



Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001

No. 111, 2001



Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001

No. 111, 2001

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
4	Application of amendments.....	2
Schedule 1—Amendment of Acts		3
	<i>Aged Care Act 1997</i>	3
	<i>Aged or Disabled Persons Care Act 1954</i>	3
	<i>Australia New Zealand Food Authority Act 1991</i>	3
	<i>Australian Hearing Services Act 1991</i>	4
	<i>Epidemiological Studies (Confidentiality) Act 1981</i>	4
	<i>Health and Other Services (Compensation) Act 1995</i>	4
	<i>Health Insurance Act 1973</i>	6
	<i>Health Insurance Commission Act 1973</i>	15
	<i>Hearing Services Administration Act 1997</i>	17
	<i>Narcotic Drugs Act 1967</i>	18
	<i>National Health Act 1953</i>	19
	<i>National Health and Medical Research Council Act 1992</i>	24
	<i>Nursing Homes Assistance Act 1974</i>	25
	<i>Therapeutic Goods Act 1989</i>	26
	<i>Tobacco Advertising Prohibition Act 1992</i>	31



Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001

No. 111, 2001

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

[Assented to 17 September 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001*.

2 Commencement

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

- (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

Aged Care Act 1997

1 At the end of section 96-9

Add:

Note: The *Criminal Code* creates offences which can apply in relation to the regulation of providers of aged care. For example, under section 137.1 of the Code it would generally be an offence to give false or misleading information to the Secretary in purported compliance with this Act.

Aged or Disabled Persons Care Act 1954

2 At the end of Part I

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.

3 Subsection 10JA(2)

Repeal the subsection.

4 Section 10JB

Omit “knowingly or recklessly”.

Australia New Zealand Food Authority Act 1991

5 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.

6 Section 65

Repeal the section.

Australian Hearing Services Act 1991

7 At the end of Part 1

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.

Epidemiological Studies (Confidentiality) Act 1981

8 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.

9 Section 5

Omit “it is established that”.

10 At the end of section 5

Add:

Note: The defendant bears an evidential burden in relation to establishing that the access was given in accordance with the authorization. See subsection 13.3(3) of the *Criminal Code*.

Health and Other Services (Compensation) Act 1995

11 At the end of Part 1

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.

12 Subsection 26(1)

Omit “, without reasonable excuse,”.

13 After subsection 26(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*.

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

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

14 Subsection 26(2)

Repeal the subsection.

15 Subsection 26(3)

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

16 Subsection 26(5)

Omit “subsection (1) or (2) of this section”, substitute “subsection (1) of this section, or an offence against section 137.1 of the *Criminal Code* that relates to whichever of the sections mentioned in paragraph (a) of this subsection is relevant”.

17 Subsection 44(1)

Omit “, without reasonable excuse,”.

18 Subsection 44(1)

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

19 Subsection 44(2)

Repeal the subsection, substitute:

(1A) However, the person is only required to comply with the notice 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 (1A). See subsection 13.3(3) of the *Criminal Code*.

(1B) 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 (1B). See subsection 13.3(3) of the *Criminal Code*.

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

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

20 Subsection 44(4)

Omit “subsection (1) or (2) of this section”, substitute “subsection (1) of this section, or an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to a notice under section 42 of this Act”.

Health Insurance Act 1973

21 At the end of Part I

Add:

7B 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.

22 Subsection 19CB(4)

Omit “, without reasonable excuse,”.

23 At the end of section 19CB

Add:

- (5) Subsection (4) does not apply if the practitioner 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*.

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

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

24 At the end of section 19CC

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*.

25 Subsection 19D(2)

Omit “, without reasonable excuse”.

26 After subsection 19D(2)

Insert:

- (2A) Subsection (2) does not apply if the practitioner 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*.

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

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

27 Subsection 19D(7)

Omit “, without reasonable excuse”.

28 After subsection 19D(7)

Insert:

- (7A) Subsection (7) does not apply if the practitioner 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*.

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

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

29 Subsection 20BA(2)

Omit “, without reasonable excuse,”.

30 After subsection 20BA(2)

Insert:

(2A) Subsection (2) does not apply if the physician or specialist 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*.

31 Subsection 20BA(4)

Omit “, without reasonable excuse,”.

32 After subsection 20BA(4)

Insert:

(4A) Subsection (4) does not apply if the physician or specialist 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*.

33 After subsection 20BA(6)

Insert:

(6A) An offence under subsection (2) or (4) is an offence of strict liability.

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

34 Subsection 23DKA(6)

Omit “, without reasonable excuse,”.

35 After subsection 23DKA(6)

Insert:

(6A) Subsection (6) does not apply if the authority has a reasonable excuse.

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

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

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

36 At the end of subsection 23DNK(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*.

37 Subsection 23DNK(3)

Repeal the subsection, substitute:

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

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

38 Subsections 23DP(1), (1A), (2) and (3)

Omit “, without reasonable excuse,”.

39 After subsection 23DP(3)

Insert:

(3A) This section does not apply if the practitioner or authority 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*.

(3B) An offence under this section is an offence of strict liability.

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

40 Subsection 23DQ(2)

Omit “, without reasonable excuse,”.

41 After subsection 23DQ(2)

Insert:

(2A) Subsection (2) does not apply if the practitioner 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*.

42 Subsection 23DQ(3)

Omit “, without reasonable excuse,”.

43 After subsection 23DQ(3)

Insert:

(3A) Subsection (3) does not apply if the first-mentioned medical practitioner 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*.

(3B) An offence under this section is an offence of strict liability.

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

44 Subsection 23DR(4)

Omit “, without reasonable excuse.”.

45 At the end of section 23DR

Add:

(5) Subsection (4) does not apply if the practitioner 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*.

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

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

46 Subsection 23DS(6)

Omit “, without reasonable excuse.”.

47 After subsection 23DS(6)

Insert:

(6A) Subsection (6) does not apply if the practitioner has a reasonable excuse.

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

(6B) An offence under this section is an offence of strict liability.

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

48 Section 106D

Omit “, without reasonable excuse”.

49 At the end of section 106D

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*.

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

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

50 Subsection 106E(1)

Omit “, without reasonable excuse”.

51 After subsection 106E(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*.

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

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

52 Subsection 106E(2)

Repeal the subsection, substitute:

- (2) A person must not:
- (a) give an answer to a question knowing the answer to be false or misleading in a material particular; or
 - (b) produce a document knowing the document to contain a statement that is false or misleading in a material particular, without identifying the respects in which he or she knows it to be false or misleading.

Penalty: 20 penalty units.

53 Subsection 106E(6)

Omit “it is proved that”.

54 At the end of subsection 106E(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*.

55 Subsection 124B(1) (subparagraphs (c)(i) and (ii) of the definition of *relevant offence*)

Repeal the subparagraphs, substitute:

- (i) section 6 of the *Crimes Act 1914*; or
- (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

56 Subsection 124B(1) (at the end of the definition of *relevant offence*)

Add:

; or (f) an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* that is committed after the commencement of this paragraph and that relates to:

- (i) an application under section 5 or 5B; or
- (ii) a statement or report under section 130A; or
- (iii) a notification under section 130B.

57 Section 124L

Omit “, without reasonable excuse”.

58 At the end of section 124L

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*.

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

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

59 Subsection 124M(1)

Omit “, without reasonable excuse”.

60 After subsection 124M(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*.

61 Subsection 124M(2)

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

62 At the end of section 124M

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*.

63 Subsection 127(2)

Omit “, without reasonable excuse,”.

64 At the end of section 127

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*.

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

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

65 At the end of section 128

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*.

66 After subsection 128A(2)

Insert:

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

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

67 Subsection 129(2A)

Repeal the subsection.

68 Subsection 129(3)

Omit “the person proves that”.

69 At the end of subsection 129(3)

Add:

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

70 Subsection 129AA(5)

Omit “the person proves that”.

71 At the end of subsection 129AA(5)

Add:

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

72 Paragraphs 129AAB(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) section 6 of the *Crimes Act 1914*; or
- (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

73 After subsection 130(3F)

Insert:

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

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

74 Subparagraph 130(6)(a)(i)

Omit “129,”.

75 Subparagraph 130(6)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in subparagraph (i); or

76 Subsection 130(16)

Repeal the subsection.

77 After subsection 130(17)

Insert:

(17A) An offence under subsection (17) is an offence of strict liability.

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

78 Subsection 130(18)

Omit “it is established that”.

79 At the end of subsection 130(18)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (18). See subsection 13.3(3) of the *Criminal Code*.

80 After subsection 130(19)

Insert:

(19A) An offence under subsection (19) is an offence of strict liability.

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

81 Subsection 130(20)

Omit “it is established that”.

82 At the end of subsection 130(20)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (20). See subsection 13.3(3) of the *Criminal Code*.

83 Subsection 130F(2)

Omit “without lawful excuse.”.

Health Insurance Commission Act 1973

84 Paragraph 3A(1)(c)

Omit all the words before “that relates to”, substitute “an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*,”.

85 Paragraph 3A(2A)(d)

Omit all the words before “that relates to”, substitute “an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*,”.

86 At the end of Part I

Add:

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.

87 Subsection 8N(4)

Omit “, without reasonable excuse,”.

88 At the end of section 8N

Add:

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

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

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

89 Subsection 8R(1)

Omit “, without reasonable excuse,”.

90 Subsection 8R(1)

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

91 Subsection 8R(2)

Repeal the subsection, substitute:

(1A) However, the person is only required to comply with the notice 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 (1A). See subsection 13.3(3) of the *Criminal Code*.

(1B) 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 (1B). See subsection 13.3(3) of the *Criminal Code*.

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

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

92 Subsection 8R(3)

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

93 At the end of subsection 8S(2)

Add “or an offence against section 137.2 of the *Criminal Code* that relates to a notice under section 8P of this Act”.

94 Paragraph 41C(2)(c)

Omit “so as to imply”, substitute “with the result of implying”.

Hearing Services Administration Act 1997

95 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.

96 Paragraph 19(6)(a)

Repeal the paragraph, substitute:

(a) an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* in respect of a statement that is made to a

person who is exercising powers or performing functions under, or in connection with, subsection 21(2) of this Act;

97 Section 22

Repeal the section.

98 Section 47

Omit “(other than section 22)”.

Narcotic Drugs Act 1967

99 At the end of Part I

Add:

8A 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.

100 At the end of section 23

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*.

101 Subsection 24(3)

Repeal the subsection, substitute:

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

- (a) an authorized inspector is acting under subsection (1) or (2);
and
- (b) the person obstructs or hinders the authorized inspector.

Penalty: \$1,000.

(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*.

- (3B) The occupier or person in charge of any premises is guilty of an offence if:
- (a) an authorized inspector enters the premises under subsection (1) or (2); and
 - (b) the occupier or person in charge does not provide the authorized inspector with all reasonable facilities and assistance for the effective exercise of the inspector's powers under that subsection.

Penalty: \$1,000.

- (3C) Subsection (3B) does not apply if the occupier or person in charge has a reasonable excuse.

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

- (3D) In subsections (3) and (3B), strict liability applies to the physical element of circumstance, that the authorized inspector is acting under subsection (1) or (2).

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

National Health Act 1953

102 At the end of Part 1

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.

103 Subsection 61B(3)

Repeal the subsection.

104 Subsection 61E(1)

Omit “, without reasonable excuse,”.

105 Subsection 61E(2)

Repeal the subsection, substitute:

- (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*.

106 Subsection 62(3)

Omit “the person proves that”.

107 At the end of subsection 62(3)

Add:

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

108 At the end of section 74

Add:

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

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

109 Section 74BA

Omit “for the purpose of”, substitute “if doing so has the result of”.

110 After subsection 75(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*.

111 Subsection 82(1)

Repeal the subsection.

112 After subsection 82K(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*.

113 After subsection 82L(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*.

114 Subsection 82U(1)

Repeal the subsection, substitute:

(1) A person is guilty of an offence if the person refuses or fails to comply with a requirement of an inspector under section 82S that is applicable to the person.

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

(1A) However, the person is only required to comply with the requirement 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 (1A). See subsection 13.3(3) of the *Criminal Code*.

(1B) In subsection (1), strict liability applies to the physical element of circumstance, that the requirement is under section 82S.

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

115 Subsection 82V(5)

Omit “, without reasonable excuse,”.

116 After subsection 82V(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*.

117 Subsection 82WC(1)

Repeal the subsection, substitute:

(1) A person is guilty of an offence if:
(a) the person engages in conduct; and
(b) the conduct results in the concealment, destruction, mutilation or alteration of records relating to the affairs of a registered organization the affairs of which are being investigated under this Act.

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

118 Subsection 82WC(2)

Omit “for the person charged to prove that”, substitute “if”.

119 At the end of subsection 82WC(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*.

120 Subsection 82XR(4)

Omit “, without reasonable excuse,”.

121 After subsection 82XR(4)

Insert:

(4A) 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*.

122 Subsections 84L(1) and (2)

Omit “knowingly”.

123 Subsections 84L(3) and (4)

Omit “, without reasonable excuse,”.

124 At the end of section 84L

Add:

(5) Subsections (3) and (4) do 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*.

125 Paragraphs 103(5)(a) and (aa)

Repeal the paragraphs.

126 Subsection 128(1)

Omit “, without reasonable excuse,”.

127 After subsection 128(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 Subsection 128(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the book, document or writing was not relevant to the matter that is the subject of the Committee's proceedings.

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

129 At the end of section 128

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*.

130 Section 134C

Omit "the person charged shows that".

131 At the end of section 134C

Add:

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

132 Subparagraph 135A(6)(a)(ii)

Repeal the subparagraph, substitute:

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

133 Subsection 135A(15)

Repeal the subsection.

134 After subsection 135A(16)

Insert:

(16A) An offence under subsection (16) is an offence of strict liability.

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

135 Subsection 135A(17)

Omit “it is established that”.

136 At the end of subsection 135A(17)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (17). See subsection 13.3(3) of the *Criminal Code*.

137 After subsection 135A(18)

Insert:

(18A) An offence under subsection (18) is an offence of strict liability.

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

138 Subsection 135A(19)

Omit “it is established that”.

139 At the end of subsection 135A(19)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (19). See subsection 13.3(3) of the *Criminal Code*.

National Health and Medical Research Council Act 1992

140 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.

Nursing Homes Assistance Act 1974

141 After section 3

Insert:

3AA 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.

142 At the end of section 8

Add:

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

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

143 At the end of section 9

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*.

144 At the end of subsection 30(1)

Add:

Penalty: \$40.

145 At the end of subsection 30(1A)

Add:

Penalty: \$40.

146 At the end of section 30

Add:

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

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

147 Subsection 30A(3)

Omit “proves that he or she”.

148 At the end of subsection 30A(3)

Add:

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

Therapeutic Goods Act 1989

149 Paragraph 3(7)(b)

Repeal the paragraph, substitute:

- (b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence against this Act or the regulations; and
- (c) an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* in relation to this Act or the regulations.

150 After section 5

Insert:

5A 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.

151 Subsection 6AA(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes a condition of an approval.

Penalty: 200 penalty units.

(3A) In subsection (3):

engage in conduct means:

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

152 Subsection 8(2)

Omit “, without reasonable excuse,”.

153 Subsection 8(3)

Repeal the subsection, substitute:

- (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*.

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

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

154 Subsection 15(2)

Repeal the subsection, substitute:

- (2) A person is guilty of an offence if:
(a) the person engages in conduct; and
(b) the conduct breaches a condition of such a consent.

Penalty: 120 penalty units.

- (2A) In subsection (2):

engage in conduct means:

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

155 Paragraph 20(1)(a)

Omit “intentionally”.

156 Subsection 20(2)

Omit “intentionally or recklessly”.

157 After subsection 20(1A)

Insert:

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

158 Section 21

Omit “intentionally or recklessly”.

159 Subsection 22(1)

Omit “intentionally or recklessly”.

160 Subsection 22(2)

Repeal the subsection.

161 Subsection 22(2A)

Omit “intentionally or recklessly”.

162 Subsection 22(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) therapeutic goods are registered or listed in relation to the person; and
 - (b) the person engages in conduct; and
 - (c) the conduct breaches a condition of the registration or listing of the goods.

Penalty: 60 penalty units.

(3A) In subsection (3):

engage in conduct means:

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

163 Subsections 22(4), (5) and (6)

Omit “intentionally or recklessly”.

164 Paragraph 22(7)(a)

Omit “intentionally”

165 Paragraph 22(7)(b)

Omit all the words before subparagraph (i), substitute “the act or omission results in the breach of:”.

166 Subsection 22(8)

Omit “intentionally or recklessly”.

167 Section 22A

Omit “intentionally or recklessly”.

168 Subsection 29B(4)

Omit “intentionally or recklessly”.

169 Subsection 30(7)

Omit “intentionally or recklessly”.

170 Subsection 30A(4)

Omit “intentionally or recklessly”.

171 Subsection 31(4)

Omit “, without reasonable excuse,”.

172 After subsection 31(4)

Insert:

(4A) 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*.

173 Subsection 31(5)

Repeal the subsection, substitute:

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

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

174 Subsection 31(6)

Omit “intentionally or recklessly”.

175 Subsection 35(1)

Omit “intentionally or recklessly”.

176 Subsections 35(2) and (3)

Repeal the subsections, substitute:

- (2) A person is guilty of an offence if:
- (a) the person holds a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct breaches a condition of the licence.

Penalty: 120 penalty units.

- (3) In subsection (2):

engage in conduct means:

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

177 Subsection 48(3)

Omit “, without reasonable excuse,”.

178 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*.

179 At the end of section 52

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*.

180 Subsection 54AA(1)

Repeal the subsection, substitute:

- (1) If:
- (a) a person holds a licence or a permission to import or export therapeutic goods; and
 - (b) the person engages in conduct; and
 - (c) the conduct breaches a condition or a requirement to which the licence or permission is subject under the regulations;

the person is guilty of an offence punishable on conviction by a fine of no more than the number of penalty units specified in whichever of n or (3) applies.

(1A) In subsection (1):

engage in conduct means:

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

Tobacco Advertising Prohibition Act 1992

181 After section 5

Insert:

5A 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.

182 Subsection 13(1)

Omit “, knowingly or recklessly,”.

183 Subsection 15(1)

Omit “, knowingly or recklessly”.

184 Subsections 15(2) and (3)

Omit “, knowingly or recklessly,”.

185 Subsection 31(3)

Omit “proves that the partner or controlling officer”.

186 At the end of subsection 31(3)

Add:

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

*[Minister's second reading speech made in—
House of Representatives on 8 August 2001
Senate on 23 August 2001]*

(150/01)
