



Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Act 2001

No. 147, 2001



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

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No. 147, 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 *Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Act 2001*.

2 Commencement

This Act commences on the day after the day on which this Act receives the Royal Assent.

Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code)

Act 2001 No. 147, 2001 1

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Higher Education Funding Act 1988

1 At the end of Chapter 1

Add:

11 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 52(1)

Repeal the subsection, substitute:

- (1) A person must not require or request a student to quote the student's tax file number.

Penalty: \$10,000 or imprisonment for 2 years, or both.

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

- (a) provision is made by or under this Chapter or another law of the Commonwealth for the student to quote the number to the person; or
- (b) the person requires or requests the number to be quoted in connection with the person acting on the student's behalf in the conduct of the student's affairs.

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

3 Subsection 53(1)

Repeal the subsection, substitute:

- (1) A person must not:
- (a) record a student's tax file number or maintain such a record;
or
- (b) use a student's tax file number in a manner connecting it with the student's identity; or

(c) divulge or communicate a student's tax file number to another person.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(1A) Subsection (1) does not apply to the extent required or permitted by, or reasonably necessary in order to comply with an obligation imposed by, this Chapter or another law of the Commonwealth.

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

(1B) Subsection (1) does not apply in connection with the person acting on the student's behalf in the conduct of the student's affairs.

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

4 Subsection 78(4)

Omit "except for the purposes of this Chapter, or otherwise than in the performance of the person's duties as an officer,".

5 After subsection 78(4)

Insert:

(4A) Subsection (4) does not apply to the extent that the person makes the record of the information, or divulges or communicates the information, for the purposes of this Chapter or in the performance of the person's duties as an officer.

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

(4B) For the purposes of an offence against subsection (4), strict liability applies to the physical element of circumstance, that the information was disclosed or obtained under or for the purposes of this Chapter.

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

Schedule 2—Student Assistance Act 1973

1 At the end of Part 1

Add:

5E Application of the *Criminal Code*

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

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

2 Subsection 12ZU(4)

Omit “, except for the purposes of this Division, or in the performance of the person’s duties as an officer”.

3 After subsection 12ZU(4)

Insert:

(4A) Subsection (4) does not apply to the extent that the person makes the record of the information, or discloses the information, for the purposes of this Division or in the performance of the person’s duties as an officer.

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

(4B) For the purposes of an offence against subsection (4), strict liability applies to the physical element of circumstance, that the information was disclosed or obtained under or for the purposes of this Division.

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

4 Subsection 42(5)

Omit “, without reasonable excuse,”.

5 After subsection 42(5)

Insert:

(5A) Subsection (5) does not apply if the party has a reasonable excuse.

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

6 Subsection 49(1)

Omit “, without reasonable excuse.”.

7 After subsection 49(1)

Insert:

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

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

8 Subsection 347(10)

Repeal the subsection, substitute:

(10) A person must not refuse or fail to comply with a requirement made under section 343, 344 or 345.

Penalty: Imprisonment for 12 months.

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

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

(12) Subsection (10) does not apply to the extent that the person is not capable of complying with the requirement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (12) (see subsection 13.3(3) of the *Criminal Code*).

(13) For the purposes of an offence against subsection (10), strict liability applies to the physical element of circumstance, that the requirement was made under section 343, 344 or 345.

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

9 Paragraph 352(b)

Repeal the paragraph.

10 Paragraph 353(b)

Repeal the paragraph.

11 At the end of section 357

Add:

- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance, that the contravention is a contravention of this Division.

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

12 Paragraph 358(b)

Repeal the paragraph, substitute:

- (b) makes representations that the person knows or ought reasonably to know are untrue with the intention of soliciting the disclosure of the information from the officer;
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*[Minister's second reading speech made in—
House of Representatives on 8 August 2001
Senate on 29 August 2001]*

(144/01)