



Migration Legislation Amendment (Application of Criminal Code) Act 2001

No. 97, 2001



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**An Act to amend the law relating to migration, and
for related purposes**

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An Act to amend the law relating to migration, and for related purposes

[Assented to 22 August 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration 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;
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- (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.
- (2) If the *Migration Legislation Amendment (Immigration Detainees) Act 2001* commences before this Act, item 98 of Schedule 1 does not commence.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 the Migration Act 1958

1 After section 4

Insert:

4A 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.

2 Subsection 5(1) (definition of *offence against this Act*)

Repeal the definition, substitute:

offence against this Act includes:

- (a) an offence against section 6 of the *Crimes Act 1914* that relates to an offence against a provision of this Act; and
- (b) an ancillary offence (within the meaning of the *Criminal Code*) that is, or relates to, an offence against a provision of this Act.

3 Subsection 21(1)

Omit “, without reasonable excuse,”.

4 Subsection 21(1)

Omit “to the extent that the person is capable of complying with it”.

5 After subsection 21(1)

Insert:

(1A) Subsection (1) does not apply:

- (a) to the extent that the person is not capable of complying with the notice; or
- (b) if the person has a reasonable excuse.

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

6 After subsection 21(2) (before the penalty)

Insert:

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

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

7 Subsection 137(7)

Omit “, without reasonable excuse.”.

8 After subsection 137(7)

Insert:

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

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

(7B) An offence against subsection (7) is an offence of strict liability.

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

9 At the end of subparagraph 203(1)(c)(i)

Add “or”.

10 Subparagraph 203(1)(c)(ii)

Repeal the subparagraph, substitute:

(ii) an offence against section 6 of that Act that relates to an offence mentioned in subparagraph (i) of this paragraph; or

(iia) an offence against section 11.1 or 11.5 of the *Criminal Code* that relates to an offence mentioned in subparagraph (i) of this paragraph; or

11 At the end of section 217

Add:

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

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

12 At the end of section 218

Add:

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

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

13 Section 219

After “against section”, insert “217 or”.

14 At the end of section 219

Add:

Note: A defendant bears a legal burden in relation to the matters in this section (see section 13.4 of the *Criminal Code*).

15 Subsection 222(8)

Omit “, without reasonable excuse,”.

16 After subsection 222(8)

Insert:

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

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

17 After subsection 223(7)

Insert:

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

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

18 Subsection 223(8) (penalty)

Omit “By imprisonment”, substitute “Imprisonment”.

19 Subsection 225(5)

Omit “, without reasonable excuse,”.

20 At the end of section 225

Add:

(6) 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 (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) An offence against subsection (5) is an offence of strict liability.

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

21 Subsection 226(5)

Omit “, without reasonable excuse,”.

22 At the end of section 226

Add:

(6) 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 (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) An offence against subsection (5) is an offence of strict liability.

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

23 Subsection 227(5)

Omit “, without reasonable excuse,”.

24 At the end of section 227

Add:

(6) 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 (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) An offence against subsection (5) is an offence of strict liability.

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

25 At the end of section 228

Add:

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

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

26 After subsection 229(2)

Insert:

- (3) An offence against subsection (1) is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

27 At the end of section 229

Add:

- (6) A defendant bears a legal burden in relation to the matters in subsection (5).

28 After subsection 230(1A)

Insert:

- (1B) An offence against subsection (1) or (1A) is an offence of strict liability.

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

29 At the end of subsection 230(2)

Add:

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

30 At the end of subsection 230(2A)

Add:

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

31 After subsection 232(1)

Insert:

- (1A) An offence against subsection (1) is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

32 At the end of section 232

Add:

- (3) A defendant bears a legal burden in relation to the matters in subsection (2).

33 Subsection 233(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
- (a) the person harbours another person; and
 - (b) the other person is an unlawful non-citizen, a removee or a deportee.

34 At the end of subsection 235(4A)

Add:

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

35 After subsection 235(4A)

Insert:

- (4B) An offence against subsection (1), (3) or (4) is an offence of strict liability.

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

36 Section 236

Repeal the section, substitute:

236 Offences relating to visas

- (1) A person is guilty of an offence if:
- (a) the person uses a visa with the intention of:
 - (i) travelling to Australia; or
 - (ii) remaining in Australia; or
 - (iii) identifying himself or herself; and
 - (b) the visa is a visa that was granted to another person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) A person is guilty of an offence if:
- (a) the person has a visa in his or her possession or under his or her control; and
 - (b) the visa is a visa that was not granted to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(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) The fault element for paragraph (2)(a) is intention.

Note: Section 5.2 of the *Criminal Code* defines *intention*.

37 Subsection 240(1)

Omit “for the purpose”, substitute “with the intention”.

38 Subsection 240(2)

Omit “purpose”, substitute “intention”.

39 At the end of subsection 240(3)

Add:

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

40 Subsection 241(1)

Omit “for the purpose of assisting”, substitute “with the intention of assisting”.

41 Subsection 241(2)

Omit “purpose”, substitute “intention”.

42 Subsection 242(1)

Omit “for the purpose”, substitute “with the intention”.

43 Subsection 242(2)

Omit “purpose”, substitute “intention”.

44 Subsection 245(1)

Omit all the words after paragraph (c) and before the penalty, substitute:
if:

(d) the person knows that the statement or information is false or misleading in a material particular; and

- (e) the statement is made, or the information is given, in a document that describes, and shows the penalty for, an offence against this subsection.

45 Subsection 245(2)

Repeal the subsection.

46 At the end of subsection 245(3) (before the penalty)

Add:

- ; and (f) the statement is made, or the information is given, in a document that describes, and shows the penalty for, an offence against this subsection.

47 Subsection 245(4)

Repeal the subsection.

48 Subsection 245B(10)

Omit “unless he or she has a reasonable excuse”.

49 At the end of section 245B

Add:

- (11) Subsection (10) does not apply if the master has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

50 Subsection 245E(6)

Omit “unless he or she has a reasonable excuse”.

51 At the end of section 245E

Add:

- (7) Subsection (6) does not apply if the pilot has a reasonable excuse.

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

52 Subsection 245F(15)

Omit “, without reasonable excuse,”.

53 After subsection 245F(15)

Insert:

(15A) Subsection (15) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (15A) (see subsection 13.3(3) of the *Criminal Code*).

(15B) An offence against subsection (15) is an offence of strict liability.

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

54 Subsection 247(1)

Omit “unless from stress of weather or other reasonable cause”.

55 Paragraph 247(2)(b)

Omit “, except for the purpose of leaving that port,”.

56 After subsection 247(2)

Insert:

(2A) Subsection (2) does not apply if the master moves the vessel from the boarding station with the intention of leaving the port.

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

57 Subsection 247(5)

Omit “a provision of subsection (3)”, substitute “subsection (1), (3)”.

58 Subsection 247(5)

Omit “provision by”, substitute “subsection by”.

59 At the end of subsection 247(5)

Add:

Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4 of the *Criminal Code*).

60 After subsection 247(5)

Insert:

(5A) An offence against any of subsections (1) to (4) is an offence of strict liability.

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

61 At the end of section 247

Add:

(8) An offence against subsection (7) is an offence of strict liability.

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

62 After subsection 251(2)

Insert:

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

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

63 After subsection 257(2)

Insert:

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

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

64 At the end of section 259

Add:

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

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

65 Section 268AC

Repeal the section.

66 Subsection 268BH(1) (note)

Repeal the note.

67 At the end of section 268BH

Add:

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

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

68 Section 268BI (note)

Repeal the note.

69 Subsections 268BJ(1) and 268CL(1) (notes)

Repeal the notes.

70 At the end of section 268CL

Add:

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

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

71 Section 268CM (note)

Repeal the note.

72 Subsection 268CN(1) (note)

Repeal the note.

73 Subsection 268CV(2) (notes 1 and 2)

Repeal the notes.

74 Subsection 268CZA(2) (notes 1 and 2)

Repeal the notes.

75 Section 279A

Repeal the section.

76 Subsection 280(1) (note)

Repeal the note.

77 After subsection 280(1)

Insert:

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

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

78 Subsections 281(1) and (2), 282(1) and (2), 283(2), 284(1) and 285(1) (notes)

Repeal the notes.

79 Section 306H (note)

Repeal the note.

80 At the end of section 306H

Add:

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

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

81 Section 312 (note)

Repeal the note.

82 At the end of section 312

Add:

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

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

83 Section 334

Repeal the section, substitute:

- (1) A person is guilty of an offence if:
- (a) the person makes a statement; and
 - (b) the statement is about:
 - (i) the person's ability or power; or
 - (ii) another person's ability or power;to induce or influence the making of decisions, or of a particular decision, under this Act; and
 - (c) the statement is false or misleading.
- (2) A person is guilty of an offence if:
- (a) the person makes a statement; and
 - (b) the statement is about the effect of:
 - (i) the person's actions; or
 - (ii) another person's actions;on the making of a decision under this Act; and
 - (c) the statement is false or misleading.

Penalty: Imprisonment for 2 years.

84 Subsection 370(1)

Omit “, without reasonable excuse”.

85 After subsection 370(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) An offence against subsection (1) is an offence of strict liability.

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

86 Subsection 371(1)

Omit “, without reasonable excuse”.

87 After subsection 371(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*).

88 Subsection 371(2)

Omit “, without reasonable excuse,”.

89 After subsection 371(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) An offence against subsection (1) or (2) is an offence of strict liability.

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

90 Subsection 371(3)

Omit “knowingly”, substitute “intentionally”.

91 Subsection 432(1)

Omit “, without reasonable excuse”.

92 After subsection 432(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) An offence against subsection (1) is an offence of strict liability.

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

93 Subsection 433(1)

Omit “, without reasonable excuse”.

94 After subsection 433(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*).

95 Subsection 433(2)

Omit “, without reasonable excuse,”.

96 After subsection 433(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) An offence against subsection (1) or (2) is an offence of strict liability.

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

97 Subsection 433(3)

Omit “knowingly”, substitute “intentionally”.

98 Subsection 491(1)

Omit “or attempt to escape”.

99 Subsection 493(9)

Repeal the subsection.

Schedule 2—Amendment of the Australian Citizenship Act 1948

1 After section 2

Insert:

3 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.

2 Section 49

Omit “, without lawful authority,”.

Schedule 3—Amendment of the Immigration (Guardianship of Children) Act 1946

1 After section 2

Insert:

3 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.

*[Minister's second reading speech made in—
House of Representatives on 5 April 2001
Senate on 18 June 2001]*

(40/01)