



Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001

No. 15, 2001

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

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Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001

No. 15, 2001

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

[Assented to 22 March 2001]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

- (1) Subject to this section, this Act commences on the latest of the following days:
 - (a) the 28th day after the day on which this Act receives the Royal Assent;
 - (b) 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 day on which item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* commences.
- (2) If Schedule 1 to the *Aboriginal and Torres Strait Islander Heritage Protection Act 2001* commences before the time applicable under subsection (1), items 1 to 11 of Schedule 1 to this Act do not commence.
- (3) Items 28, 29 and 30 of Schedule 1 to this Act commence at the later of the following times:
 - (a) the time applicable under subsection (1);
 - (b) the commencement of subsection 17(4) of the *Antarctic (Environment Protection) Legislation Amendment Act 1992*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

1 After section 6

Insert:

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) 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 Subsection 7(3)

After “or under this Act”, insert “, the *Criminal Code*”.

3 Subparagraph 21Y(1)(b)(i)

Omit “, 7 or 7A”.

4 Subparagraph 21Y(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

5 Subsection 21G(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct:
 - (i) destroys or causes damage to a notice placed under this section; or
 - (ii) causes interference with or the removal of a notice placed under this section.

Penalty:

- (a) if the person is a natural person—\$500; or
-

(b) if the person is a body corporate—\$2,500.

(4) In subsection (3):

engage in conduct means:

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

6 Section 21H

Repeal the section, substitute:

21H Offence to contravene declaration

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to an Aboriginal place.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) if the person is a body corporate—\$50,000.

- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to an Aboriginal object.

Penalty:

- (a) if the person is a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) if the person is a body corporate—\$25,000.

(3) In this section:

engage in conduct means:

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

7 Subsection 21U(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
- (a) the person:
 - (i) does an act; and
 - (ii) the act causes damage to, the defacing of, or interference with, an Aboriginal object or an Aboriginal place; or
 - (b) the person does an act likely to endanger an Aboriginal object or Aboriginal place.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) if the person is a body corporate—\$50,000.

8 Subsections 22(1) and (2)

Repeal the subsections, substitute:

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes a provision of a declaration made under Part II in relation to a significant Aboriginal area.

Penalty:

- (a) if the person is a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) if the person is a body corporate—\$50,000.

- (2) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes the terms of a declaration under this Part relating to a significant Aboriginal object or significant Aboriginal objects.

Penalty:

- (a) if the person is a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) if the person is a body corporate—\$25,000.

9 At the end of section 22

Add:

(5) In this section:

engage in conduct means:

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

10 Subparagraph 23(1)(b)(i)

Omit “, 7 or 7A”.

11 Subparagraph 23(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

Antarctic Marine Living Resources Conservation Act 1981

12 After section 4

Insert:

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.

13 Before subsection 8(1)

Insert:

- (1A) Subject to section 7 and subsection (2) of this section, if, otherwise than in accordance with a permit:
 - (a) a person in the Convention area engages in conduct; and
 - (b) the conduct causes the harvesting of any marine organisms;the person is guilty of an offence against this subsection punishable, on conviction:
 - (c) if the offender is a natural person—by a fine not exceeding \$50,000; or
 - (d) if the offender is a body corporate—by a fine not exceeding \$100,000.

14 Subsection 8(1)

Omit “harvests, or carries out research with respect to,” substitute “carries out research with respect to”.

15 Subsection 8(2)

Omit “subsection (1) if it is proved that”, substitute “subsection (1A) or (1) if”.

16 At the end of subsection 8(2)

Add:

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

17 At the end of section 8

Add:

(3) In this section:

engage in conduct means:

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

18 Section 10

Repeal the section, substitute:

10 Contravening conditions of permits

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

- (a) a condition of a permit is applicable to the person; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the condition.

Penalty:

- (a) if the offender is a natural person—\$5,000; or
- (b) if the offender is a body corporate—\$10,000.

(2) In this section:

engage in conduct means:

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

19 Subsection 16(6)

Omit “, without reasonable excuse,”.

20 After subsection 16(6)

Insert:

(6A) An offence under subsection (6) is an offence of strict liability.

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

(6B) Subsection (6) does not apply if the person has a reasonable excuse.

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

21 Subsections 18(1), (2) and (3)

Omit “subsection 8(1)”, substitute “subsection 8(1A) or (1)”.

Antarctic Treaty (Environment Protection) Act 1980

22 After section 6

Insert:

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.

23 Subsection 17(7)

Omit “, without reasonable excuse,”.

24 After subsection 17(7)

Insert:

(7A) An offence under subsection (7) is an offence of strict liability.

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

(7B) Subsection (7) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7B). See subsection 13.3(3) of the *Criminal Code*.

25 Before subsection 19(1)

Insert:

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

- (a) the person does an act; and
- (b) the action:
 - (i) causes death or injury to a native bird, a native invertebrate or a native mammal in the Antarctic; or
 - (ii) causes the taking of a native bird, a native invertebrate or a native mammal in the Antarctic; or
 - (iii) causes other interference with a native bird, a native invertebrate or a native mammal in the Antarctic; or
 - (iv) causes injury to or other interference with a native plant in the Antarctic.

Penalty: \$2,000 or imprisonment for 12 months, or both.

26 Paragraph 19(1)(a)

Repeal the paragraph.

27 Paragraph 19(1)(b)

Omit “collect, injure or otherwise interfere with”, substitute “or collect”.

28 At the end of paragraph 19(1)(d)

Add “or”.

29 Paragraphs 19(1)(f) and (g)

Repeal the paragraphs.

30 After subsection 19(1)

Insert:

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

- (a) the person does an act; and
- (b) the action:
 - (i) causes any damage to or in an historic site; or

- (ii) destroys, or causes damage to or the removal of, an historic monument.

Penalty: \$2,000 or imprisonment for 12 months, or both.

31 Paragraph 19(2)(e)

Omit “knowingly or recklessly”.

32 Subsection 19(3)

Omit “Subsections (1) and (2) do”, substitute “This section does”.

33 Section 20

Repeal the section, substitute:

20 Contravening conditions of permits

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

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) In this section:

engage in conduct means:

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

34 After subsection 21(1)

Insert:

- (1A) An offence under subsection (1) is an offence of strict liability.

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

35 Subsection 21A(2)

Omit “knowingly or recklessly”.

36 Paragraph 21A(3)(b)

Omit “knowingly or recklessly”.

37 Subsection 21A(4)

Omit “the person proves”.

38 Paragraphs 21A(4)(a) and (b)

Omit “that”.

39 At the end of subsection 21A(4)

Add:

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Environment Protection (Alligator Rivers Region) Act 1978

40 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.

41 Subsection 31(2)

Omit “except in the performance of a function or duty under or in connexion with this Act,”.

42 After subsection 31(2)

Insert:

(2A) Subsection (2) does not apply to acts done in the performance of a function or duty under or in connection with this Act.

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

43 At the end of subsection 31(3)

Add:

Note: The defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

44 Subsection 31(4)

Omit “except for the purpose of advising the Minister in connexion with this Act,”.

45 After subsection 31(4)

Insert:

(4A) Subsection (4) does not apply to acts done for the purpose of advising the Minister in connection with this Act.

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

Great Barrier Reef Marine Park Act 1975

46 Subsection 3(4)

Repeal the subsection, substitute:

(4) A reference in this Act (other than in this subsection) to an offence against a provision of this Act includes a reference to an offence against:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to an offence against a provision of this Act.

47 After section 4

Insert:

4A Application of the *Criminal Code*

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

Note 1: However, Part 2.5 of the *Criminal Code* does not apply to an offence against this Act: see subsection 64(8) of this Act.

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

48 Section 38C

Repeal the section, substitute:

38C Contravening conditions of permit or authority—zoned area

- (1) A person is guilty of an offence if:
- (a) a permission or authority referred to in section 38B is subject to a condition; and
 - (b) the condition applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the condition.

Penalty: 200 penalty units.

- (2) The fault element for paragraph (1)(d) is negligence.

Note: Section 5.5 of the *Criminal Code* defines *negligence*.

- (3) In this section:

engage in conduct means:

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

49 Section 38G

Repeal the section, substitute:

38G Contravening conditions of permit or authority—unzoned area

- (1) A person is guilty of an offence if:
- (a) a permission or authority referred to in section 38F is subject to a condition; and
 - (b) the condition applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the condition.

Penalty: 200 penalty units.

- (2) The fault element for paragraph (1)(d) is negligence.

Note: Section 5.5 of the *Criminal Code* defines *negligence*.

- (3) In this section:

engage in conduct means:

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

50 Subsection 38J(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
 - (a) a permission referred to in subsection (1) is subject to a condition; and
 - (b) the condition applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the condition.

Penalty: 200 penalty units.

- (2A) The fault element for paragraph (2)(d) is negligence.

Note: Section 5.5 of the *Criminal Code* defines *negligence*.

- (2B) In subsection (2):

engage in conduct means:

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

51 Section 39Q

Omit “intentionally or recklessly” (wherever occurring).

52 Subsection 45(2)

Omit “, without reasonable excuse,”.

53 After subsection 45(2)

Insert:

- (2A) An offence under subsection (2) is an offence of strict liability.

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

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

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

54 Subsection 45A(4)

Omit “, without reasonable excuse,”.

55 At the end of section 45A

Add:

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

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

56 Section 47A

Omit “, without reasonable excuse,”.

57 At the end of section 47A

Add:

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

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

58 Subsection 47B(2)

Omit “, without reasonable excuse,”.

59 After subsection 47B(2)

Insert:

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

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

60 Subsection 48(5)

Omit “, without reasonable excuse,”.

61 After subsection 48(5)

Insert:

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

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

62 At the end of section 59B

Add:

(2) An offence under subsection (1) is an offence of strict liability.

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

63 At the end of sections 59C and 59D

Add:

(3) An offence under subsection (1) is an offence of strict liability.

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

64 At the end of subsection 59H(1)

Add:

Note: The defendant bears a legal burden in relation to the matter in subsection (1). See section 13.4 of the *Criminal Code*.

65 Subsection 59H(2)

Omit all the words and paragraphs after “proves that”, substitute “the owner did not know that the regulated ship was in contravention of the relevant section.”.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

66 Subsection 59H(3)

Repeal the subsection.

67 Subsection 59L(7)

Omit “, without reasonable excuse.”.

68 At the end of section 59L

Add:

(8) Subsection (7) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

69 Paragraph 61B(7)(a)

Repeal the paragraph, substitute:

- (a) an offence against section 6 of the *Crimes Act 1914* or section 11.4 or 11.5 of the *Criminal Code*; or

70 Subsection 61B(8)

Omit “section 5 of the *Crimes Act 1914*”, substitute “section 11.2 of the *Criminal Code*”.

71 Paragraph 61B(8)(b)

Omit “, procured, or was knowingly concerned in, or party to,”, substitute “or procured”.

72 At the end of section 62

Add:

Note: However, the prosecutor cannot make an averment in prosecuting for an offence that is directly punishable by imprisonment. See section 13.6 of the *Criminal Code*.

Hazardous Waste (Regulation of Exports and Imports) Act 1989

73 Paragraph 8(a)

Omit “, 7 or 7A, or subsection 86(1),”.

74 Paragraph 8(a)

After “*Crimes Act 1914*”, substitute “, or section 11.1, 11.4 or 11.5 of the *Criminal Code*,”.

75 Paragraph 8(b)

Omit “, 7 or 7A, or subsection 86(1),”.

76 Paragraph 8(b)

After “*Crimes Act 1914*”, substitute “, or section 11.1, 11.4 or 11.5 of the *Criminal Code*,”.

77 After section 10

Insert:

10A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) 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.

78 Subsection 39(4)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 39(4) is amended by omitting “*knowledge*” and substituting “*intention*”.

79 Paragraph 39(6)(a)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 39(6) is amended by omitting “*knowledge*” and substituting “*intention*”.

80 Subsection 40(3)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 40(3) is amended by omitting “*knowledge*” and substituting “*intention*”.

81 Paragraph 40(5)(a)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 40(5) is amended by omitting “*knowledge*” and substituting “*intention*”.

82 Subsection 40A(3)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 40A(3) is amended by omitting “*knowledge*” and substituting “*intention*”.

83 Paragraph 40A(5)(a)

Omit “knowingly”, substitute “intentionally”.

Note: The heading to subsection 40A(5) is amended by omitting “*knowledge*” and substituting “*intention*”.

84 Subsection 41A(2)

Omit “knowingly”, substitute “intentionally”.

85 At the end of section 43

Add:

(4) An offence under subsection (3) is an offence of strict liability.

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

86 Subsection 45(5)

Omit “, without reasonable excuse,”.

87 After subsection 45(5)

Insert:

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

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

88 Subsection 48(3)

Omit “, without reasonable excuse,”.

89 After subsection 48(3)

Insert:

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

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

90 Subsection 52(3)

Omit “, without reasonable excuse,”.

91 At the end of section 52

Add:

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

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

92 Subsection 53(2)

Omit “, without reasonable excuse,”.

93 At the end of section 53

Add:

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

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

94 Section 54

Omit “, without reasonable excuse,”.

95 At the end of section 54

Add:

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

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

Historic Shipwrecks Act 1976

96 Subsection 3(1) (paragraphs (b) and (c) of the definition of offence against this Act)

Repeal the paragraphs, substitute:

- (b) an offence against this Act that is taken to have been committed because of section 11.2 of the *Criminal Code*; and
(c) an offence against section 11.1 or 11.4 of the *Criminal Code* in relation to this Act.

97 At the end of Part 1

Add:

4AA 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.

98 Subsection 13(1)

Repeal the subsection, substitute:

- (1) A person contravenes this section if:
- (a) the person engages in conduct; and
 - (b) the conduct:
 - (i) destroys or causes damage to a historic shipwreck or historic relic; or
 - (ii) causes interference with a historic shipwreck or historic relic; or
 - (iii) causes the disposal of a historic shipwreck or historic relic; or
 - (iv) causes a historic shipwreck or historic relic to be removed from Australia (including State waters), from Australian waters or from waters above the continental shelf of Australia.

(1A) Subsection (1) does not apply if the person engages in the conduct in accordance with a permit.

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

(1B) In subsections (1) and (1A):

engage in conduct means:

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

99 Subsection 15(5)

Repeal the subsection, substitute:

- (5) A person is guilty of an offence if:
- (a) a permit has been granted to the person or is otherwise applicable to the person; and

- (b) the person engages in conduct; and
- (c) the conduct contravenes a condition imposed in respect of the permit.

Penalty: \$2,000 or imprisonment for 2 years, or both.

(5A) In subsection (5):

engage in conduct means:

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

100 Paragraph 23(5)(a)

Omit “without reasonable excuse,”.

101 After subsection 23(5)

Insert:

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

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

102 Paragraph 23(7)(a)

Omit “without reasonable excuse,”.

103 After subsection 23(7)

Insert:

(7A) Paragraph (7)(a) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7A). See subsection 13.3(3) of the *Criminal Code*.

***National Environment Protection Measures
(Implementation) Act 1998***

104 After section 6

Insert:

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.

105 Subsection 29(2)

Repeal the subsection.

Ozone Protection Act 1989

106 At the end of Part I

Add:

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) 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.

107 Subsection 13(6) (penalty)

Repeal the penalty.

108 At the end of section 13

Add:

(7) A person who contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 500 penalty units.

(8) An offence under this section is an offence of strict liability.

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

109 Subsection 18(7)

Omit “, without reasonable excuse,”.

110 After subsection 18(7)

Insert:

(7A) An offence under subsection (7) is an offence of strict liability.

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

(7B) Subsection (7) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7B). See subsection 13.3(3) of the *Criminal Code*.

111 After subsection 38(2)

Insert:

(2A) An offence under this section is an offence of strict liability.

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

112 After subsection 44(1)

Insert:

(1A) An offence under subsection (1) is an offence of strict liability.

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

113 After subsection 44(5)

Insert:

(5A) An offence under subsection (5) is an offence of strict liability.

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

114 After subsection 45(1)

Insert:

(1A) An offence under subsection (1) is an offence of strict liability.

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

115 After subsection 45(3A)

Insert:

(3AA) An offence under subsection (3A) is an offence of strict liability.

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

116 Subsection 46(2)

Omit “, without reasonable excuse,”.

117 After subsection 46(2)

Insert:

(2A) An offence under subsection (2) is an offence of strict liability.

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

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

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

118 At the end of section 50

Add:

(4) An offence under subsection (3) is an offence of strict liability.

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

119 Subsection 60(1)

Repeal the subsection, substitute:

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

- (a) the person engages in conduct; and
- (b) the conduct causes goods to be moved, altered or interfered with; and
- (c) the goods are the subject of a notice under subsection 59(2).

Penalty: Imprisonment for 2 years.

(1A) Subsection (1) does not apply if the person engages in the conduct in accordance with a direction given to the person by the Minister.

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

(1B) In subsections (1) and (1A):

engage in conduct means:

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

120 Subsection 62(1)

Omit “knowingly or recklessly”.

121 Subsection 62(2)

Omit “, knowingly or recklessly”.

122 Subsections 62(3) and (4)

Omit “knowingly or recklessly”.

123 At the end of section 62

Add:

(5) The fault elements for:

(a) the circumstance that the statement mentioned in paragraph (1)(a) or (2)(a) or subsection (3) or (4) is false or misleading in a material particular; or

(b) the circumstance that the document mentioned in paragraph (1)(b) or (2)(b) contains information that is false or misleading in a material particular;

are knowledge and recklessness.

124 Section 63

Omit “, without reasonable excuse, wilfully”, substitute “intentionally”.

125 At the end of section 63

Add:

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

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

126 Subsection 64(1)

Omit “, without reasonable excuse,”.

127 After subsection 64(1)

Insert:

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

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

128 Subsections 64(2) and (9)

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

Sea Installations Act 1987

129 At the end of Part I

Add:

13A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) 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.

130 After subsection 14(1)

Insert:

(1A) An offence under subsection (1) is an offence of strict liability.

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

131 At the end of section 15

Add:

(2) An offence under subsection (1) is an offence of strict liability.

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

132 At the end of section 16

Add:

(2) An offence under subsection (1) is an offence of strict liability.

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

133 After subsection 51(5)

Insert:

(5A) Strict liability applies to paragraphs (1)(b) and (c), (2)(b) and (c) and (3)(b) and (c).

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

134 Subparagraph 56(2)(a)(ii)

Omit “arising out of section 5 or 7 of the *Crimes Act 1914*”, substitute “against section 11.1 or 11.2 of the *Criminal Code*”.

135 After subsection 57(3)

Insert:

(3A) An offence under subsection (3) is an offence of strict liability.

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

136 Section 58

Repeal the section, substitute:

58 Contravention of conditions

- (1) A person is guilty of an offence if:
- (a) the person holds a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the conditions to which the permit is subject.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

- (2) In this section:

engage in conduct means:

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

137 At the end of section 61

Add:

- (3) An offence under subsection (2) is an offence of strict liability.

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

138 Subsection 62(14)

Omit “arising out of section 5 or 7 of the *Crimes Act 1914* in relation to such a contravention or to an offence against subsection 89(1) of that Act”, substitute “against section 11.1, 11.2 or 11.5 of the *Criminal Code*”.

139 Subsection 63(2)

Omit “, without reasonable excuse,”.

140 After subsection 63(2)

Insert:

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

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

141 Subsection 63(3)

Omit “subsection 64(2)”, substitute “Division 137 of the *Criminal Code*”.

142 Section 64

Repeal the section.

143 Subsection 65(1)

Omit “or 58, subsection 64(1) or section”, substitute “, 58 or”.

144 Subparagraph 65(4)(b)(ii)

Omit “\$25,000; or”, substitute “\$25,000.”.

145 Paragraph 65(4)(c)

Repeal the paragraph.

***Wildlife Protection (Regulation of Exports and Imports) Act
1982***

146 Subsection 4(1) (definition of *offence against this Act*)

Repeal the definition, substitute:

offence against this Act includes an offence against:

- (a) section 6 of the *Crimes Act 1914*; or
 - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence against a provision of this Act.

147 After section 7

Insert:

7A 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.

148 Section 21

Omit “, otherwise than in accordance with a permit or an authority, intentionally or recklessly”.

149 At the end of section 21

Add:

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit or an authority.

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

150 Section 22

Omit “, otherwise than in accordance with a permit or an authority, intentionally or recklessly”.

151 At the end of section 22

Add:

- (2) Subsection (1) does not apply if the specimen is imported in accordance with a permit or an authority.

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

152 Section 48

Repeal the section, substitute:

48 Compliance with conditions of permit or authority

- (1) A person is guilty of an offence if:
- (a) the person holds a permit or authority; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition imposed under subsection 47(1) in respect of the permit or authority or, in the case of an authority under section 43, the condition to which the authority is subject under subsection 43(8).

Penalty: 120 penalty units.

- (2) In this section:

engage in conduct means:

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

153 Subsection 50(4)

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the person holds a permit or an authority; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition to which the permit or authority is subject by virtue of this section.

Penalty: 600 penalty units.

- (5) In subsection (4):

engage in conduct means:

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

154 Subsection 51(4)

Repeal the subsection, substitute:

- (4) A person is guilty of an offence if:
- (a) the person holds a permit or an authority; and
 - (b) the person engages in conduct; and

- (c) the conduct contravenes a condition to which the permit or authority is subject by virtue of this section.

Penalty: 600 penalty units.

- (5) In subsection (4):

engage in conduct means:

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

155 Subsection 51E(2)

Repeal the subsection, substitute:

Person not to remove or interfere with mark etc.

- (2) A person contravenes this subsection if:
 - (a) a specimen is marked in accordance with a determination under section 51D; and
 - (b) the person engages in conduct; and
 - (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

156 Subsection 51E(3)

Omit “intentionally or recklessly”.

157 At the end of section 51E

Add:

Defence

- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 51D.

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

Definition

- (5) In this section:

engage in conduct means:

- (a) do an act; or
-

(b) omit to perform an act.

158 Paragraphs 53(1)(a) and (b)

Omit “without reasonable excuse (proof of which lies upon the person)”.

159 After subsection 53(1)

Insert:

(1B) Subsection (1) does not apply if the person proves that the person has a reasonable excuse.

Note: The defendant bears a legal burden in relation to the matter in subsection (1B). See section 13.4 of the *Criminal Code*.

160 After subsection 53(2)

Insert:

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

161 After subsection 53(3)

Insert:

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

162 Subsection 53(4)

Omit “subsection (2) or (3)”, substitute “this section”.

163 Paragraphs 53A(2)(c) and (3)(c)

Omit “intentionally or recklessly”.

164 Section 57N

Repeal the section, substitute:

57N Offence of contravening conditions

- (1) A person is guilty of an offence if:
- (a) the person is the holder, or one of the holders, of a registration certificate; and
 - (b) the person engages in conduct; and

(c) the conduct contravenes a condition of the certificate.

Penalty: 120 penalty units.

(2) In this section:

engage in conduct means:

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

165 Section 57S

Repeal the section, substitute:

57S Treatment of partnerships

Divisions 2 and 3 apply to a partnership as if the partnership were a person, except that obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.

166 Subsection 61(3)

Omit “, without reasonable excuse,”.

167 At the end of section 61

Add:

(4) An offence under subsection (3) is an offence of strict liability.

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

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

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

168 Subsection 62(9)

Omit “, without reasonable excuse,”.

169 After subsection 62(9)

Insert:

(9A) Subsection (9) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9A). See subsection 13.3(3) of the *Criminal Code*.

170 Subsection 67(3)

Omit “, without reasonable excuse,”.

171 After subsection 67(3)

Insert:

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

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

172 Subsection 69(3)

Omit “subsections (6) and (7)”, substitute “subsections (6), (7) and (8)”.

173 Subsection 69(3)

Omit “to the extent that the person is capable of doing so”.

174 At the end of subsection 69(6)

Add:

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

175 At the end of subsection 69(7)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

176 At the end of section 69

Add:

Capability to answer question

(8) If a person is asked a question under subsection (2), the person is only required to answer the question to the extent that the person is capable of doing so.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

177 Subsection 71A(1)

Repeal the subsection, substitute:

(1) If:

- (a) a person engages in conduct; and
- (b) the conduct causes the rescue of any goods that have been, or are about to be, seized under this Act;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

(1A) If:

- (a) a person engages in conduct; and
- (b) the conduct causes any goods to be staved, broken or destroyed, or any documents relating to any goods to be destroyed; and
- (c) the conduct hinders or prevents the seizure of goods, the securing of goods, or the proof of any offence under this Act;

the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

178 At the end of section 71A

Add:

(3) In this section:

engage in conduct means:

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

[Minister's second reading speech made in—
Senate on 6 December 2000
House of Representatives on 7 March 2001]

(212/00)

