



Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001

No. 137, 2001

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

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Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001

No. 137, 2001

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

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day after the day on which it receives the Royal Assent.
- (2) If item 19 of Schedule 1 to the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001* commences after this Act commences, items 124 and 125 of Schedule 1 to this Act commence immediately after the commencement of that item.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Schedule 1—Amendment of Acts

A New Tax System (Bonuses for Older Australians) Act 1999

1 After section 3

Insert:

3AA Application of the *Criminal Code*

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

2 Section 55

Repeal the section, substitute:

55 Use etc. of information relating to another person

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person uses, makes a record of, or discloses or communicates to any person, any information that relates to the affairs of another person; and
 - (b) the information is information that was acquired by the first person in the performance of a function or obligation, or in the exercise of a power, under this Part; and
 - (c) the use, making of the record, disclosure or communication was not carried out in the performance of the function or obligation, or in the exercise of the power.

Maximum penalty: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

A New Tax System (Family Assistance) (Administration) Act 1999

3 After section 3

Insert:

3A Application of the *Criminal Code*

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

4 At the end of section 25

Add:

- (2) Strict liability applies to the element of an offence against subsection (1) that a notice is a notice given under section 25A.

5 After subsection 56C(1)

Insert:

- (1A) Strict liability applies to the following elements of an offence against subsection (1):
 - (a) the element that a determination is a determination under section 50F;
 - (b) the element that a notice is a notice given under section 57.

6 After subsection 56C(2)

Insert:

- (2A) Strict liability applies to the following elements of an offence against subsection (2):
 - (a) the element that a determination is a determination under section 50F or 50J;
 - (b) the element that Schedule 2 to the Family Assistance Act is used to calculate a CCB %;
 - (c) the element that a notice is a notice given under section 57.

7 After subsection 56C(3)

Insert:

- (3A) Strict liability applies to the following elements of an offence against subsection (3):
 - (a) the element that a determination is a determination under section 50F or 50H;

- (b) the element that a circumstance is a circumstance set out in subsection 54(2), (4), (6) or (8) of the Family Assistance Act or subsection 55(2) or (4) of that Act;
- (c) the element that a notice is a notice given under section 57.

8 After subsection 56C(4)

Insert:

- (4A) Strict liability applies to the following elements of an offence against subsection (4):
 - (a) the element that a determination is a determination under section 50F or 50H;
 - (b) the element that a notice is a notice given under section 57.

9 After subsection 56C(5)

Insert:

- (5A) Strict liability applies to the following elements of an offence against subsection (5):
 - (a) the element that a determination is a determination under section 50F or 50K;
 - (b) the element that a notice is a notice given under section 57.

10 After subsection 56C(6)

Insert:

- (6A) Strict liability applies to the following elements of an offence against subsection (6):
 - (a) the element that a determination is a determination under section 50F;
 - (b) the element that the determination of a rate is a determination under subsection 81(2) of the Family Assistance Act;
 - (c) the element that a notice is a notice given under section 57.

11 After subsection 56D(1)

Insert:

- (1A) Strict liability applies to the following elements of an offence against subsection (1):

- (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
- (b) the element that a determination is a determination under section 54C;
- (c) the element that a circumstance is a circumstance under subsection 54(3), (5), (7), (9) or (12) or subsection 55(3), (5) or (8) of the Family Assistance Act;
- (d) the element that a notice is a notice given under section 57.

12 After subsection 56D(2)

Insert:

- (2A) Strict liability applies to the following elements of an offence against subsection (2):
 - (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
 - (b) the element that a determination of a rate is a determination under subsection 81(4) of the Family Assistance Act;
 - (c) the element that a notice is a notice given under section 57.

13 After subsection 56D(3)

Insert:

- (3A) Strict liability applies to the following elements of an offence against subsection (3):
 - (a) the element that a determination is a determination under section 50F;
 - (b) the element that a determination of a rate is a determination under subsection 81(3) of the Family Assistance Act;
 - (c) the element that a notice is a notice given under section 57.

14 After subsection 56D(4)

Insert:

- (4A) Strict liability applies to the following elements of an offence against subsection (4):

- (a) the element that a determination is a determination under section 50F;
- (b) the element that a determination is a determination under section 50H;
- (c) the element that a circumstance is a circumstance set out in subsection 54(12) or 55(8) of the Family Assistance Act;
- (d) the element that a notice is a notice given under section 57.

15 After subsection 56D(5)

Insert:

- (5A) Strict liability applies to the following elements of an offence against subsection (5):
 - (a) the element that a determination is a determination under section 57 of the Family Assistance Act;
 - (b) the element that a notice is a notice given under section 57.

16 Paragraph 75(c)

Repeal the paragraph, substitute:

- (c) another person is convicted of an offence:
 - (i) that is taken to have been committed because of section 11.2 of the *Criminal Code*; or
 - (ii) against section 11.4 or 11.5 of the *Criminal Code*; in relation to that contravention;

17 At the end of section 133

Add:

- (3) Strict liability applies to the element of an offence against subsection (2) that an order is an order under subsection (1).

18 Section 159

Repeal the section, substitute:

159 Offence: failure to comply with requirement

- (1) A person must not refuse or fail to comply with a requirement under this Division to give information or produce a document.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the requirement.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to the element of an offence against subsection (1) that a requirement is a requirement under this Division.

19 Section 163

Repeal the section, substitute:

163 Offence: unauthorised access to protected information

- (1) If:
 - (a) a person intentionally obtains information; and
 - (b) the person is not authorised under the family assistance law to obtain the information; and
 - (c) the person knows or ought reasonably to know that the information is protected information;the person is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.
- (2) Strict liability applies to the element of an offence against subsection (1) that a person not authorised to do something is not authorised under the family assistance law to do that thing.

20 Section 164

Repeal the section, substitute:

164 Offence: unauthorised use of protected information

- (1) If:
 - (a) a person intentionally:
 - (i) makes a record of; or
 - (ii) discloses to any other person; or
 - (iii) otherwise makes use of; information; and
 - (b) the person is not authorised or required under:
-

- (i) the family assistance law; or
 - (ii) the *Social Security Act 1991*; or
 - (iii) the *Social Security (Administration) Act 1999*;
to make the record, disclosure or use of the information that
is made by the person; and
 - (c) the person knows or ought reasonably to know that the
information is protected information;
the person is guilty of an offence punishable on conviction by
imprisonment for a term not exceeding 2 years.
- (2) Strict liability applies to the element of an offence against
subsection (1) that a person not authorised or required to do
something is not authorised or required to do that thing under:
- (a) the family assistance law; or
 - (b) the *Social Security Act 1991*; or
 - (c) the *Social Security (Administration) Act 1999*.

21 At the end of section 165

Add:

- (2) Strict liability applies to paragraph (1)(b).

22 Section 172

Repeal the section, substitute:

172 False statement in connection with claim

A person contravenes this section if:

- (a) the person makes a statement; and
- (b) the statement is false or misleading; and
- (c) the person is reckless as to whether the statement is false or
misleading; and
- (d) the statement is made in connection with, or in support of,
the person's or any other person's claim for family
assistance.

23 Section 173

Repeal the section, substitute:

173 False statement to deceive

- (1) A person contravenes this section if:
 - (a) the person makes a statement; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless as to whether the statement is false or misleading; and
 - (d) the person is reckless as to whether the statement:
 - (i) deceives, or might deceive, an officer or an approved child care service exercising powers, or performing duties or functions, under the family assistance law; or
 - (ii) affects, or might affect, an entitlement to a payment of family assistance under the family assistance law; or
 - (iii) affects, or might affect, the rate of a payment of family assistance under the family assistance law; or
 - (iv) affects, or might affect, conditional eligibility for child care benefit by fee reduction, a weekly limit of hours, a CCB % or a schooling % applicable to a person.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a power, duty or function is a power, duty or function under the family assistance law;
 - (b) the element that a payment is a payment under the family assistance law.

24 Section 174

Repeal the section, substitute:

174 False statement or document

- (1) A person contravenes this subsection if:
 - (a) the person makes a statement or presents a document to an officer or an approved child care service exercising powers, or performing duties or functions, under the family assistance law; and
 - (b) the statement or document is false in any particular; and

- (c) the person is reckless as to whether the statement or document is false in any particular.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to the element of the offence that a power, duty or function is a power, duty or function under the family assistance law.

25 Section 175

Repeal the section, substitute:

175 Obtaining payment where no entitlement

A person contravenes this section if:

- (a) the person obtains a payment of family assistance; and
- (b) the person does so knowing that he or she is:
 - (i) not entitled to the payment; or
 - (ii) only entitled to part of the payment.

26 Subsections 175A(1), (2) and (3)

Omit “knowingly”.

Note: The heading to section 175A is altered by omitting “**Knowingly obtaining**” and substituting “**Obtaining**”.

27 After subsection 175A(3)

Insert:

- (3A) For the purposes of an offence against section 177 that relates to a contravention of subsection (3) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a child care service’s lack of eligibility for a child care benefit is a lack of eligibility under section 47 of the Family Assistance Act;
 - (b) the element that an amount of an advance paid to reimburse a child care service is an amount paid under section 219R.

28 Subsection 175A(4)

Omit “knowingly”.

29 After subsection 175A(4)

Insert:

- (4A) For the purposes of an offence against section 177 that relates to a contravention of subsection (4) of this section, strict liability applies to the following elements of the offence:
- (a) the element that a child care service's eligibility for a child care benefit is an eligibility under section 47 of the Family Assistance Act;
 - (b) the element that an incorrect amount of an advance paid to reimburse a service is an incorrect amount paid under section 219R.

30 Section 176

Repeal the section, substitute:

176 Payment or fee reductions obtained by fraud

- (1) A person contravenes this subsection if:
- (a) the person obtains:
 - (i) a payment of family assistance; or
 - (ii) fee reductions; or
 - (iii) in the case of an approved child care service—an amount of an advance paid under section 219R to reimburse the service the amount of the fee reductions made by the service for care provided to a child; and
 - (b) the person does so:
 - (i) by means of impersonation; or
 - (ii) by fraudulent means.
- (2) For the purposes of an offence against section 177 that relates to a contravention of subsection (1) of this section, strict liability applies to the element of the offence that an amount of an advance paid to reimburse a service is an amount paid under section 219R.
- (3) A person contravenes this subsection if:
- (a) the person makes a statement; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless as to whether the statement is false or misleading; and
 - (d) as a result the person obtains:
-

- (i) a payment of family assistance; or
 - (ii) fee reductions; or
 - (iii) in the case of an approved child care service—an amount of an advance paid under section 219R to reimburse the service the amount of the fee reductions made by the service for care provided to a child.
- (4) For the purposes of an offence against section 177 that relates to a contravention of subsection (3) of this section, strict liability applies to the element of the offence that an amount of an advance paid to reimburse a service is an amount paid under section 219R.

31 Part 7 (heading)

Repeal the heading, substitute:

Part 7—Liability of certain employers and principals for offences

32 Sections 186 to 188

Repeal the sections, substitute:

188 Offence

A reference in this Part to an offence against this Act includes a reference to:

- (a) an offence against this Act that is taken to have been committed because of section 11.2 of the *Criminal Code*; or
- (b) an offence created by:
 - (i) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
 - (ii) section 6 of the *Crimes Act 1914*;that relates to this Act.

33 Division 2 of Part 7

Repeal the Division.

34 At the end of section 219A

Add:

- (3) Subsection (2) is an offence of strict liability.
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35 After subsection 219B(1)

Insert:

(1A) Subsection (1) is an offence of strict liability.

36 At the end of section 219C

Add:

(2) Subsection (1) is an offence of strict liability.

37 At the end of section 219D

Add:

(3) Subsections (1) and (2) are offences of strict liability.

38 After subsection 219E(1)

Insert:

(1A) Subsection (1) is an offence of strict liability.

39 After subsection 219F(2)

Insert:

(2A) Subsections (1) and (2) are offences of strict liability.

40 After subsection 219G(1)

Insert:

(1A) Subsection (1) is an offence of strict liability.

41 After subsection 219L(3)

Insert:

(3A) Subsections (1), (2) and (3) are offences of strict liability.

Child Support (Assessment) Act 1989

42 After section 4

Insert:

4A Application of the *Criminal Code*

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

43 Subsection 150(2)

Repeal the subsection, substitute:

- (2) Subject to subsection (3), a person to whom this section applies must not:
- (a) make a record of any protected information; or
 - (b) whether directly or indirectly, communicate to a person any protected information concerning another person.

Penalty: Imprisonment for 1 year.

- (2A) Subsection (2) does not apply if the record is made, or the information is communicated:
- (a) under or for the purposes of this Act; or
 - (b) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

44 Subsections 159A(1) and (2)

Repeal the subsections, substitute:

- (1) A person is guilty of an offence if:
- (a) the person makes a statement to an officer; and
 - (b) the statement:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the statement is false or misleading in a material particular; and
 - (c) the person is reckless as to whether the statement is a statement of that kind.

Penalty: 5 penalty units.

- (2) In a prosecution of a person for an offence against subsection (1), if, having regard to:
- (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged offence;

the person has acted without taking reasonable care as to the accuracy and completeness of the statement, or with intentional disregard to the requirements to obtain and provide relevant information, the person is to be taken to have been reckless as to whether the statement is false or misleading in a material particular.

45 Section 159B

Repeal the section, substitute:

159B Failure to notify required information

- (1) A person is guilty of an offence if:
 - (a) the person is required to notify information to the Registrar; and
 - (b) the requirement is a requirement under section 63A; and
 - (c) the person fails to notify the Registrar; and
 - (d) the person is reckless as to the requirement.

Penalty: 5 penalty units.

- (2) Strict liability applies to paragraph (1)(b).
- (3) In a prosecution of a person for an offence against subsection (1), if, having regard to:
 - (a) the person's abilities, experience, qualifications and other attributes; and
 - (b) all the circumstances surrounding the alleged offence;the person has acted without reasonable care or with intentional disregard to the requirement to notify the Registrar as required by section 63A, the person is to be taken to have been reckless as to that requirement.

46 Subsection 160(3)

Repeal the subsection, substitute:

- (3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

(3A) Subsection (3) applies only to the extent to which the person is capable of complying with the notice.

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

(3C) Subsection (3) is an offence of strict liability.

47 Subsection 161(3)

Repeal the subsection, substitute:

(3) A person who refuses or fails to comply with a requirement made under subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 6 months.

(3A) Subsection (3) applies only to the extent to which the person is capable of complying with the requirement.

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

(3C) Subsection (3) is an offence of strict liability.

48 At the end of section 162

Add:

(4) Strict liability applies to the element of an offence against subsection (3) that an order is an order under subsection (1).

Child Support (Registration and Collection) Act 1988

49 After section 3

Insert:

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

50 Subsection 16(2)

Repeal the subsection, substitute:

- (2) Subject to subsection (3), a person to whom this section applies must not:
- (a) make a record of any protected information; or
 - (b) whether directly or indirectly, communicate to a person any protected information concerning another person.

Penalty: Imprisonment for 1 year.

- (2A) Subsection (2) does not apply if the record is made, or the information is communicated:
- (a) under or for the purposes of this Act; or
 - (b) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

51 After subsection 23(7)

Insert:

- (7A) Subsection (7) is an offence of strict liability.

52 After subsection 33(2)

Insert:

- (2A) Subsection (2) is an offence of strict liability.

53 After subsection 34(2)

Insert:

- (2A) Subsection (2) is an offence of strict liability.

54 After subsection 46(1)

Insert:

- (1A) Subsection (1) is an offence of strict liability.

55 After subsection 47(3)

Insert:

- (3A) Subsections (1A), (2) and (3) are offences of strict liability.

56 After subsection 57(1)

Insert:

- (1A) Strict liability applies to the element of an offence against subsection (1) that a notice is a notice given under subsection 45(1).

57 Section 58

Repeal the section, substitute:

58 Employers not to disclose information etc.

- (1) Any person who is or has been:
- (a) an employer; or
 - (b) a person employed by, or performing services for, an employer;
- must not, directly or indirectly, divulge or communicate to a second person any information in relation to the affairs of a third person, being information disclosed or obtained under or for the purposes of this Part and acquired by the person because of, or in the course of, the performance of the employer's duties under this Part.
- Penalty: \$1,000.
- (2) Subsection (1) does not apply if the information is divulged or communicated for the purposes of this Part or otherwise in connection with the performance of the employer's duties under this Part or in connection with the carrying on of the employer's affairs.
- (3) Strict liability applies to the element of an offence against subsection (1) that a disclosure or obtaining of information is a disclosure or obtaining under or for the purposes of this Part.

58 After subsection 59(3) (before the penalty)

Insert:

- (4) Subsections (1) and (2) are offences of strict liability.

59 After subsection 60(1)

Insert:

- (1A) Subsection (1) is an offence of strict liability.

60 Subsection 61(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
 - (a) the person is an occupier of land or premises entered or proposed to be entered by an officer; and
 - (b) the person does not provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing; and
 - (c) the person does not do so in circumstances where the officer is exercising his or her powers under this section.

Penalty: \$1,000.

- (4) Strict liability applies to paragraph (3)(c).

61 Subsection 72A(2)

Omit “, without reasonable excuse,”.

62 After subsection 72A(2)

Insert:

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.
- (2B) Subsection (2) is an offence of strict liability.

63 After subsection 111(3)

Insert:

- (3A) Subsection (3) is an offence of strict liability.

64 Subsection 120(3)

Repeal the subsection, substitute:

- (3) A person who refuses or fails to comply with a requirement made under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.
- (4) Subsection (3) applies only to the extent to which the person is capable of complying with the requirement.

(5) Subsection (3) is an offence of strict liability.

65 At the end of section 121

Add:

(4) Strict liability applies to the element of an offence against subsection (3) that an order is an order under subsection (1).

Commonwealth Services Delivery Agency Act 1997

66 After section 2

Insert:

2A Application of the *Criminal Code*

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

67 After subsection 38(1)

Insert:

(1A) Subsection (1) is an offence of strict liability.

Data-matching Program (Assistance and Tax) Act 1990

68 After section 2

Insert:

2A Application of the *Criminal Code*

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

69 Subsection 15(1)

Repeal the subsection, substitute:

(1) An officer of an agency who has information only because of performing functions or duties under this Act, must not make a record of, or disclose, any of the information.

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply if the information is recorded or disclosed:
- (a) in the course of carrying out functions or duties under this Act; or
 - (b) with the consent of the person to whom the information relates.

Disability Services Act 1986

70 After section 3

Insert:

3A Application of the *Criminal Code*

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

71 Paragraph 27(3)(a)

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

72 Paragraph 27(3)(b)

Repeal the paragraph, substitute:

- (b) in purported compliance with such a notice, furnish information or give evidence knowing that the information or evidence is false or misleading in a material particular.

73 After subsection 27(3)

Insert:

- (3A) Paragraph (3)(a) applies only to the extent to which the person is capable of complying with the notice.

74 Subsection 28(2)

Omit “except in the performance of duties or exercise of powers under this Part or for the purposes of the administration of the *Social Security Act 1991*,”.

75 After subsection 28(2)

Insert:

(2A) Subsection (2) does not apply if the person records or divulges the information in the performance of duties or exercise of powers under this Part or for the purposes of the administration of the *Social Security Act 1991*.

76 After subsection 28(3)

Insert:

(3A) Strict liability applies to the element of an offence against subsection (2) that an acquisition of information is an acquisition in the performance of duties or exercise of powers under this Part.

First Home Owners Act 1983

86 Before section 4

Insert:

3A Application of the *Criminal Code*

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

87 Subsection 29(1)

Omit “except for the purposes of this Act,”.

88 After subsection 29(1)

Insert:

(1A) Subsection (1) does not apply if the record is made, or the information is divulged or communicated, for the purposes of this Act.

(1B) Strict liability applies to the element of an offence against subsection (1) that an acquisition of information is an acquisition in the exercise of powers, or the performance of duties or functions, under this Act.

89 Paragraph 30(2)(a)

Omit “without lawful excuse,”.

90 Subsection 31(2)

Omit “without lawful excuse,”.

91 Subsection 31(3)

Omit “, without lawful excuse”.

92 After subsection 31(3) (before the penalty)

Insert:

(4) Subsections (2) and (3) are offences of strict liability.

93 At the end of section 35

Add:

(3) Subsection (2) is an offence of strict liability.

94 Paragraph 36(1)(b)

Omit “, or a further certificate, as the case may be,”.

95 Subsection 36(1)

After “furnish the certificate”, insert “mentioned in paragraph (b)”.

96 After subsection 36(1)

Insert:

(1A) Strict liability applies to the element of an offence against subsection (1) that a statement is a statement under paragraph 20(2)(b).

Home Deposit Assistance Act 1982

97 Before section 4

Insert:

3A Application of the *Criminal Code*

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

98 Subsection 50(1)

Omit “except for the purposes of this Act,”.

99 After subsection 50(1)

Insert:

- (1A) Subsection (1) does not apply if the information is recorded, divulged or communicated for the purposes of this Act.
- (1B) Strict liability applies to the element of an offence against subsection (1) that an acquisition of information is an acquisition in the exercise of powers, or in the performance of duties or functions, under this Act.

100 Paragraph 51(2)(a)

Omit “without lawful excuse,”.

101 Subsection 52(2)

Omit “without lawful excuse,”.

102 Subsection 52(3)

Omit “, without lawful excuse”.

103 After subsection 52(3) (before the penalty)

Insert:

- (3A) Subsections (2) and (3) are offences of strict liability.

104 After subsection 58(2)

Insert:

- (2A) Subsection (2) is an offence of strict liability.

105 After subsection 59(1)

Insert:

- (1A) Strict liability applies to the element of an offence against subsection (1) that a statement is a statement under paragraph 34(2)(b).

Homes Savings Grant Act 1964

106 After section 2

Insert:

3 Application of the *Criminal Code*

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

107 Subsection 12(2)

Omit “without lawful excuse.”.

108 After subsection 12(3) (before the penalty)

Insert:

(4) Subsections (2) and (3) are offences of strict liability.

109 Subsection 13(2)

Omit “except in the exercise of his powers, or the performance of his duties or functions, under this Act, and while he is, or after he ceases to be, an officer,”.

110 After subsection 13(2)

Insert:

(2A) Subsection (2) does not apply if the information is recorded, divulged or communicated in the exercise of powers, or the performance of duties or functions, under this Act.

(2B) Strict liability applies to the element of an offence against subsection (2) that an acquisition of information is an acquisition in the exercise of powers, or in the performance of duties or functions, under this Act.

111 After subsection 24(1A)

Insert:

(1B) Subsection (1A) is an offence of strict liability.

112 After subsection 26A(3)

Insert:

(3A) Subsections (1), (2) and (3) are offences of strict liability.

Homes Savings Grant Act 1976

113 Before section 4

Insert:

3A Application of the *Criminal Code*

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

114 Subsection 41(2)

Omit “except in the exercise of his powers, or the performance of his duties or functions, under this Act, and while he is, or after he ceases to be, an officer,”.

115 After subsection 41(2)

Insert:

(2A) Subsection (2) does not apply if the information is recorded, divulged or communicated in the exercise of powers, or the performance of duties or functions, under this Act.

(2B) Strict liability applies to the element of an offence against subsection (2) that an acquisition of information is an acquisition in the exercise of powers, or in the performance of duties or functions, under this Act.

116 Subsection 42(2)

Omit “without lawful excuse,”.

117 Subsection 43(2)

Omit “without lawful excuse,”.

118 Subsection 43(3)

Omit “, without lawful excuse”.

119 After subsection 43(3) (before the penalty)

Insert:

(3A) Subsections (2) and (3) are offences of strict liability.

120 After subsection 48(2)

Insert:

(2A) Subsection (2) is an offence of strict liability.

Social Security Act 1991

121 After section 2

Insert:

3 Application of the *Criminal Code*

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

122 Section 1061ZZBW

Repeal the section, substitute:

1061ZZBW Refusal or failure to comply with notice

- (1) A person is guilty of an offence if:
- (a) the person is required to comply with a notice; and
 - (b) the notice is a notice under section 1061ZZBR; and
 - (c) the person refuses or fails to comply with the notice; and
 - (d) the person is reckless as to the requirement.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to paragraph (1)(b).

123 Section 1061ZZCD

Repeal the section, substitute:

1061ZZCD Refusal or failure to comply with notice

- (1) A person is guilty of an offence if:
 - (a) the person is required to comply with a notice; and
 - (b) the notice is a notice under section 1061ZZBY; and
 - (c) the person refuses or fails to comply with the notice; and
 - (d) the person is reckless as to the requirement.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Strict liability applies to paragraph (1)(b).

124 Subsection 1184D(1)

Repeal the subsection, substitute:

- (1) If a person (the *potential compensation payer*) has been given a notice under section 1182 or 1184 in relation to the payment of compensation to a person, the potential compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

- (1A) Subsection (1) does not apply if:
 - (a) in the case of a notice under section 1182—the Secretary has given the potential compensation payer written notice that the notice under section 1182 is revoked; or
 - (b) in the case of a notice under section 1184—the potential compensation payer has paid to the Commonwealth the amount specified in the notice; or
 - (c) the Secretary has given the potential compensation payer written permission to pay the compensation.

125 Subsection 1184D(2)

Repeal the subsection, substitute:

- (2) If an insurer has been given a notice under section 1182 or 1184 in relation to the insurer's liability to indemnify a compensation payer, the insurer must not make any payment to the compensation payer in relation to that liability.

Penalty: Imprisonment for 12 months.

- (2A) Subsection (2) does not apply if:
- (a) in the case of a notice under section 1182—the Secretary has given the insurer written notice that the notice under section 1182 is revoked; or
 - (b) in the case of a notice under section 1184—the insurer has paid to the Commonwealth the amount specified in the notice; or
 - (c) the Secretary has given the insurer written permission to pay the amount.

126 Paragraph 1224AB(1)(b)

Omit “5, 7A or 86 of the *Crimes Act 1914*”, substitute “11.2, 11.4 or 11.5 of the *Criminal Code*”.

127 Subsection 1233(3)

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

128 After subsection 1233(3)

Insert:

- (3A) Subsection (3) applies only to the extent to which the person is capable of complying with the notice.
- (3B) Strict liability applies to the element of an offence against subsection (3) that a notice is a notice under subsection (1).

Social Security (Administration) Act 1999

129 After section 2

Insert:

2A Application of the *Criminal Code*

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

130 Subsection 72(8)

Repeal the subsection, substitute:

- (8) For the purposes of any provision of this Act, other than section 74 or a provision of Part 6, a person is taken to have failed to comply with a notice under this Subdivision if, in response to the notice:
- (a) the person gives information or a statement; and
 - (b) the information or statement is false or misleading; and
 - (c) the person is reckless as to whether the information or statement is false or misleading.

131 Section 74

Omit “, without reasonable excuse,”.

132 Section 74

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

133 At the end of section 74

Add:

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the notice.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.
- (4) Subsection (1) is an offence of strict liability.

134 Section 197

Omit “, without reasonable excuse,”.

135 Section 197

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

136 At the end of section 197

Add:

- (2) Subsection (1) applies only to the extent to which the person is capable of complying with the requirement.
- (3) Subsection (1) does not apply if the person has a reasonable excuse.

137 At the end of section 200

Add:

- (2) Strict liability applies to the element of an offence against subsection (1) that a request is a request under section 199.

138 Paragraph 203(1)(b)

Repeal the paragraph, substitute:

- (b) the person is not authorised by or under the social security law or the *Farm Household Support Act 1992* to obtain the information; and

139 At the end of section 203

Add:

- (3) Strict liability applies to the element of an offence against subsection (1) that a person not authorised to do something is not authorised by or under the social security law or the *Farm Household Support Act 1992* to do that thing.

140 At the end of section 204

Add:

- (3) Strict liability applies to the element of an offence against subsection (1) that a person not authorised or required to do something is not authorised or required by or under the social security law or the *Farm Household Support Act 1992* to do that thing.

141 At the end of section 205

Add:

- (3) Strict liability applies to the element of an offence against subsection (1) that a contravention is a contravention of this Division.

142 Section 212

Repeal the section, substitute:

212 False statement in connection with claim or hardship request

- (1) A person contravenes this subsection if:
- (a) the person makes a statement; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless as to whether the statement is false or misleading; and
 - (d) the statement is made in connection with, or in support of, the person's or any other person's:
 - (i) claim for a social security payment under the social security law; or
 - (ii) request under paragraph 1129(1)(d) of the 1991 Act that section 1129 of that Act apply to the person; or
 - (iii) request under paragraph 1131(1)(f) of the 1991 Act that section 1131 of that Act apply to the person; or
 - (iv) request under paragraph 1132A(1)(b) of the 1991 Act that paragraph 838(1)(d) of that Act not apply to the person.
- (2) For the purposes of an offence against section 217 that relates to subsection (1) of this section, strict liability applies to the following elements of the offence:
- (a) the element that a payment is a social security payment under the social security law;
 - (b) the element that a request is a request under paragraph 1129(1)(d) of the 1991 Act;
 - (c) the element that a request is a request under paragraph 1131(1)(f) of the 1991 Act;
 - (d) the element that a request is a request under paragraph 1132A(1)(b) of the 1991 Act.

143 Section 213

Repeal the section, substitute:

213 False statement to deceive or affect rates

- (1) A person contravenes this subsection if:
 - (a) the person makes a statement; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless as to whether the statement is false or misleading; and
 - (d) the person is reckless as to whether the statement:
 - (i) deceives, or might deceive, an officer doing duty in relation to the social security law; or
 - (ii) affects, or might affect, the rate of a social security payment under the social security law.
- (2) For the purposes of an offence against section 217 that relates to subsection (1) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a duty is a duty in relation to the social security law;
 - (b) the element that a rate of payment is a rate of social security payment under the social security law.

144 Section 214

Repeal the section, substitute:

214 False statement or document

- (1) A person contravenes this subsection if:
 - (a) the person makes a statement to an officer; and
 - (b) the statement is false or misleading in any particular; and
 - (c) the person is reckless as to whether the statement is false or misleading in any particular.
 - (2) A person contravenes this subsection if:
 - (a) the person presents a document to an officer; and
 - (b) the document is false or misleading in any particular; and
 - (c) the person is reckless as to whether the document is false or misleading in any particular.
-

145 Section 215

Omit “knowingly”.

Note: The heading to section 215 is altered by omitting “**Knowingly obtaining**” and substituting “**Obtaining**”.

146 Section 215

Omit “which is”, substitute “knowing that the payment is”.

147 At the end of section 215

Add:

- (2) For the purposes of an offence against section 217 that relates to subsection (1) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a payment is a social security payment under the social security law;
 - (b) the element that an instalment is an instalment of a social security payment under the social security law.

148 Section 216

Repeal the section, substitute:

216 Payment obtained through fraud etc.

- (1) A person contravenes this subsection if:
 - (a) the person obtains:
 - (i) payment of a social security payment under the social security law; or
 - (ii) payment of an instalment of a social security payment under the social security law; and
 - (b) the person does so:
 - (i) by means of impersonation; or
 - (ii) by means of a fraudulent device.
- (2) For the purposes of an offence against section 217 that relates to subsection (1) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a payment is a social security payment under the social security law;

- (b) the element that an instalment is an instalment of a social security payment under the social security law.
- (3) A person contravenes this subsection if:
 - (a) the person makes a statement; and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless as to whether the statement is false or misleading; and
 - (d) as a result the person obtains:
 - (i) payment of a social security payment under the social security law; or
 - (ii) payment of an instalment of a social security payment under the social security law.
- (4) For the purposes of an offence against section 217 that relates to subsection (3) of this section, strict liability applies to the following elements of the offence:
 - (a) the element that a payment is a social security payment under the social security law;
 - (b) the element that an instalment is an instalment of a social security payment under the social security law.

149 Division 5 of Part 6 (heading)

Repeal the heading, substitute:

Division 5—Liability of certain employers and principals for offences

150 Sections 226 to 228

Repeal the sections, substitute:

228 Offence

A reference in this Division to an offence against the social security law includes a reference to:

- (a) an offence against the social security law that is taken to have been committed because of section 11.2 of the *Criminal Code*; or
- (b) an offence created by:

- (i) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
 - (ii) section 6 of the *Crimes Act 1914*;
- that relates to the social security law.

151 Subdivision B of Division 5 of Part 6

Repeal the Subdivision.

Social Welfare Commission (Repeal) Act 1976

152 After section 3

Insert:

3A Application of the *Criminal Code*

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

153 After subsection 8(2)

Insert:

- (2A) Strict liability applies to the following elements of an offence against subsection (2):
 - (a) the element that an acquisition of information is an acquisition by reason of the first-mentioned person's office or employment under or for the purposes of the repealed Act or by virtue of the operation of this Act;
 - (b) the element that a document is a document furnished for the purposes of the repealed Act or under an engagement, arrangement or contract referred to in section 6 of this Act.

[*Minister's second reading speech made in—
Senate on 22 August 2001
House of Representatives on 27 September 2001*]

(156/01)
