



Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001

No. 109, 2001



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

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Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001

No. 109, 2001

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

[Assented to 17 September 2001]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

This Act commences, or is taken to have commenced, at the later of the following times:

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- (a) the start of the 28th day after the day on which it receives the Royal Assent; and
 - (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.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

- (1) If the *Superannuation Act 1922* is repealed before the commencement of this Act, this Act has effect as if the amendments of the *Superannuation Act 1922* contained in Schedule 1 to this Act were amendments of the *Superannuation Act 1922* as that Act continues to apply under section 19 of the *Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Act 2001*.
- (2) If the *Superannuation Act 1976* is repealed before the commencement of this Act, this Act has effect as if the amendments of the *Superannuation Act 1976* contained in Schedule 1 to this Act were amendments of the *Superannuation Act 1976* as that Act continues to apply under section 11 of the *Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Act 2001*.
- (3) If the *Superannuation Act 1990* is repealed before the commencement of this Act, this Act has effect as if the amendments of the *Superannuation Act 1990* contained in Schedule 1 to this Act were amendments of the *Superannuation Act 1990* as that Act continues to apply under section 18 of the *Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Act 2001*.

5 Application of amendments generally

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
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- (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 Superannuation Acts

Parliamentary Contributory Superannuation Act 1948

1 After section 4E

Insert:

4F 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 Subsection 21B(5)

Omit “\$500”, substitute “15 penalty units”.

3 At the end of subsection 21B(5)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

4 Subsection 21B(7)

Omit “, without reasonable excuse,”.

5 Subsection 21B(7)

Omit “\$500”, substitute “Imprisonment for 6 months, or 30 penalty units, or both”.

6 At the end of subsection 21B(7)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

7 Subsection 21B(8)

Repeal the subsection, substitute:

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

Superannuation Act 1922

8 After section 5

Insert:

6 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.

9 Subsection 143A(3)

Omit “\$40”, substitute “5 penalty units”.

10 At the end of subsection 143A(3)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

11 Subsection 143A(8)

Omit all the words after “under subsection (1)”, substitute:
must, within 21 days after the day that the judgment debt is satisfied, notify the Board, in such manner as is prescribed, that the judgment debt is satisfied.

Penalty: 5 penalty units.

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

12 Paragraph 150(1)(d)

Omit “\$100”, substitute “20 penalty units”.

13 At the end of subsection 150(1)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Superannuation Act 1976

14 Before section 4

Insert:

3F 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.

15 Subsection 44(3)

Omit “intentionally”.

16 Subsection 44(3) (at the end of the penalty)

Add “, or 30 penalty units, or both”.

17 At the end of subsection 44(3)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

18 Subsection 119(7)

Omit all the words after “under subsection (1)”, substitute:
must, within 21 days after the day that the judgment debt is satisfied, notify the Board that the judgment debt is satisfied.

Penalty: 5 penalty units.

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

19 Paragraph 163A(1)(a)

Omit “within the time and in the manner specified in the notice,”.

20 Paragraph 163A(1)(b)

Omit “in accordance with the notice,”.

21 After subsection 163A(1)

Insert:

- (1A) For the purposes of subsection (1), the information must be given, or the document must be produced:
- (a) within 14 days after the day the notice was served; and
 - (b) in the manner specified in the notice.

22 Subsection 163A(3) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months, or 30 penalty units, or both.

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

23 Paragraph 168(1)(b)

Omit “a fine of \$100”, substitute “20 penalty units”.

24 At the end of subsection 168(1)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Superannuation Act 1990

25 After section 3A

Insert:

3B 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.

26 Subsection 27A(3)

Omit “intentionally”.

27 Subsection 27A(3) (at the end of the penalty)

Add “, or 30 penalty units, or both”.

28 At the end of subsection 27A(3)

Add:

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

Schedule 1A—Amendment of Electoral Acts

Commonwealth Electoral Act 1918

1 After section 4C

Insert:

4D 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 At the end of subsection 101(4)

Add:

Note: A defendant bears a legal burden in relation to the defence in subsection (4) (see section 13.4 of the *Criminal Code*).

3 At the end of subsection 101(5A)

Add:

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

4 After subsection 101(6)

Insert:

(6AA) An offence against subsection (6) relating to a failure to comply with subsection (1) or (5) is an offence of strict liability.

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

(6AB) An offence against subsection (6) relating to a failure to comply with subsection (4) is an offence of absolute liability.

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

5 At the end of subsection 101(6A)

Add:

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

6 Section 103

Omit “without just excuse”.

7 At the end of section 103

Add:

- (2) Subsection (1) does not apply if the officer has a just excuse for the failure.

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

8 At the end of section 196

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

9 At the end of section 200J

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

10 Subsection 245(8)

Omit “paragraph (15)(a)”, substitute “subsection (15)”.

11 Subsection 245(10)

Omit “paragraph (15)(a)”, substitute “subsection (15)”.

12 Subsection 245(15)

Repeal the subsection, substitute:

- (15) An elector is guilty of an offence if the elector fails to vote at an election.

Penalty: \$50.

- (15A) Strict liability applies to an offence against subsection (15).
-

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

(15B) Subsection (15) does not apply if the elector has a valid and sufficient reason for the failure.

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

(15C) An elector who makes a statement in response to a penalty notice or to a notice under subsection (9) that is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: \$50.

13 After subsection 315(1)

Insert:

(1A) Strict liability applies to an offence against subsection (1).

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

14 After subsection 315(2)

Insert:

(2A) Strict liability applies to an offence against subsection (2).

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

15 Subsection 316(5)

Repeal the subsection, substitute:

(5) A person is guilty of an offence if the person refuses to comply with a notice under subsection (2A), (3) or (3A) to the extent that the person is capable of complying with the notice.

Penalty: \$1,000.

(5A) A person is guilty of an offence if the person fails to comply with a notice under subsection (2A), (3) or (3A) to the extent that the person is capable of complying with the notice.

Penalty: \$1,000.

(5B) Strict liability applies to an offence against subsection (5A).

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

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

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

16 Subsections 325(1) and (2) and 325A(1)

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

17 Subsection 326(2)

Omit “in order to influence or affect”, substitute “with the intention of influencing or affecting”.

18 At the end of subsection 329(5)

Add:

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

19 After subsection 334(2)

Insert:

(2A) Strict liability applies to an offence against subsection (1).

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

20 Subsection 335(1)

Omit “wilfully”.

21 Paragraph 339(1)(a)

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

22 Paragraph 339(1)(b)

Omit “for the purpose of voting”, substitute “with the intention of voting in that other person’s name”.

23 Paragraph 339(1)(c)

Repeal the paragraph, substitute:

(c) fraudulently do an act that results in the destruction or defacement of any nomination paper or ballot-paper; or

24 Paragraph 339(1)(h)

Repeal the paragraph, substitute:

- (h) do an act that results in the unlawful destruction of, taking of, opening of, or interference with, ballot-boxes or ballot-papers.

25 Subsection 339(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if the person:
 - (a) does an act; and
 - (b) the act results in the defacement, mutilation, destruction or removal of any notice, list or other document affixed by, or by the authority of, any Divisional Returning Officer.

Penalty: \$500.

26 At the end of section 341

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

27 At the end of section 343

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

28 Subsection 347(1)

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

29 Subsection 347(4)

Omit “, without the authority of the chairperson (proof whereof shall lie upon that person)”.

30 At the end of section 347

Add:

- (5) Subsection (4) does not apply if the person proves that he or she is authorised by the chairperson to return.

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

31 Subsection 350(1)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if the person makes or publishes any false and defamatory statement in relation to the personal character or conduct of a candidate.

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

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

- (1A) Subsection (1) does not apply if the person proves that he or she had a reasonable ground for believing, and did believe, the statement to be true.

Note: A defendant bears a legal burden in relation to the defence in subsection (1A) (see section 13.4 of the *Criminal Code*).

32 Subsection 351(1)

Omit “, without the written authority of the candidate (proof whereof shall lie upon that person)”.

33 After subsection 351(1)

Insert:

- (1A) Subsection (1) does not apply if the person proves that he or she is authorised in writing by the candidate to announce or publish the thing claimed, suggested or advocated.

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

34 At the end of subsection 351(3)

Add:

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

35 At the end of subsection 351(5)

Add:

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

36 Subparagraph 386(a)(ii)

Omit “section 7 of the *Crimes Act 1914*”, substitute “section 11.1 of the *Criminal Code*”.

Referendum (Machinery Provisions) Act 1984

37 After section 3B

Insert:

3C 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 Subsection 45(8)

Omit “paragraph (14)(a)”, substitute “subsection (14)”.

39 Subsection 45(10)

Omit “paragraph (14)(a)”, substitute “subsection (14)”.

40 Subsection 45(14)

Repeal the subsection, substitute:

(14) An elector is guilty of an offence if the elector fails to vote at a referendum.

Penalty: \$50.

(14A) Strict liability applies to an offence against subsection (14).

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

(14B) Subsection (14) does not apply if the elector has a valid and sufficient reason for the failure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (14B) (see subsection 13.3(3) of the *Criminal Code*).

- (14C) An elector who makes a statement in response to a penalty notice or to a notice under subsection (9) that is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: \$50.

41 Subsections 55(6) and (7)

Repeal the subsections.

42 At the end of section 68

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

43 At the end of section 73H

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

44 Subsections 118(1) and (2) and 118A(1)

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

45 Paragraph 119(2)(a)

Omit “in order to influence”, substitute “with the intention of influencing”.

46 Paragraph 119(2)(b)

Omit “in order to induce”, substitute “with the intention of inducing”.

47 At the end of subsection 122(5)

Add:

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

48 Subsection 126(1)

Omit “wilfully”.

49 Paragraph 130(1)(a)

Repeal the paragraph, substitute:

- (a) impersonate another person with the intention of voting in that other person's name; or
- (aa) impersonate another person with the intention of securing a ballot-paper to which the first-mentioned person is not entitled; or

50 Paragraph 130(1)(b)

Repeal the paragraph, substitute:

- (b) fraudulently do an act that results in the destruction or defacement of a ballot-paper or other document relating to a referendum; or

51 Paragraph 130(1)(e)

Repeal the paragraph.

52 Paragraph 130(1)(g)

Repeal the paragraph, substitute:

- (g) do an act that results in the unlawful destruction of, taking of, opening of, or interference with, ballot-boxes or ballot-papers.

53 Paragraph 130(1)(j)

Repeal the paragraph.

54 Subsection 130(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if the person:
 - (a) does an act; and
 - (b) the act results in the defacement, mutilation, destruction or removal of any notice, list or other document displayed in any place by, or with the authority of, an officer.

Penalty: \$500.

55 At the end of section 132

Add:

- (2) Strict liability applies to an offence against subsection (1).

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

56 Subsection 134(2)

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

57 At the end of section 136

Add:

(2) Strict liability applies to an offence against subsection (1).

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

Schedule 2—Amendment of other Acts

Public Accounts and Audit Committee Act 1951

1 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.

2 Section 15

Omit “, without reasonable excuse (proof whereof shall lie upon him),”.

3 At the end of section 15

Add:

- (2) Subsection (1) does not apply if the person proves that he or she has a reasonable excuse.

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

4 Section 16

Omit “knowingly”.

4A Section 17

Omit “, without just cause (proof whereof shall lie upon him)”.

4B At the end of section 17

Add:

- (2) Paragraph (1)(a), (b) or (c) does not apply if the person proves that he or she has just cause for the refusal.

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

5 Section 18

Omit “wilfully”.

6 Subsection 19(2)

Omit “, inflict or procure”, substitute “or inflict”.

Public Works Committee Act 1969

7 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.

8 Section 28

Omit “, without reasonable excuse (proof whereof shall lie upon him)”.

9 At the end of section 28

Add:

(2) Paragraph (1)(a) or (b) does not apply if the person proves that he or she has a reasonable excuse.

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

10 Section 29

Omit “knowingly”.

11 Section 30

Omit “, without reasonable excuse (proof whereof shall lie upon him)”.

12 At the end of section 30

Add:

(2) Paragraph (1)(a), (b) or (c) does not apply if the person proves that he or she has a reasonable excuse.

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

13 Section 31

Omit “wilfully”.

14 Section 32

Omit “or procure” (wherever occurring).

*[Minister’s second reading speech made in—
House of Representatives on 4 April 2001
Senate on 21 August 2001]*

(51/01)