



Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001

No. 35, 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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Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001

No. 35, 2001

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

[Assented to 28 April 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001*.

2 Commencement

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.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Australian Trade Commission Act 1985

1 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.

Chemical Weapons (Prohibition) Act 1994

2 At the end of Part 1

Add:

11A 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.

3 Section 12

Omit “, intentionally or recklessly”, substitute “intentionally”.

4 Subsection 29(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person refuses or fails to do an act; and
 - (b) the refusal or failure causes a contravention of subsection (1) or (2).

Penalty: Imprisonment for 1 year.

(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*.

5 Subsection 30(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person refuses or fails to do an act; and
 - (b) the refusal or failure causes a contravention of subsection (2).

Penalty: Imprisonment for 2 years.

(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*.

6 Subsection 31(4)

Repeal the subsection, substitute:

- (4) A person must comply with a notice given to the person under this section.

- (4A) A person is guilty of an offence if:
- (a) the person refuses or fails to do an act; and
 - (b) the refusal or failure causes a contravention of subsection (4).

Penalty: Imprisonment for 1 year.

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

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

(4C) Subsection (4A) does not apply to the extent that the person is not capable of complying with the notice.

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

7 Sections 77 and 78

Repeal the sections, substitute:

77 Production etc. of Scheduled chemicals otherwise than in accordance with permit

- (1) A person is guilty of an offence if:
- (a) the person is required under section 16 to have a permit to operate a facility so far as concerns the production, acquisition, retention or use of Schedule 1 chemicals at that facility, or the transfer of Schedule 1 chemicals from that facility; and
 - (b) the person produces, acquires, retains or uses Schedule 1 chemicals at that facility, or transfers Schedule 1 chemicals from that facility; and
 - (c) that conduct is engaged in without, or otherwise than in accordance with, such a permit.

Penalty: Imprisonment for 5 years or 500 penalty units, or both.

- (2) A person is guilty of an offence if:
- (a) the person is required under section 16 to have a permit to operate a facility so far as concerns the production, processing or consumption of Schedule 2 chemicals at that facility; and
 - (b) the person produces, processes or consumes Schedule 2 chemicals at that facility; and
 - (c) that conduct is engaged in without, or otherwise than in accordance with, such a permit.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

- (3) A person is guilty of an offence if:
- (a) the person is required under section 16 to have a permit to operate a facility so far as concerns the production of particular Schedule 3 chemicals at that facility; and
 - (b) the person produces that chemical at that facility; and
 - (c) that conduct is engaged in without, or otherwise than in accordance with, such a permit.

Penalty: 250 penalty units.

- (4) A person is guilty of an offence if:
- (a) the person fails to do an act; and
 - (b) the failure to do the act causes a contravention of section 28.

Penalty: 100 penalty units.

- (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 (4A). See subsection 13.3(3) of the *Criminal Code*.

78 Breach of condition of permit

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

Penalty: 100 penalty units.

- (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 (4A). See subsection 13.3(3) of the *Criminal Code*.

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

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

- (4) In this section:

engage in conduct means:

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

8 Subsection 80(1)

Omit “or recklessly”.

9 At the end of section 93

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*.

10 Subsection 102(3E)

Repeal the subsection, substitute:

- (3E) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct contravenes subsection (2), (3A) or (3C).

Penalty: Imprisonment for 2 years.

- (3F) In subsection (3E):

engage in conduct means:

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

11 Subsection 102(4)

Repeal the subsection, substitute:

- (4) In this section:

offence against this Act includes an offence created by:

- (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 this Act.

Comprehensive Nuclear Test-Ban Treaty Act 1998

12 At the end of section 67

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*.

Diplomatic and Consular Missions Act 1978

13 After section 3

Insert:

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.

Export Expansion Grants Act 1978

14 At the end of Part I

Add:

10A 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.

Export Finance and Insurance Corporation Act 1991

15 At the end of Part 1

Add:

5A 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.

International Organisations (Privileges and Immunities) Act 1963

16 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.

17 After subsection 12(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*.

Nuclear Non-Proliferation (Safeguards) Act 1987

18 Section 4 (paragraph (b) of the definition of offence against this Act)

Omit “, 7 or 7A”.

19 Section 4 (paragraph (c) of the definition of offence against this Act)

Repeal the paragraph, substitute:

- (c) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* in relation to an offence against this Act or the regulations.

20 At the end of Part I

Add:

8A 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.

21 Subsection 25(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct:
 - (i) contravenes a condition, or fails to observe a restriction, subject to which a permit or authority is granted; or
 - (ii) contravenes a direction given or an order made under section 73.

Penalty:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(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) In subsection (1):

engage in conduct means:

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

22 At the end of section 58

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*.

23 At the end of section 66

Add:

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

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

Passports Act 1938

24 After section 5

Insert:

5A 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.

25 Paragraphs 9A(a) and (b)

Omit “for purposes of travel or identification and without reasonable excuse,”, substitute “in connection with travel or identification,”.

26 Paragraph 9A(c)

Omit “, without reasonable excuse,”.

27 Paragraph 9A(c)

Omit “for purposes of”, substitute “in connection with”.

28 Paragraphs 9A(d), (e) and (f)

Omit “without reasonable excuse,”.

29 Paragraph 9A(g)

Omit “wilfully defaces or destroys”, substitute “intentionally does an act that causes the defacing or destruction of”.

30 At the end of section 9A

Add:

- (2) Paragraphs (1)(a) to (f) (inclusive) do 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*.

31 Paragraph 9C(2)(a)

Omit “knowingly”, substitute “intentionally”.

32 Subsection 10(1)

Omit “knowingly or recklessly”.

33 Paragraph 10(1)(a)

Omit “for the purpose of obtaining”, substitute “in the course of obtaining, or attempting to obtain,”.

34 Paragraph 10(1)(b)

Omit “in support of”, substitute “in the course of supporting”.

35 Paragraph 10(2)(a)

Omit “for the purpose of obtaining”, substitute “in the course of obtaining, or attempting to obtain,”.

36 Paragraph 10(2)(b)

Omit “in support of”, substitute “in the course of supporting”.

Registration of Deaths Abroad Act 1984

37 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.

38 Subsections 24(1) and (2)

Repeal the subsections.

39 Subsection 24(4)

Omit “or wilfully mutilate”, substitute “, or intentionally do an act that causes the mutilation of,”.

South Pacific Nuclear Free Zone Treaty Act 1986

40 At the end of Part I

Add:

7A 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.

41 At the end of section 20

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*.

42 At the end of section 24

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*.

*[Minister's second reading speech made in—
House of Representatives on 6 December 2000
Senate on 5 April 2001]*

(193/00)