



# **Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001**

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**An Act relating to the application of the *Criminal Code* to certain offences, and for related purposes**

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# Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001

No. 5, 2001

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## An Act relating to the application of the *Criminal Code* to certain offences, and for related purposes

[Assented to 20 March 2001]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*.

### 2 Commencement

- (1) Subject to this section, this Act commences at the latest of the following times:
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- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
    - (b) the start of the 28th day after the day on which the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* receives the Royal Assent;
    - (c) the start of the 28th day after the day on which this Act receives the Royal Assent.
  - (2) If item 22 of Schedule 1 to the *Broadcasting Services Amendment Act 2000* has not commenced before the commencement of section 1 of this Act, items 20, 21, 22, 23, 24 and 25 of Schedule 1 to this Act commence immediately after the commencement of the first-mentioned item.
  - (3) If section 1 of this Act commences before 1 July 2001:
    - (a) item 21 of Schedule 1 to the *Broadcasting Services Amendment Act (No. 3) 1999* does not commence (despite section 2 of that Act); and
    - (b) item 27 of Schedule 1 to this Act commences on 1 July 2001.
  - (4) If section 1 of this Act commences on 1 July 2001:
    - (a) item 26 of Schedule 1 to this Act commences on that day immediately after the commencement of item 21 of Schedule 1 to the *Broadcasting Services Amendment Act (No. 3) 1999*; and
    - (b) item 27 of Schedule 1 to this Act commences immediately after the commencement of item 26 of Schedule 1 to this Act.
  - (5) If section 1 of this Act commences after 1 July 2001, item 27 of Schedule 1 to this Act commences immediately after the commencement of item 26 of Schedule 1 to this Act.
  - (6) If item 140 of Schedule 1 to the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* has not commenced before the commencement of section 1 of this Act, item 38 of Schedule 1 to this Act commences immediately after the commencement of the first-mentioned item.
  - (7) If item 2 of Schedule 1 to the *Postal Services Legislation Amendment Act 2001* commences before the commencement of section 1 of this Act, this Act has effect as if the amendments of the *Australian Postal Corporation Act 1989* contained in
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Schedule 1 to this Act were amendments of the *Australian Postal Corporation Limited Act 1989*.

- (8) If item 1 of Schedule 1 to the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000* has not commenced before the commencement of section 1 of this Act, items 164 and 165 of Schedule 1 to this Act commence immediately after the commencement of the first-mentioned item.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

## Schedule 1—Amendment of Acts

### *Archives Act 1983*

#### 1 Subsection 3(1)

Insert:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

#### 2 At the end of Part I

Add:

#### 4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### 3 Subsection 24(1)

Repeal the subsection, substitute:

- (1) Subject to this Part, a person must not engage in conduct that results in:
  - (a) the destruction or other disposal of a Commonwealth record; or
  - (b) the transfer of the custody or ownership of a Commonwealth record; or
  - (c) damage to or alteration of a Commonwealth record.

Penalty: 20 penalty units.

- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that the record is a Commonwealth record.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



**4 Subsection 26(1)**

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
- (a) a Commonwealth record has been in existence for more than 25 years; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct results in an addition to or an alteration of the record.

Penalty: 20 penalty units.

- (1A) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**5 Subsection 56(3)**

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) records are made available to the person under subsection (2) on conditions to be observed by the person; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes such a condition.

Penalty: 20 penalty units.

**6 Subsection 61(3)**

Repeal the subsection (including the penalty), substitute:

- (3) A person must not engage in conduct that results in:
- (a) the destruction or other disposal of any object to which this section applies; or
  - (b) damage to such an object.

Penalty: 20 penalty units.

- (4) Subsection (3) does not apply if the person has the permission of the Archives to destroy, dispose of or damage the object.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

## ***Australian Communications Authority Act 1997***

### **7 At the end of Part 1**

Add:

#### **4A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **8 Subsection 55(1)**

Omit “, unless the ACA consents in writing”.

### **9 Subsection 55(2)**

Omit “intentionally or recklessly”.

### **10 After subsection 55(2)**

Insert:

(2A) Subsections (1) and (2) do not apply if the ACA consents in writing to the use or application of the name or symbol.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

## ***Australian Film Commission Act 1975***

### **11 At the end of Part I**

Add:

#### **3A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **12 Subsection 10(5)**

Repeal the subsection, substitute:

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(5) Subsection (4) does not apply if the person has a reasonable excuse relating to the availability of Australian short films.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(5A) Subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## ***Australian Postal Corporation Act 1989***

### **13 At the end of Part 1**

Add:

#### **11A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **14 Subsection 90H(2)**

Omit “knowingly or recklessly”.

#### **15 Subsection 90LB(2)**

Omit “knowingly or recklessly”.

#### **16 Subsection 90LE(2)**

Omit “knowingly or recklessly”.

#### **17 Subsection 90N(2)**

Omit “knowingly or recklessly”.

## ***Broadcasting Services Act 1992***

### **18 At the end of Part 1**

Add:

## 10A Application of the *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Despite subsection (1), Part 2.5 of the *Criminal Code* does not apply to an offence against Schedule 5 to this Act.

## 19 After subsection 66(1)

Insert:

- (1A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the provision breached was a provision of Division 2, 3, 4 or 5.

## 20 Subsection 121FH(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
- (a) the person is subject to a notice under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct does not comply with the notice.

Penalty: 20,000 penalty units.

## 21 At the end of section 121FH

Add:

- (4) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

## 22 Paragraph 121FJ(b)

Repeal the paragraph, substitute:

- (b) the person engages in conduct; and
- (c) the person's conduct breaches a condition of the licence.

## 23 At the end of section 121FJ

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Add:

(2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

## **24 Paragraph 121FLF(b)**

Repeal the paragraph, substitute:

- (b) the person engages in conduct; and
- (c) the person's conduct breaches a condition of the declaration.

## **25 At the end of section 121FLF**

Add:

(2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

## **26 Section 139**

Repeal the section, substitute:

### **139 Offence for breach of conditions of licences and class licences**

(1) A person is guilty of an offence if:

- (a) the person is a commercial television broadcasting licensee;  
and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches a condition of the licence set out in subclause 7(1) of Schedule 2.

Penalty: 2,000 penalty units.

(2) A person is guilty of an offence if:

- (a) the person is a subscription television broadcasting licensee;  
and
- (b) the person engages in conduct; and

- (c) the person's conduct breaches a condition of a subscription television broadcasting licence set out in section 103P, 103Q, 103S, 103T, 103V, 103W, 103Y, 103Z, 103ZM or 103ZN, or in subclause 10(1) of Schedule 2.

Penalty: 1,000 penalty units.

- (3) A person is guilty of an offence if:
  - (a) the person is a commercial radio broadcasting licensee; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches a condition of the licence set out in subclause 8(1) of Schedule 2.

Penalty: 500 penalty units.

- (4) A person is guilty of an offence if:
  - (a) the person is a community broadcasting licensee (other than a temporary community broadcasting licensee); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches a condition of the licence set out in subclause 9(1) of Schedule 2.

Penalty: 50 penalty units.

- (5) A person is guilty of an offence if:
  - (a) the person is a temporary community broadcasting licensee; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2.

Penalty: 50 penalty units.

- (6) A person is guilty of an offence if:
  - (a) the person provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting service; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches a condition set out in subclause 11(1) of Schedule 2.

Penalty: 50 penalty units.

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(7) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**27 Paragraph 139(2)(c)**

Omit “103Y, 103Z, 103ZM or 103ZN”, substitute “103Y or 103Z”.

**28 Subsection 202(1)**

Omit “, without reasonable excuse”.

**29 At the end of subsection 202(1)**

Add:

Penalty: Imprisonment for one year.

**30 Subsection 202(2)**

Omit “, without reasonable excuse”.

**31 After subsection 202(2)**

Insert:

(2A) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**32 Paragraph 82(b) of Schedule 5**

Repeal the paragraph, substitute:

- (b) the person engages in conduct; and
- (c) the person’s conduct contravenes the rule.

**33 At the end of clause 82 of Schedule 5**

Add:

(2) In this clause:

*engage in conduct* means:

- (a) do an act; or

(b) omit to perform an act.

**34 Paragraph 83(4)(b) of Schedule 5**

Repeal the paragraph, substitute:

- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the direction.

**35 Subclause 83(4) of Schedule 5 (penalty)**

Omit "for contravention of this subclause".

**36 At the end of clause 83 of Schedule 5**

Add:

(5) In this clause:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**37 Subclause 87(9) of Schedule 5**

Omit "section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*", substitute "section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*".

**38 After subclause 10(2) of Schedule 6**

Add:

(2A) Subclause (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

***Film Licensed Investment Company Act 1998***

**39 Section 35**

Repeal the section.

***Protection of Movable Cultural Heritage Act 1986***

**40 Paragraphs 3(3)(a) and (b)**

Repeal the paragraphs, substitute:

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- (a) section 6 of the *Crimes Act 1914*; or
- (b) an ancillary offence (within the meaning of the *Criminal Code*);

#### **41 At the end of Part I**

Add:

#### **6A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **42 Subsection 9(3)**

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
  - (a) the person exports, or attempts to export, an object; and
  - (b) the object is an Australian protected object; and
  - (c) the person's conduct referred to in paragraph (a) is otherwise than in accordance with a permit or certificate.
- (3A) A person is guilty of an offence if:
  - (a) a permit or certificate relates to an Australian protected object; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a condition of the permit or certificate.
- (3B) A person who is convicted of an offence against subsection (3) or (3A) is punishable by:
  - (a) if the person is an individual—a fine not exceeding 1,000 penalty units or imprisonment for a period not exceeding 5 years, or both; or
  - (b) if the person is a body corporate—a fine not exceeding 2,000 penalty units.

Note: See subsection 46(4) for penalties that may be imposed by a court of summary jurisdiction.

#### **43 At the end of section 9**

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Add:

(7) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**44 At the end of section 29**

Add:

(4) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**45 Subsection 39(2)**

Omit “, without reasonable excuse,”.

**46 At the end of section 39**

Add:

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**47 Section 42**

Repeal the section.

**48 Subsection 46(1)**

Omit “subsection 9(3), 14(2) or 42(1)”, substitute “subsection 9(3), 9(3A) or 14(2)”.

**49 Subsection 46(4)**

Repeal the subsection, substitute:

(4) If, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence referred to in subsection (1), the penalty that the court may impose is:

- (a) if the person is an individual—a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the person is a body corporate—a fine not exceeding 200 penalty units.

## ***Radiocommunications Act 1992***

### **50 Subsection 11(1)**

Omit “section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914*, or an ancillary offence (within the meaning of the *Criminal Code*)”.

### **51 Section 46**

Omit “, without reasonable excuse, knowingly or recklessly”.

### **52 At the end of section 46**

Add:

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **53 Section 47**

Omit “, without reasonable excuse,”.

### **54 At the end of section 47**

Add:

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **55 Section 113**

Repeal the section, substitute:

### 113 Contravention of conditions

- (1) A person is guilty of an offence if:
- (a) an apparatus licence relates to the person; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the licence.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

### 56 At the end of section 117

Add:

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 57 After subsection 118(1)

Insert:

- (1A) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 58 Subsection 124(4)

Omit “, without reasonable excuse,”.

### 59 Subsection 124(4) (penalty)

Omit “for contravention of this subsection”.

### 60 At the end of section 124

Add:

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(5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) Subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**61 Subsection 157(1)**

Omit “, without reasonable excuse,”.

**62 After subsection 157(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**63 Subsection 158(1)**

Omit “, without reasonable excuse,”.

**64 After subsection 158(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**65 Subsection 160(1)**

Omit “, without reasonable excuse,”.

**66 After subsection 160(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**67 Section 170**

Repeal the section, substitute:

**170 Contraventions of permit conditions**

- (1) A person is guilty of an offence if:
- (a) a permit relates to the person; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the permit.

Penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**68 Section 178**

Omit "subsection 157(1), 158(1) or 160(1)", substitute "subsection 157(1A), 158(1A) or 160(1A)".

**69 Subsection 186(1)**

Omit ", without reasonable excuse,".

**70 After subsection 186(1)**

Insert:

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**71 Subsection 187(1)**

Omit ", without reasonable excuse,".

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**72 After subsection 187(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**73 Subsection 187A(1)**

Omit “, without reasonable excuse”.

**74 After subsection 187A(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(1B) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**75 Subsection 188A(2)**

Omit “intentionally or recklessly”.

**76 Subsection 189(1)**

Omit “, without reasonable excuse”.

**77 After subsection 189(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**78 Section 197**

Repeal the section, substitute:

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**197 Causing interference etc.**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the person is reckless as to whether the conduct will result in:
    - (i) substantial interference with radiocommunications; or
    - (ii) substantial disruption or disturbance of radiocommunications.

Penalty: Imprisonment for 1 year.

- (2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**79 Section 199**

Omit “, without reasonable excuse,”.

**80 At the end of section 199**

Add:

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**81 Subsection 210(5)**

Omit “, without reasonable excuse”.

**82 After subsection 210(5)**

Insert:

- (5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

**83 Section 214**

Repeal the section, substitute:

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**214 Contravention of a direction**

- (1) A person is guilty of an offence if:
- (a) the person has been issued with a direction under section 212; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 100 penalty units.

- (2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**84 Subsection 227(1)**

Omit “, without reasonable excuse,”.

**85 After subsection 227(1)**

Insert:

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

**86 Subsection 227(4)**

Omit “subsection (1)”, substitute “subsection (1A)”.

**87 Subsection 261B(3)**

Omit “, without reasonable excuse,”.

**88 Subsection 261B(4)**

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACA has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

### **89 Subsection 261C(3)**

Omit “, without reasonable excuse,”.

### **90 Subsection 261C(4)**

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACA has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person is guilty of an offence if:
- (a) the ACA has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

- (a) do an act; or
  - (b) omit to perform an act.
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**91 Subsection 268(3)**

Omit “, without reasonable excuse,”.

**92 At the end of section 268**

Add:

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**93 Subsection 278(4)**

Omit “, without reasonable excuse,”.

**94 At the end of section 278**

Add:

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**95 Subsection 279(2)**

Omit “, without reasonable excuse,”.

**96 At the end of section 279**

Add:

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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**97 Subsection 301(1)**

Omit “, without reasonable excuse,”.

**98 After subsection 301(1)**

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(1B) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**99 After subsection 301(3)**

Insert:

(3A) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**100 After section 313**

Insert:

**313A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

***Telecommunications Act 1997***

**101 Paragraph 2(1)(e)**

Repeal the paragraph.

**102 Section 5**

Omit:

- |  |
|--|
| <ul style="list-style-type: none"><li>• Provision is made for the following ancillary matters:</li></ul> |
|--|

- (a) information-gathering powers;
- (b) powers of search, entry and seizure;
- (c) review of decisions;
- (d) injunctions;
- (e) the prohibition of false and misleading statements.

Substitute:

- Provision is made for the following ancillary matters:
  - (a) information-gathering powers;
  - (b) powers of search, entry and seizure;
  - (c) review of decisions;
  - (d) injunctions.

**103 Section 6 (table item 31)**

Repeal the item.

**104 After section 11**

Insert:

**11A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**105 Subsection 42(5)**

Omit “intentionally or recklessly”.

**106 Subsection 276(3)**

Omit “intentionally or recklessly”.

**107 Subsection 277(3)**

Omit “intentionally or recklessly”.

**108 Subsection 278(3)**

Omit “intentionally or recklessly”.

**109 Section 303**

Omit “intentionally or recklessly”.

**110 Subsection 306(7)**

Omit “intentionally or recklessly”.

**111 Subsection 307(2)**

Omit “intentionally or recklessly”.

**112 Section 399**

Repeal the section, substitute:

**399 Offence of contravening condition**

(1) A person is guilty of an offence if:

- (a) the person is the holder of a connection permit, or a nominee of such a holder; and
- (b) the person engages in conduct; and
- (c) the person’s conduct contravenes a condition to which the permit is subject.

Penalty: 100 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

(2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**113 Subsection 411(2)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**114 After subsection 411(2)**

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Insert:

*Exception—reasonable excuse for contravention*

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**115 Subsection 412(2)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**116 After subsection 412(2)**

Insert:

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**117 Subsection 413(2)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**118 After subsection 413(2)**

Insert:

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**119 Subsection 414(2)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**120 At the end of section 414**

Add:

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**121 Subsection 415(2)**

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
- (a) the person is a manufacturer or importer of customer equipment or customer cabling; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement referred to in subsection (1).

Penalty: 100 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**122 Subsection 416(2)**

Omit "intentionally or recklessly".

**123 Subsection 417(2)**

Omit "intentionally or recklessly".

**124 Subsection 420(2)**

Omit "intentionally or recklessly".

**125 Subsection 421(4)**

Omit "intentionally or recklessly".

**126 Section 434**

Repeal the section, substitute:

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**434 Offence in relation to contravening condition**

- (1) A person is guilty of an offence if:
- (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and
  - (b) the person performs cabling work of that type; and
  - (c) the performance of that work contravenes a condition to which the licence is subject.

Penalty: 100 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

- (2) A person is guilty of an offence if:
- (a) the person is the holder of a cabling licence that authorises the performance of a particular type of cabling work; and
  - (b) the person engages in conduct; and
  - (c) the result of the person's conduct is a failure to take all reasonable steps to ensure that cabling work of that type performed under the person's supervision does not contravene the conditions of the licence.

Penalty: 100 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

- (3) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**127 Subsection 452(2)**

Omit "intentionally or recklessly".

**128 Subsection 475(7)**

Repeal the subsection, substitute:

- (7) A person is guilty of an offence if:
- (a) the person has been given a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

**129 At the end of section 475**

Add:

(9) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**130 Subsection 476(7)**

Repeal the subsection, substitute:

(7) A person is guilty of an offence if:

- (a) the person has been given a direction under this section; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

**131 At the end of section 476**

Add:

(9) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**132 Subsection 493(3)**

Omit “, without reasonable excuse,”.

**133 Subsection 493(4)**

Repeal the subsection, substitute:

(4) A person is guilty of an offence if:

- (a) the ACA has made an order under subsection (2); and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**134 Subsection 494(3)**

Omit “, without reasonable excuse,”.

**135 Subsection 494(4)**

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACA has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person is guilty of an offence if:
- (a) the ACA has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

- (a) do an act; or
  - (b) omit to perform an act.
-

**136 Subsection 503(3)**

Omit “, without reasonable excuse,”.

**137 Subsection 503(4)**

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACCC has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**138 Subsection 504(3)**

Omit “, without reasonable excuse,”.

**139 Subsection 504(4)**

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACCC has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 10 penalty units.

- (5) A person is guilty of an offence if:
- (a) the ACCC has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**140 Paragraphs 521(4)(e) and (f)**

Repeal the paragraphs, substitute:

- (e) section 525.

**141 Paragraphs 521(5)(e) and (f)**

Repeal the paragraphs, substitute:

- (e) section 525.

**142 Subsections 522(4) and (5)**

Repeal the subsections, substitute:

- (4) A person is guilty of an offence if:
- (a) the ACA has given a notice to the person under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20 penalty units.

- (5) A notice under this section must set out the effect of subsection (4) and section 525.

- (6) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**143 Paragraph 524(2)(c)**

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Omit “or 526”.

**144 Section 525**

Omit “intentionally or recklessly”.

**145 Section 526**

Repeal the section.

**146 Subsection 531(2)**

Omit “intentionally or recklessly”.

**147 Subsection 534(3)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**148 At the end of section 534**

Add:

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**149 Subsection 535(2)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**150 Subsection 542(4)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**151 Subsection 544(2)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**152 Subsection 545(4)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**153 Subsection 548(2)**

Omit “, without reasonable excuse, intentionally or recklessly”.

**154 After subsection 548(2)**

Insert:

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(2B) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**155 Subsection 548(3)**

Insert:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**156 Subsection 549(3)**

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person’s conduct contravenes the requirement.

Penalty: 20 penalty units.

(3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

**157 At the end of section 549**

Add:

(5) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**158 Subsection 551(2)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**159 Subsection 553(2)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**160 Subparagraph 574(b)(ii)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**161 Paragraph 576(1)(b)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**162 Part 33**

Repeal the Part.

***Telecommunications (Consumer Protection and Service Standards) Act 1999***

**163 At the end of Part 1**

Add:

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**7A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except for Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For criminal liability of corporations under this Act, see sections 574A and 575 of the *Telecommunications Act 1997*.

**164 Section 20 (note)**

Omit “(see section 578 of the *Telecommunications Act 1997*)”, substitute “(see Part 7.4 of the *Criminal Code*)”.

**165 Section 20J (note)**

Omit “(see section 578 of the *Telecommunications Act 1997*)”, substitute “(see Part 7.4 of the *Criminal Code*)”.

***Telstra Corporation Act 1991***

**166 After section 6**

Insert:

**6A Application of the *Criminal Code***

(1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Despite subsection (1), Part 2.5 of the *Criminal Code* does not apply to an offence against Part 2 or 2A (within the meaning of section 8CI).

**167 Subsection 8AC(2)**

Repeal the subsection, substitute:

- (2) Telstra is guilty of an offence if:
- (a) Telstra engages in conduct; and
  - (b) that conduct contravenes subsection (1).

Penalty: 500 penalty units.

(3) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**168 Subsection 8BI(2)**

Repeal the subsection, substitute:

- (2) Telstra is guilty of an offence if:
- (a) Telstra engages in conduct; and
  - (b) that conduct contravenes subsection (1).

Penalty: 500 penalty units.

(3) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**169 Subsection 8BO(2)**

Omit “intentionally or recklessly”.

**170 Section 8BP**

Repeal the section.

**171 Subsection 8CI(6)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**172 At the end of subsection 8CI(6)**

Add “of this Act”.

**173 Subsection 8CJ(6)**

Omit “section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914*”, substitute “section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code*”.

**174 At the end of subsection 8CJ(6)**

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Add “of this Act”.

*[Minister’s second reading speech made in—  
House of Representatives on 7 December 2000  
Senate on 8 February 2001]*

(203/00)

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