

EXPLANATORY STATEMENT

COMMONWEALTH OF AUSTRALIA

CRIMES ACT 1914

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Subsection 4(1) of the Acts Interpretation Act 1901 (the Interpretation Act) provides, so far as is relevant, that where an Act enacted on or after the date of commencement of this section that is not to come into operation immediately upon its enactment is expressed to confer power, or to amend another Act in such a manner that the other Act, as amended, will confer power, to make an appointment or to make an instrument of a legislative or administrative character (including rules, regulations or by-laws), then, unless the contrary intention appears, the power may be exercised, and anything may be done for the purposes of enabling the exercise of the power or of bringing the appointment or instrument into effect, before the Act concerned comes into operation as if it had come into operation.

Section 91 of the Crimes Act 1914 (the Crimes Act) provides that the Governor-General may make regulations, not inconsistent with this Act prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

The Crimes Regulations:

prescribe forms, schemes and procedures to give effect to Part IB of the Crimes Act; and

prescribe an exclusion under paragraph 85ZZH(k) of the Crimes Act.

repeal and restate all current regulations;

Part IB was inserted into the Crimes Act by the Crimes Legislation Amendment Act (No. 2) 1989 (the Amendment Act) and will come into effect on 17 July 1990 by virtue of subsection 2(14) of that Act. It provides a new regime for the sentencing, imprisonment and release of federal offenders. For this regime to work effectively various State and Territory pre-release and home detention schemes and appropriate forms are required to be prescribed by regulation. These schemes and forms are prescribed in sections 3-6 of the regulations.

Part VIIC of the Act provides a scheme by which, after a period of ten years for an adult or five years for a minor, convictions for Commonwealth offences are to be treated as spent in that the convicted person need not disclose, nor may any other person or organisation disclose or take account of, such conviction.

Section 85ZZH of Part VIIC provides exclusions from the operation of the scheme for a number of specified purposes* Paragraph 85ZZH(k) provides that further exclusions may be prescribed.

The regulations which are repealed by these regulations are listed in regulation 9* Included in the repealed and restated regulations is Statutory Rule 1990 No.156 which was made on 26 June 1990. The reason for this repeal and restatement is to make all the regulations accessible in a single document.

Details of the regulations are:

Regulation 1: This regulation gives the title of the Regulations•

Regulation 2: This regulation defines "the Act" to mean the Crimes Act 1914.

Regulation 3: This regulation and the schedules to which it refers, prescribe certain forms for the purposes of the Act.

Regulation 4: This regulation and the schedules to which it refers list forms which may be used for the purposes of the Act.

Regulation 5: Subsection 19AZD(3) of the Act provides that a law of a State or Territory providing for a State or Territory offender to be released under a pre-release permit scheme that is prescribed for the purposes of the subsection applies, subject to any eligibility conditions, to a federal offender who is serving a sentence in that State or Territory. The regulation prescribes a number of State pre-release permit schemes. The schemes prescribed are:

- (a) the release of a prisoner to serve a period of home detention under the Corrective Services Act 1988 (Old);
- (b) the release of a prisoner to serve a period of home detention under the Correctional Services Act 1982 (SA) ;
- (c) a pre-release permit granted under the Corrections Act 1986 (Vic) or the

Penalties and Sentences Act 1985 (Vic)?

- (d) a work release order under the Probation and Parole Act 1963 (WA).

It also provides that a federal offender who is or may be liable to deportation is not eligible to participate in a pre-release permit scheme.

Regulation 6; Section 20AB of the Act provides that where under the law of a State or Territory with which the Commonwealth has an Arrangement under section 3B of the Act a court is empowered to make an order known as a community service order, a work order, a sentence of weekend detention or an attendance order or some similar type of order in respect of a State or Territory offender, then such laws may be prescribed to enable either that court or any federal court to make such orders in corresponding cases in respect of a person convicted of an offence against the law of the Commonwealth in that State or Territory. The regulation prescribes orders under the law of Victoria and the Northern Territory for the purposes of the section. These are:

- (a) a home detention order under the Criminal Law (Conditional Release of Offenders) Act (NT);
- (b) a community-based order under the Penalties and Sentences Act 1985 (Vic).

Regulation 7 This regulation restates the provisions of the Crimes Regulations (Amendment) made by Statutory Rule 1990 No.32 which is repealed by the regulations. The regulation prescribes circumstances, for the purposes of section 85ZKB(2)(c) of the Act in which the offence prohibiting a person from manufacturing, advertising, displaying, offering for sale, selling or possessing a device which the person knows is of a kind capable of being used to intercept a communication in contravention of section 7(1) of the Telecommunications (Interception) Act 1979 (the Interception Act) does not apply. The circumstances are:

- (a) in relation to the advertising, displaying, offering for sale or sale of an apparatus or device, for a purpose related to the interception of communications that is not in contravention of section 7(1) of the Interception Act because of section 6(3) or 7(2) of that Act;
- (b) in relation to the manufacture or possession of an apparatus or device, for a purpose related to a circumstance specified in paragraph (a);
- (c) in relation to the manufacture of an apparatus or device, for a purpose related to section 85ZKB(2)(b) of the Act;

- (d) in relation to the manufacture or possession of an apparatus or device, where the apparatus or device is to be exported;
- (e) in relation to the manufacture, offering for sale, sale or possession of an apparatus or device for a purpose related to the use of a listening device under relevant Commonwealth and State law; and
- (f) in relation to the possession of an apparatus or device where the possession of the device relates to the investigation or prosecution of specified offences*

Regulation 8(1) This regulation restates regulation 6 made by Statutory Rule 1990 No.156 which is repealed by regulation 9 of the regulations.

Subregulation 8(1) provides that the matters specified in Schedule 4 to the regulations are so specified for the purposes of paragraph 85ZZH(k) of the Act.

Subregulation 8(2) defines "drug offence" in relation to offences which are prescribed in Schedule 4 as an offence constituted by the production, possession, importation or export of a substance which is a narcotic substance within the meaning of the Customs Act 1901 or a drug within the meaning of the Customs (Prohibited Exports) Regulations or the Customs (Prohibited Imports) Regulations.

Schedule 4 specifies those matters prescribed in regulation 8. It restates Schedule 2 to Statutory Rule 1990 No.156 with the addition of one matter. Item no.4 of Schedule 4 now specifies a further exclusion under paragraph 85ZZH(k) of the Act to the Australian Customs Service for the purposes of considering whether to prosecute or making submissions on sentence. The Australian Customs Service is not a "law enforcement agency" as defined in section 85ZL of the Act and therefore does not receive the benefits of the exclusions for these matters contained in paragraph 85ZZH(a) of the Act. The addition is necessary to enable the Australian Customs Service properly to carry out its law enforcement functions.

Regulation 9: This regulation repeals Statutory Rules which are restated in these regulations. Apart from the Statutory Rules referred to in regulations 7 and 8, Statutory Rules 1982 No. 296 and 1985 No.179 are restated in the prescription of Form 1 in Schedule 1 of these regulations. Statutory Rule 1987 No. 43 prescribes community based orders under the Penalties and Sentences Act 1985 (Vic) and this is re-enacted in regulation 6 of the regulations.

Regulation 10: This regulation saves the operation of any order made before the commencement of these regulations under section 20AB of the Act.

Minister for Justice
and Consumer Affairs
for and on behalf of
the Attorney-General