the appellant's submission.

38 Court to inform parties, set date, etc.

- (1) The court must, after receiving the complainant's submission:
 - (a) inform the defendant they have received the complainant's submission which concerns them, and provide them with a copy of said submission;
 - (b) inform both parties of alternatives to trial, if applicable;

- (c) inform the defendant that they have a right to make a submission (the defendant's submission), and if they do so, to do so at least one hour before the date and time in which the trial is to take place;
 - (d) inform, if applicable, of alternatives to trial; and
 - (e) set a date and time in which the trial shall commence that has been agreed to by the parties and the court.
- (2) The court must perform the above as soon as reasonably possible.
 - (3) The court must publicly inform members of the date and time in which the trial shall commence.
 - (4) The court must only change the date and time in which the trial shall commence if both parties and the court agrees to do so. If agreed to, the court must then follow (3).

39 Justice to recuse if conflict of interest exists

- (1) If a Justice, before a trial, knows or finds out:
 - (a) that the Justice was the complainant to the current case; or
 - (b) that the Justice was the complainant to a previous case with the same defendant up to 6 months ago; or

Note: this is to be determined by calculating the months between the judgment date of the previous case and the date the complainant's submission was filed.
 - (c) that the Justice considers themselves to be associated with the defendant to the extent that their participation in the case would undermine the confidence of the judicial system,

then the Justice may recuse himself from the case, and avoid discussing the case with any other Justice presiding over the current case.
- (2) Subsection (1)(a)-(b) does not apply if the Justice was presiding over an Alternative Dispute Resolution session within the meaning of part 5 division 2 of this Act.

40 Power of court to investigate claim before trial

- (1) The court may investigate the following aspects relating to the claim before the commencement of the trial:
 - (a) evidence submitted,
 - (b) submissions received,
 - (c) witness testimony,
 - (d) electronic logs, histories or similar,
 - (e) any other information the court deems relevant to the claim,
 - (f) the circumstances arising from the claim or from anything else in this list.
- (2) This section also applies to members of the judiciary who are presiding over the case.

41 Reviewing claim brief before trial

- (1) The court must, after receiving a submission but before the trial:
 - (a) consider the offences that the complainant accuses the defendant of having committed; and
 - (b) the evidence submitted to support the offence that the complainant accuses the defendant of having committed.
- (2) If, after following (1), the court finds:
 - (a) that an offence mentioned in the submission is wholly unsupported and unsubstantiated by the evidence; or

(b) that there is evidence that is wholly unsuitable towards assisting the complainant from supporting any offence listed in the submission;

the court may disregard that particular part of the submission.

(3) Nothing in this section prevents the court from disregarding the entire submission as it falls under (2).

42 Submissions from third parties once valid complaint lodged

Once a valid complaint is lodged, the court must accept submissions from third parties if they meet the standard set out in section 37 of the Act.

Division 2 – During a trial

43 When a trial begins

For the purposes of this Act, a trial commences when the time and date set for the commencement of the trial, as given in section 38 of the Act, has passed.

44 Defendant must make plea

- (1) The defendant must, as soon as possible at the beginning of the trial, plead guilty or not guilty to the offence(s) that they have been brought to trial for.
- (2) If the defendant makes a plea of guilty, no trial shall be conducted and the defendant shall be sentenced for that offence.
- (3) If the defendant pleads guilty to a subset of the offences charged, the trial should only concern itself with the offences in which the defendant has pleaded not guilty.
- (4) If the defendant does not make a plea, the court should accordingly assume the defendant is guilty and be sentenced for that offence.

45 Court to publicly air trial

- (1) The court must allow the public to have access to view the trial.
- (2) The court may waive this requirement if and only if the court is reasonably satisfied that:
 - (a) the details of the submission contain pornography; or
 - (b) the details of the submission are illegal to publicly redistribute; or
 - (c) the details of the submission contain credible threats of harm to people; or
 - (d) the details of the submission contain statements of a nature which, if publicly aired, are reasonably likely to cause physical harm to members.
- (3) Where possible, if the court waives the requirement, they should do so in a way that minimises the time in which the public does not have access to view the trial.
- (4) Nothing in this section mandates that the court must allow the public to have access to a period where judicial deliberation is taking place.

46 Court to keep a record of court proceedings

The court, regardless of how it determines the format or setting of the trial, must keep a record of the court proceedings in a commonly available electronic format that is readable by free software.

47 Court to ensure that all parties have adequate chance to respond

The court shall ensure that all parties have an adequate chance to argue their claim before the court, including calling on witnesses to appear before court, introducing evidence, and any other legal requirements. However, the court is under no obligation to allow a third party to argue before court.

48 Justice to recuse if conflict of interest exists

If a Justice, during a trial, knows that the Justice considers themselves to be associated with the defendant to the extent that their participation in the case would undermine the confidence of the judicial system, then the Justice should recuse themselves from the case, and avoid discussing the case with any other Justice presiding over the current case.

49 Trial in absentia

If the complainant or the defendant are not present at the trial, the justice is under no obligation to delay any aspect of the trial.

50 Court may make rules concerning procedure under this Act

The court may make rules concerning the court procedure during a trial where the offence charged is under this Act.

Part 5 – Alternatives to trial**51 General principles of this Part**

The principle of this Part is, where timely and efficient to do so, to allow a claim to enter an alternative to trial to provide alternate forms of justice which may, given the circumstances, be preferable to a trial.

52 Applicability of this Part

- (1) Under no circumstances where the trial has begun for a claim, as given in section 39 of the Act, can any of the alternatives to trial listed within this Part be conducted for the claim.
- (2) Under no circumstances where the procedure for an alternative to trial, as given in this part of the Act, has commenced can an alternative to the alternative to the trial be chosen.

Division 1 – Alternative Dispute Resolution**53 Definition of Alternative Dispute Resolution**

In this Act, Alternative Dispute Resolution ('ADR') shall mean a procedure where two parties engage in arbitration, in an amicable manner, to reach a binding agreement between both parties to prevent any future breaches of this Act.

54 When parties may request Alternative Dispute Resolution

A party may request the court to act as a forum for arbitration for Alternative Dispute Resolution if the conditions below are wholly met:

- (1) A party to the claim wants to conduct ADR;
- (2) The other party agrees to ADR;
- (3) The defendant has been charged with an offence or offences which the maximum penalty or penalties together is no longer than 4 weeks;
- (4) The defendant has not participated in ADR in the last 6 months; and
- (5) A justice agrees to preside over the ADR.

55 Format of ADR to be followed

- (1) If section 53 is met, the following procedure is to be adhered to:

- (a) The parties agree to an ADR session(s) in a manner similar to section 38;
 - (b) The parties discuss a resolution that would amicably address the interests of all parties concerned;
 - (c) The justice provides a safe and respectable space for the parties to communicate between each other; and
 - (d) The parties both agree to bind themselves to an agreement that, in the opinion of the parties and the justice, is reasonable in the circumstances.
- (2) The Governor-General may make regulations that prescribe additional steps to the procedure, or clarify the procedure as set out in the section.

56 Conduct during ADR to be of a reasonable standard

- (1) A party to the ADR must act in accordance with this Act.
- (2) A party who commits an offence during an ADR can have a claim filed against them for their breach of the Act during the ADR.
- (3) If a party has a claim filed against them based on an offence committed during the ADR, that claim shall not be allowed to be resolved via any mechanism listed in Part 5 of this Act.

57 Limit on possible terms in agreement

A justice must not approve an agreement that:

- (1) Imposes a burden against any party for a period exceeding 6 months; or
- (2) Imposes a term that would be inappropriate in the public interest.

58 Right to go to trial

- (1) Nothing in this section prevents a party from ending an attempt at ADR before an agreement is concluded, and going to a trial for the offence.
- (2) If a party exercises this right, the court should follow part 4, division 1 of the Act to the extent required to fulfil the requirements set out in the Act.

59 No agreement reached during ADR

If the parties are unable to reach an agreement during ADR after one week, a justice must order the case to go to trial.

60 Confidentiality

- (1) A party may agree to keep the arbitration process, outcome or both, confidential.
- (2) In order for confidentiality to exist, both parties must clearly state that they wish to keep the arbitration process (including evidence presented), outcome, or both, confidential, and that both parties agree.
- (3) Confidentiality is waived if:
 - (a) any term of the agreement is breached; or
 - (b) a party exercises their right under section 58 to go to trial.

Division 2 – Summary sentence for minor offences

61 Definition of summary sentence

- (1) In this Act, a summary offence shall mean a procedure where a justice, acting in the court's capacity may summarily decide to sentence the respondent for committing an offence, without going to trial.

- (2) For the avoidance of any doubt, a justice, acting in the court's capacity should only utilise this division to summarily find the defendant guilty and impose a sentence based on this Act if the justice, acting in the court's capacity is satisfied, beyond the balance of probabilities, that the defendant committed the offence.

Note: A justice, acting in the court's capacity should also consider s 63(2) of the Act to ensure that the court is able to fulfil the requirements listed there. If the court cannot fulfil the section, the justice, acting in the court's capacity should not impose a summary sentence.

62 When a summary sentence can be utilised

A justice, acting in the court's capacity having the relevant jurisdiction over the offence may, at their discretion sentence the defendant for an offence committed under this Act if the conditions below are wholly met:

- (1) The maximum penalty for the offence is no more than four weeks;
- (2) The offence does not require the prosecution to prove that the defendant needed to have the mind of committing the act;
- (3) There is no defence that the justice, acting in the court's capacity can reasonably see that applies to the circumstances of the case; and
- (4) The defendant has not received more than two summary sentences within a period of one month before the filing of the current claim.

63 Procedure for a summary offence

- (1) If section 61 is met, the justice, acting in the court's capacity shall:
 - (a) not go into trial (as otherwise described in in part 4 of this Act);
 - (b) immediately inform the defendant that he has been charged and sentenced for a breach of this Act; and
 - (c) issue a judgement per (2).
- (2) The justice, acting in the court's capacity shall concisely outline, in a judgment which is to not exceed one page:
 - (a) the offence committed by the defendant, and table it with evidence (which shall be on a separate page) to support the assertion that the defendant is guilty;
 - (b) that the defendant has, beyond the balance of probabilities, committed the offence; and
 - (c) the justice, acting in the court's capacity concisely outlines why no defence can be reasonably raised for the offence.
- (3) The justice, acting in the court's capacity is to inform members of the judgment in a reasonable manner.
- (4) The Governor-General may make regulations that prescribe additional steps to the procedure, or clarify the procedure as set out in the section.

64 Justice shall act as complainant

To avoid any doubt, the justice who utilises a summary sentence shall be acting as the complainant.

Part 6 – Judgment, and Sentencing procedures

65 General Principles and Outline of Part

- (1) The general principles of this part are to ensure that the courts fairly apply the law during judgment and sentencing.

- (2) The outline of this part is as follows:
- (a) Outlining how a judgment is to be issued;
 - (b) Outlining how a sentence is to be determined;
 - (c) Outlining when and how a suspended sentence can be applied;
 - (d) Outlining when and how a caution can be applied;
 - (e) Outlining when parliamentary approval is required; and
 - (f) When the court may adjust a sentence.

66 Communication of judgment and sentence

Having arrived at a judgment and sentence, the court must communicate the judgment and sentence:

- (1) To the parties to the claim; and
- (2) To members, in a reasonable manner.

67 Sentencing if summary sentence utilised

If the court hands down a summary sentence as given in part 5 division 2 of this act, the penalties the court may impose must not exceed the following:

- (1) Caution; or
- (2) Mute for more than 3 days; or
- (3) Ban for more than 1 day.

This applies regardless of whether the penalty was a suspended penalty or not.

68 Court must not consider certain elements when deciding on appropriate sentence

The court, in determining the appropriate sentence, and the length of the sentence, must not consider the defendant's fame, public image, importance, parliamentarian status, or anything else of a similar nature.

Division 1 – Judgment

69 Court to decide on judgment

- (1) The court shall determine whether the defendant is guilty or not guilty for the offence that the respondent has been brought to trial for.
- (2) Nothing in this section prevents the court to make an alternate resolution based on any other law.
- (3) Where a justice has determined to follow the procedure outlined in part 5 division 2 of this Act, the respondent is to be found guilty.

70 Time to judgment

The court shall ensure, in the interests of general justice, that a judgment is handed down as soon as reasonably practicable.

71 Judgment to also outline sentence, if applicable

If the defendant is to be found guilty, the court must in the judgment also hand down the sentence to be applied against the defendant.

72 Judgments to be published

A judgment must be published and made publicly available as soon as practical.

Division 2 – Sentencing generally

73 Purposes of sentencing

The purposes for which a court may impose a sentence on the defendant are as follows:

- (1) to ensure that the defendant is adequately punished for the offence;
- (2) to prevent recidivism by deterring the defendant and other persons from committing similar offences;
- (3) to protect the community from the defendant;
- (4) to promote the rehabilitation of the defendant;
- (5) to make the defendant accountable for their actions;
- (6) to denounce the conduct of the defendant;
- (7) to recognise the harm done to the victim of the crime and the community.

74 Power for court to change offence

The Court may, in its discretion, convict and sentence a defendant to an offence different from the offence originally claimed in respect of the defendant's conduct. The Court may only do so if the offence claimed by the claimant and the offence the Court wishes to convict the defendant of are those offences in the sections listed below:

- (1) Section 15
- (2) Section 16
- (3) Section 17

75 Aggravating, mitigating and other factors in sentencing

- (1) In determining the appropriate sentence for an offence, the court shall consider the following matters:
 - (a) the aggravating factors referred to in subsection (2) that are relevant and known to the court,
 - (b) the mitigating factors referred to in subsection (3) that are relevant and known to the court,
 - (c) any other objective or subjective factor that affects the relative seriousness of the offence.

The matters referred to in this subsection are in addition to any other matters that are required or permitted to be considered by the court under any Act or rule of law.

- (2) The aggravating factors to be considered in determining the appropriate sentence for an offence are as follows:
 - (a) the offence involved threatened use of violence,
 - (b) the defendant has a record of previous convictions,
 - (c) the offence was committed in company,
 - (d) the offence involved gratuitous cruelty,
 - (e) the injury, emotional harm, loss or damage caused by the offence was substantial,
 - (f) the offence was motivated by hatred for or prejudice against a group of people to which the defendant believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability),
 - (g) the offence was committed without regard for community safety,
 - (h) the offence was committed while the defendant was on conditional liberty in relation to an offence or alleged offence,

- (i) the defendant abused a position of trust or authority in relation to the victim,
- (j) the offence involved multiple victims or a series of criminal acts,
- (k) the defendant was previously cautioned under this Act,
- (l) the defendant was aware that a member was not in a reasonable situation to protest,
- (m) the defendant breached or has breached an ADR agreement.

The court is not to have additional regard to any such aggravating factor in sentencing if it is an element of the offence.

- (3) The mitigating factors to be considered in determining the appropriate sentence for an offence are as follows:
- (a) the harm caused by the offence was not substantial,
 - (b) the defendant was acting under duress,
 - (c) the defendant does not have any record (or any significant record) of previous convictions,
 - (d) the defendant was a person of good character,
 - (e) the defendant is unlikely to re-offend,
 - (f) the defendant has good prospects of rehabilitation,
 - (g) the remorse shown by the defendant for the offence, so long as it is sincere,
 - (h) the defendant has provided evidence that they have accepted responsibility for their actions, and
 - (i) the defendant has acknowledged any injury, loss or damage caused their actions or made reparation for such injury, loss or damage (or both),
 - (ii) the defendant was not fully aware of the consequences of their actions because of the defendant's age or any disability,
 - (i) a plea of guilty by the defendant, so long as the plea was sincere;
 - (j) assistance by the defendant to the court, so long as such disclosure was sincere,
 - (k) the defendant has conformed to an ADR agreement.
- (4) The court is not to have regard to any such aggravating or mitigating factor in sentencing if it would be contrary to any Act or rule of law to do so.
- (5) The fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.

76 Sentence per offence not to exceed maximum sentence for offence

The sentence per offence committed must not, under any circumstances, exceed the maximum sentence given within this Act.

77 One sentence per offence

Subject to any other provision in this Act, the court must impose a sentence for every offence for which the defendant has been found guilty.

78 Procedure when sentencing defendant for multiple offences

The court may, when sentencing the defendant for multiple offences, impose an aggregate sentence so long as the following are met:

- (1) There are reasonable grounds to aggregate a sentence;
- (2) That the court outlines what sentences the defendant would have received under each offence if the sentences were not aggregated; and
- (3) The aggregate sentence does not exceed the sum of all maximum sentences for the multiple offences.

The aggregate sentence is to be served in addition to any sentence the defendant may already be serving.

79 Application of sentence where alternate account is used

If the defendant was charged under any offence listed in Part 2 of this Act containing the element of using an alternate account:

- (1) The alternate account at the time of sentencing is to be banned indefinitely (no Parliamentary approval is required); and
- (2) The sentence is to be applied against the original account that the member operates at the time of sentencing.

80 Stacking of sentences

Where the defendant has been previously sentenced for an offence, and the sentence is still in effect, the current sentence is to be added to the previous sentence, and the defendant is to serve in addition to the previous sentence the current sentence.

81 Commencement of sentence

Unless otherwise provided for, a sentence must commence on the date the sentence and judgment is handed down, unless all or part of the sentence requires approval from Parliament, in which all or part of that sentence commences after approval from Parliament.

82 Record of sentences

The Judiciary (or relevant designated body) shall keep a record of sentences imposed against any member.

Division 3 – Suspended sentences

83 Purpose of suspended sentences

The purpose of this division is to give the court, in consideration of the purposes of sentencing, greater flexibility in handing down a sentence against the defendant.

A suspended sentence will allow the defendant to not face the penalty so long as they do not commit another offence for a significant amount of time.

If the defendant commits another offence, and is found guilty of it, the suspended sentence shall be served in addition to the sentence from the other offence.

84 Definition of suspended sentences

‘In this Act, suspended sentence means a sentence handed down by a court that the court may, in its discretion, decide does not need to be served at the time the sentence is handed down.

85 Application and effect of suspended sentences

A court, where choosing to suspend the sentence of the defendant, shall

- (1) Communicate to the defendant the purpose of suspended sentences as given in section 81; and
- (2) Warn the defendant that a breach of the suspended sentence may lead to higher penalties for future offences.

86 Offences in which suspended sentence may not be utilised

- (1) If the defendant was found to be guilty of any offence in the current claim that:
 - (a) contains a maximum penalty exceeding 8 weeks; or
 - (b) contains a penalty allowing for the loss of voting rights,a court must not allow a suspended sentence for that particular offence.
- (2) If the defendant has breached a suspended sentence in the last 3 months, a court must not order a suspended sentence for any offence.

87 Parliament to not approve suspended sentences

A suspended sentence does not need to be approved by Parliament unless, and only if the suspended sentence contains the loss of voting rights, in which the Parliament shall vote for that part of the suspended sentence only.

88 Expiry of suspended sentence

If, after twelve weeks from the commencement of the suspended sentence, the defendant does not commit an offence, or if he is not found guilty of it, or is found guilty but a caution is applied as the sentence, then the suspended sentence shall cease to have effect.

89 Breach of suspended sentence

If the defendant, after receiving a suspended sentence, commits an offence, and is found guilty of that offence, the defendant is to serve the suspended sentence in addition to the sentence, if any, for that offence.

90 Court must not consider certain elements when deciding on suspended sentences

The court, in determining whether a suspended sentence should be applied or not, must not consider the fame, public image, importance, or anything else of a similar nature of the defendant.

Division 4 – Caution instead of listed penalty etc.**91 Imposing caution instead of penalty listed in Act**

A court may decide to issue a caution instead of a penalty listed in the Act if, having regard to all the circumstances of the claim, the purposes of sentencing, and the aggravating, mitigating and other factors in sentencing, a caution would be the most appropriate sentence.

92 Nature of a caution

- (1) For the avoidance of any doubt, if a court decides to impose a caution on the defendant, the defendant, despite not having to face any other punishment, shall still be guilty of the offence.
- (2) The defendant will otherwise retain the rights and privileges of any other member.

93 Court may not caution defendant

- (1) If the defendant was found to be guilty of any offence in the current claim that:
 - (a) contains a maximum penalty exceeding 4 weeks; or
 - (b) contains a penalty allowing for the loss of voting rights,the defendant must not be cautioned for that particular offence.

- (2) If the defendant has obtained a caution for the same offence in the last four weeks immediately preceding the claim, a court must not caution the defendant and instead apply any other sentence provided for in this Act.

Division 5 – Parliamentary approval of certain sentences

94 Parliament must approve certain sentences

The Parliament must approve a sentence if:

- (1) The sentence would mean the loss of voting rights; or
- (2) The sentence would be longer than 4 weeks; or
- (3) If the sentence is against a parliamentarian only – the sentence would be longer than 1 week;

and the Parliament must approve the sentence within two days.

95 If Parliament does not approve of sentence

If Parliament does not approve a particular sentence, the court shall revise the sentence, and adjust the sentence so that:

- (1) There is no loss of voting rights;
- (2) The sentence is revised to 4 weeks; or
- (3) If the sentence is against a parliamentarian only – the sentence would not exceed 1 week.

whichever one is applicable.

96 Parliaments decision is final

The decision on the sentence by Parliament cannot be reconsidered.

97 Procedure if Parliament is not sitting when sentence is issued

If the Parliament is not sitting when the sentence requiring Parliamentary approval is handed down, the following procedure is to be adhered to:

- (1) All parliamentary representatives who were legally elected immediately prior to Parliament rising shall attend the High Court of Australia at a time and place designated by the High Court no more than two days after the sentence is handed down; and
- (2) Vote on whether the sentence is agreed to;

and if a majority of parliamentary representatives agree to the sentence, then it is taken to having fulfilled the requirements of this division.

Division 6 – Sentencing if defendant is parliamentarian

98 Court not to consider status of defendant as parliamentarian

The court shall not consider the fact that the defendant is a parliamentarian when determining the application of a suitable sentence, and the length of the sentence.

99 Additional consequences if certain sentence issued against defendant

If the defendant is a parliamentarian, and if the defendant is sentenced to a punishment that:

- (1) exceeds one week, the parliamentarian is to be removed from Parliament, and the appropriate steps are to be taken to replace the defendant in Parliament; or

- (2) is or less than one week, the parliamentarian is to be automatically granted official leave from Parliament.

100 Application of additional penalties

The penalties listed in section 99 shall apply to any type of sentence, including normal sentences and suspended sentences (if breached).

Division 7 – Court may adjust sentence

101 Court may reopen proceedings to correct sentencing errors

- (1) This section applies to proceedings (including proceedings on appeal) in which a court has:
 - (a) imposed a penalty that is contrary to law, or
 - (b) failed to impose a penalty that is required to be imposed by law,and applies whether or not a person has been convicted of an offence in those proceedings.
- (2) The court may reopen the proceedings (either on its own initiative or on the application of a party to the proceedings) and, after giving the parties an opportunity to be heard:
 - (a) may impose a penalty that is in accordance with the law, and;
 - (b) if necessary, may amend any relevant conviction or order.
- (3) The court may only reopen proceedings to correct sentencing errors before one week from the date of judgment and sentencing.

Part 7 – Appeals

102 General Principles and Outline of Part

The general principles of this part are to ensure that a party can appeal the judgment and sentence handed down, and that a member can appeal any aspect of this law that allows for judicial discretion.

103 No appeals allowed in certain circumstances

- (1) Where the Full Bench of the High Court of AustraliaSim has decided on a case, there is to be no appeal. Otherwise, either party may appeal the case to the Full Bench of the High Court of AustraliaSim.
- (2) No aspect of an ARD agreement may be appealed.

104 Justice to recuse if conflict of interest exists

If a Justice, before or during an appeal trial, considers themselves to be associated with the defendant to the extent that their participation in the case would undermine the confidence of the judicial system, then the Justice should recuse themselves from the case, and avoid discussing the case with any other Justice presiding over the current case.

105 Meaning of Court in this Part

In this part, ‘Court’ shall mean the Full Bench of the High Court of AustraliaSim.

106 Application of sentence if judgment under appeal

- (1) The sentence against the defendant shall continue during the appeal stage to the maximum extent possible whilst allowing the defendant to exercise his rights and responsibilities under this part.

- (2) If the defendant is a parliamentarian, in addition to (1), the parliamentarian may continue to participate in the appropriate chamber of parliament to vote only.

Division 1 – Initiating appeal

107 Parties who may appeal

Only the complainant or defendant who believes that the judgment, the sentence, or any other element was improper due to an error in fact or law may appeal.

108 No appeals allowed after time elapsed

An appeal may not be initiated, regardless of any compelling reason, or any other Act or rule of law, after one week from the day the sentence and judgment was handed down.

109 Procedure for member to file appeal

- (1) The party submitting the appeal (the appellant) must submit a document to the Court outlining:
 - (a) the grounds for the appeal; and
 - (b) the evidence to support the appeal.
- (2) The Court may make rules prescribing, in addition to (1), standards required before accepting the appellant's submission.

110 Court to inform parties, set date, etc.

- (1) The Court must, after receiving the appellant's submission:
 - (a) inform the respondent they have received the appellant's submission which concerns them, and provide a copy of said submission to the respondent;
 - (b) inform the respondent that they have a right to make a submission (the respondent's submission), and if they do so, to do so at least one hour before the date and time in which the appeal trial is to take place; and
 - (c) set a date and time in which the appeal trial shall commence that has been agreed to by the parties and the court.
- (2) The Court must perform the above as soon as reasonably possible.
- (3) The Court must publicly inform members of the date and time in which the trial shall commence.
- (4) The Court must only change the date and time in which the trial shall commence if both parties and the Court agrees to do so. If agreed to, the Court must then follow (3).

111 Power of Court to investigate claim before trial

- (1) The Court may investigate any aspects deemed relevant that relates to the claim before the commencement of the appeal trial.
- (2) This section also applies to members of the judiciary who are presiding over the claim.

112 Reviewing claim brief before trial

- (1) The Court must, after receiving a submission but before the appeal trial:
 - a. consider grounds of the appeal as submitted by the appellant; and
 - b. the evidence submitted to support the grounds of appeal as submitted by the appellant.
- (2) If, after following (1), the Court finds:
 - a. that a ground of appeal in the submission is wholly unsupported and unsubstantiated by the evidence; or

- b. that there is evidence that is wholly unsuitable towards assisting the complainant from supporting any ground of appeal given in the submission;

the Court may disregard that particular part of the submission.

- (3) Nothing in this section prevents the Court from disregarding the entire submission as the entire submission falls under (2).

113 Submissions from third parties once valid appeal lodged

Once a valid appeal has been lodged, the Court must accept submissions from third parties if they meet the standard set out in section 109 of the Act.

Division 2 – During appeal

114 Appellant and respondent to argue before Court

The appellant and respondent shall argue on any reasonable appeal grounds before the Court.

115 Court to publicly air appeal trial

- (1) The Court must allow the public to have access to view the appeal trial.
- (2) The Court may waive this requirement if, and only if the Court is reasonable satisfied that:
 - (a) the details of the submission contain pornography; or
 - (b) the details of the submission are illegal to publicly redistribute; or
 - (c) the details of the submission contain credible threats of harm to people; or
 - (d) the details of the submission contain statements of a nature which, if publicly aired, are reasonably likely to cause physical harm to members.
- (3) Where possible, if the Court waives the requirement, they should do so in a way that minimises the time in which the public does not have access to view the appeal trial.
- (4) Nothing in this section mandates that the Court must allow the public to have access to a period where judicial deliberation is taking place.

116 Court to keep a record of court proceedings

The Court, regardless of how the Court determines the format or setting of the appeal trial, must keep a record of the Court proceedings in a commonly available electronic format that is readable by free software.

117 Court to ensure that all parties have adequate chance to respond

The Court shall ensure that all parties have an adequate chance to argue their claim before the Court, including calling on witnesses to appear before Court, introducing evidence, and any other legal means. However, the Court is under no obligation to allow a third party to argue before Court.

118 Appeal trial in absentia

If the appellant or respondent are not present at the appeal trial, the justice is under no obligation to delay any aspect of the appeal trial, judgment and resentencing, if any.

119 Court may make rules concerning procedure under this Act

The Court may make rules concerning procedure during an appeal trial.

Division 3 – Appeal determination

120 Court to decide on appeal grounds

The Court is to determine whether the grounds for appeal are to be held or dismissed.

121 Case to be remitted to trial justice where appropriate

If the Court determined that a ground of appeal is held, the Court should remit the matter back to the trial court for their consideration, unless the Court acted as the trial court, in which case the Court shall consider the results of the appeal and reissue a judgment and sentence, as appropriate.

122 Appeal judgments to be published

An appeal judgment must be published and made publicly available as soon as practical.

Part 8 – Miscellaneous

123 Governor-General may make regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

124 Withdrawing complainant's submission

The complainant may at any time unilaterally withdraw a submission or part of a submission to the court alleging that a respondent has committed a particular offence before a judgment has been handed down, unless the matter is already under trial as given in part 4 division 2 of the Act, in which the Justice(s) presiding must also assent to the withdrawal.

125 Joint claims

- (1) A group of members may join and act together as a complainant.
- (2) If (1) is exercised, any part of the act referring to the complainant shall be construed as to mean the group of members, to the extent reasonable.
- (3) If in this Act, the complainant must agree or assent to something, with a group of members, all members must unanimously agree or assent to that thing.
- (4) Where reasonable, that same group of members may also act as the appellant or respondent in an appeal.
- (5) The group of members may not disband during a trial or appeal trial.

126 Giving evidence in timely manner

A party ordered to give evidence by a court shall do so at the time and place so ordered by the court.

127 Evidence

Any evidence may be admitted by the court in its absolute discretion.

128 Witnesses

Any party may call on any witness that the court deems to be relevant.

129 No third party legal representation allowed

No one may have third party legal representation for any matter dealing with this Act.

130 Directions to court where reasonable is contained within section

Where the court is to determine whether something is reasonable or not, the court should consider the:

- (a) sound judgment,
- (b) sensibility,
- (c) appropriateness,
- (d) credible,
- (e) believability, and
- (f) moderation

of that thing, whatever that may be.

131 Interpretation of Act

The Act shall be interpreted based on the modern statutory approach. Unless otherwise provided, the Act should be read in line with the *Acts Interpretation Act 1901*.

132 Spirit of this Act to be upheld in event of inconsistency

To the fullest extent possible, where there is an inconsistency in the Act, the court should interpret the Act to keep in spirit of this Act.