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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Crimes Legislation Amendment
(Proceeds of Crime and Other Measures)
Bill 2015**

No. , 2015

(Justice)

**A Bill for an Act to amend legislation relating to the
criminal law, law enforcement and background
checking, and for other purposes**

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1 **A Bill for an Act to amend legislation relating to the**
2 **criminal law, law enforcement and background**
3 **checking, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Crimes Legislation Amendment*
7 *(Proceeds of Crime and Other Measures) Act 2015*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

1

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 to 4	The day after this Act receives the Royal Assent.	
3. Schedule 5	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

8

3 Schedules

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Proceeds of crime

Proceeds of Crime Act 2002

1 Subsection 266A(2)

Omit all the words after “in that item”, substitute:

if:

- (a) the person believes on reasonable grounds that the disclosure will serve that purpose; and
- (b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

2 Section 315A

Before “A court”, insert “(1)”.

3 At the end of section 315A

Add:

(2) However, if:

- (a) a *proceeds of crime authority applies for a *forfeiture order relating to particular property; and
- (b) a person applies for an order (the *exclusion order*) under section 29 or 29A to exclude a specified *interest in that property from a *restraining order; and
- (c) the application for the exclusion order has not been withdrawn;

the court may only hear the application for the forfeiture order after the application for the exclusion order has been determined.

4 Section 319

Repeal the section, substitute:

319 Stay of proceedings

- (1) A court may stay proceedings (the *POCA proceedings*) under this Act that are not criminal proceedings if the court considers that it is in the interests of justice to do so.

- 1 (2) The court must not stay the POCA proceedings on any or all of the
2 following grounds:
- 3 (a) on the ground that criminal proceedings have been, are
4 proposed to be or may be instituted or commenced (whether
5 or not under this Act) against the person subject to the POCA
6 proceedings;
- 7 (b) on the ground that criminal proceedings have been, are
8 proposed to be or may be instituted or commenced (whether
9 or not under this Act) against another person in respect of
10 matters relating to the subject matter of the POCA
11 proceedings;
- 12 (c) on the ground that:
- 13 (i) a person may consider it necessary to give evidence, or
14 to call evidence from another person, in the POCA
15 proceedings; and
- 16 (ii) the evidence is or may be relevant (to whatever extent)
17 to a matter that is, or may be, at issue in criminal
18 proceedings that have been, are proposed to be or may
19 be instituted or commenced (whether or not under this
20 Act) against the person or any other person;
- 21 (d) on the ground that POCA proceedings in relation to another
22 person have been, are to be or may be stayed.
- 23 (3) Paragraph (2)(a) applies even if the circumstances pertaining to the
24 POCA proceedings are or may be the same as, or substantially
25 similar to, the circumstances pertaining to the criminal
26 proceedings.
- 27 (4) Paragraph (2)(b) applies even if the subject matter of the POCA
28 proceedings is the same as, or substantially similar to, the matter at
29 issue in the criminal proceedings.
- 30 (5) Paragraph (2)(d) applies even if the staying of the POCA
31 proceedings would avoid a multiplicity of POCA proceedings.
- 32 (6) In considering whether a stay of the POCA proceedings is in the
33 interests of justice, the court must have regard to the following
34 matters:
- 35 (a) that the POCA proceedings, and any criminal proceedings of
36 a kind referred to in paragraph (2)(a) or (b), should proceed
37 as expeditiously as possible;
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- 1 (b) the cost and inconvenience to the Commonwealth of
 2 retaining property to which the POCA proceeding relates and
 3 being unable to expeditiously realise its proceeds;
 4 (c) the risk of a *proceeds of crime authority suffering any
 5 prejudice (whether general or specific) in relation to the
 6 conduct of the POCA proceedings if the proceedings were
 7 stayed;
 8 (d) whether any prejudice that a person (other than a proceeds of
 9 crime authority) would suffer if the POCA proceedings were
 10 not stayed may be addressed by the court by means other
 11 than a stay of the proceedings;
 12 (e) any orders (other than an order for the stay of the POCA
 13 proceedings) that the court could make to address any
 14 prejudice that a person (other than a proceeds of crime
 15 authority) would suffer if the proceedings were not stayed.

16 Note: Examples of orders the court could make to address any prejudice that
 17 a person (other than a proceeds of crime authority) would suffer if the
 18 POCA proceedings were not stayed include an order under
 19 section 319A (closed court) or an order prohibiting the disclosure of
 20 information.

21 **319A Closed court**

22 A court may order that proceedings under this Act (other than
 23 criminal proceedings) be heard, in whole or in part, in closed court
 24 if the court considers that the order is necessary to prevent
 25 interference with the administration of criminal justice.

26 **5 Application provisions**

- 27 (1) Subsection 266A(2) of the *Proceeds of Crime Act 2002*, as amended by
 28 this Schedule, applies in relation to the disclosure of information after
 29 the commencement of this item, whether the information was obtained
 30 before or after that commencement.
 31 (2) Subsection 315A(2) of the *Proceeds of Crime Act 2002*, as inserted by
 32 this Schedule, applies in relation to an application made after the
 33 commencement of this item:
 34 (a) whether the application relates to an interest in property
 35 acquired before or after that commencement; and

- 1 (b) whether the application relates to conduct that occurred
2 before or after that commencement.
- 3 (3) Sections 319 and 319A of the *Proceeds of Crime Act 2002*, as inserted
4 by this Schedule, apply in relation to proceedings instituted or
5 commenced before or after the commencement of this item.

Schedule 2—False accounting

Criminal Code Act 1995

1 At the end of Chapter 10 of the *Criminal Code*

Add:

Part 10.9—Accounting records

Division 490—False dealing with accounting documents

490.1 Intentional false dealing with accounting documents

(1) A person commits an offence if:

(a) the person:

- (i) makes, alters, destroys or conceals an accounting document; or
- (ii) fails to make or alter an accounting document that the person is under a duty, under a law of the Commonwealth, a State or Territory or at common law, to make or alter; and

(b) the person intended the making, alteration, destruction or concealment of the document (or the failure to make or alter the document) to facilitate, conceal or disguise the occurrence of one or more of the following:

- (i) the person receiving a benefit that is not legitimately due to the person;
- (ii) the person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit;
- (iii) another person receiving a benefit that is not legitimately due to the other person;
- (iv) another person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit (who may be the first-mentioned person);
- (v) loss to another person that is not legitimately incurred by the other person; and

1 (c) one or more of the circumstances referred to in subsection (2)
2 applies.

3 (2) For the purposes of paragraph (1)(c) of this section or
4 paragraph 490.2(1)(c), the circumstances are:

5 (a) the person is:

6 (i) a constitutional corporation, or a corporation that is
7 incorporated in a Territory; or

8 (ii) an officer or employee of a constitutional corporation
9 acting in the performance of his or her duties or the
10 carrying out of his or her functions; or

11 (iii) a person engaged to provide services to a constitutional
12 corporation and acting in the course of providing those
13 services; or

14 (iv) a Commonwealth public official acting in the
15 performance of his or her duties or the carrying out of
16 his or her functions; or

17 (b) the person's act or omission referred to in paragraph (1)(a):

18 (i) occurs in a Territory; or

19 (ii) occurs outside Australia; or

20 (iii) concerns matters or things outside Australia; or

21 (iv) facilitates or conceals the commission of an offence
22 against a law of the Commonwealth; or

23 (c) the accounting document:

24 (i) is outside Australia; or

25 (ii) is in a Territory; or

26 (iii) is kept under or for the purposes of a law of the
27 Commonwealth; or

28 (iv) is kept to record the receipt or use of Australian
29 currency.

30 (3) Absolute liability applies to paragraph (1)(c).

31 Note: For absolute liability, see section 6.2.

32 *Penalty for individual*

33 (4) An offence against this section committed by an individual is
34 punishable on conviction by imprisonment for not more than 10
35 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

- 1
- 2 (5) An offence against this section committed by a body corporate is
- 3 punishable on conviction by a fine not more than the greatest of the
- 4 following:
- 5 (a) 100,000 penalty units;
- 6 (b) if the court can determine the value of the benefit that the
- 7 body corporate, and any body corporate related to the body
- 8 corporate, have obtained directly or indirectly and that is
- 9 reasonably attributable to the conduct constituting the
- 10 offence—3 times the value of that benefit;
- 11 (c) if the court cannot determine the value of that benefit—10%
- 12 of the annual turnover of the body corporate during the
- 13 period (the *turnover period*) of 12 months ending at the end
- 14 of the month in which the conduct constituting the offence
- 15 occurred.

16 **490.2 Reckless false dealing with accounting documents**

- 17 (1) A person commits an offence if:
- 18 (a) the person:
- 19 (i) makes, alters, destroys or conceals an accounting
- 20 document; or
- 21 (ii) fails to make or alter an accounting document that the
- 22 person is under a duty, under a law of the
- 23 Commonwealth, a State or Territory or at common law,
- 24 to make or alter; and
- 25 (b) the person is reckless as to whether the making, alteration,
- 26 destruction or concealment of the document (or the failure to
- 27 make or alter the document) facilitates, conceals or disguises
- 28 the occurrence of one or more of the following:
- 29 (i) the person receiving a benefit that is not legitimately
- 30 due to the person;
- 31 (ii) the person giving a benefit that is not legitimately due to
- 32 the recipient, or intended recipient, of the benefit;
- 33 (iii) another person receiving a benefit that is not
- 34 legitimately due to the other person;

- 1 (iv) another person giving a benefit that is not legitimately
2 due to the recipient, or intended recipient, of the benefit
3 (who may be the first-mentioned person);
4 (v) loss to another person that is not legitimately incurred
5 by the other person; and
6 (c) one or more of the circumstances referred to in
7 subsection 490.1(2) applies.

8 (2) Absolute liability applies to paragraph (1)(c).

9 Note: For absolute liability, see section 6.2.

10 *Penalty for individual*

11 (3) An offence against this section committed by an individual is
12 punishable on conviction by imprisonment for not more than 5
13 years, a fine not more than 5,000 penalty units, or both.

14 *Penalty for body corporate*

15 (4) An offence against this section committed by a body corporate is
16 punishable on conviction by a fine not more than the greatest of the
17 following:

- 18 (a) 50,000 penalty units;
19 (b) if the court can determine the value of the benefit that the
20 body corporate, and any body corporate related to the body
21 corporate, have obtained directly or indirectly and that is
22 reasonably attributable to the conduct constituting the
23 offence—1.5 times the value of that benefit;
24 (c) if the court cannot determine the value of that benefit—5% of
25 the annual turnover of the body corporate during the period
26 (the *turnover period*) of 12 months ending at the end of the
27 month in which the conduct constituting the offence
28 occurred.

29 **490.3 Meaning of *annual turnover***

30 (1) For the purposes of this Division, the *annual turnover* of a body
31 corporate, during the turnover period, is the sum of the values of all
32 the supplies that the body corporate, and any body corporate

1 related to the body corporate, have made, or are likely to make,
2 during that period, other than the following supplies:

- 3 (a) supplies made from any of those bodies corporate to any
4 other of those bodies corporate;
5 (b) supplies that are input taxed;
6 (c) supplies that are not for consideration (and are not taxable
7 supplies under section 72-5 of the *A New Tax System (Goods
8 and Services Tax) Act 1999*);
9 (d) supplies that are not made in connection with an enterprise
10 that the body corporate carries on.

- 11 (2) Expressions used in this section that are also used in the *A New Tax
12 System (Goods and Services Tax) Act 1999* have the same meaning
13 in this section as they have in that Act.

14 **490.4 Related bodies corporate**

15 The question whether 2 bodies corporate are related to each other
16 is to be determined for the purposes of this Division in the same
17 way as for the purposes of the *Corporations Act 2001*.

18 **490.5 Proof of certain matters unnecessary**

19 In a prosecution for an offence against this Division, it is not
20 necessary to prove:

- 21 (a) the occurrence of any of the following:
22 (i) the defendant receiving or giving a benefit;
23 (ii) another person receiving or giving a benefit;
24 (iii) loss to another person; or
25 (b) that the defendant intended that a particular person receive or
26 give a benefit, or incur a loss.

27 **490.6 Consent to commencement of proceedings**

- 28 (1) Proceedings for an offence against this Division must not be
29 commenced without the Attorney-General's written consent if:
30 (a) the conduct constituting the alleged offence occurs wholly in
31 a foreign country; and

- 1 (b) at the time of the alleged offence, the person alleged to have
2 committed the offence is none of the following:
3 (i) an Australian citizen;
4 (ii) a resident of Australia;
5 (iii) a body corporate incorporated by or under a law of the
6 Commonwealth or of a State or Territory.
- 7 (2) However, a person may be arrested for, charged with, or remanded
8 in custody or released on bail in connection with an offence against
9 this Division before the necessary consent has been given.

10 **490.7 Saving of other laws**

11 This Division is not intended to exclude or limit the operation of
12 any other law of the Commonwealth or any law of a State or
13 Territory.

14 **2 Dictionary of the *Criminal Code***

15 Insert:

- 16 ***accounting document*** means:
17 (a) any account; or
18 (b) any record or document made or required for any accounting
19 purpose; or
20 (c) any register under the *Corporations Act 2001*, or any
21 financial report or financial records within the meaning of
22 that Act.

1 **Schedule 3—Serious drugs**
2

3 ***Criminal Code Act 1995***

4 **1 Paragraph 301.9(1)(b) of the *Criminal Code***

5 Repeal the paragraph.

6 **2 Subparagraph 301.9(1)(c)(iii) of the *Criminal Code***

7 Repeal the subparagraph, substitute:

- 8 (iii) by the replacement of one or more of the groups or
9 atoms specified in subsection (2) with one or more of
10 the other groups or atoms specified in that subsection;

11 **3 Subsection 301.9(2) of the *Criminal Code***

12 Repeal the subsection, substitute:

13 (2) The following groups and atoms are specified:

- 14 (a) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or
15 dialkylamino groups with up to 6 carbon atoms in any alkyl
16 residue;
17 (b) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in
18 the group, where the group is attached to oxygen (for
19 example, an ester or an ether group), nitrogen, sulphur or
20 carbon;
21 (c) halogen, hydroxy, nitro or amino groups;
22 (d) hydrogen atoms.

23 (3) However:

- 24 (a) a drug analogue of a listed controlled drug does not include a
25 substance that is itself a listed controlled drug; and
26 (b) a drug analogue of a listed border controlled drug does not
27 include a substance that is itself a listed border controlled
28 drug.

29 (4) In this section:

30 ***addition*** has its ordinary meaning.

31 ***replacement*** has its ordinary meaning.

1 **4 Subsection 305.1(1) of the *Criminal Code***

2 Repeal the subsection, substitute:

3 (1) For the purposes of this Part, *manufacture* means:

4 (a) any process by which a substance is produced (other than the
5 cultivation of a plant), and includes the following:

6 (i) the process of extracting or refining a substance;

7 (ii) the process of transforming a substance into a different
8 substance; or

9 (b) any process by which a substance is converted from one form
10 to another, including the process of extracting or refining a
11 substance.

1 **Schedule 4—Secrecy and access of AUSTRAC**
2 **information**
3

4 ***Anti-Money Laundering and Counter-Terrorism Financing***
5 ***Act 2006***

6 **1 Section 5 (after paragraph (u) of the definition of**
7 ***designated agency*)**

8 Insert:

9 (uaa) the Independent Commissioner Against Corruption of South
10 Australia; or

11 **2 Section 5 (definition of *foreign law enforcement agency*)**

12 Repeal the definition, substitute:

13 ***foreign law enforcement agency*** means:

- 14 (a) a government body that has responsibility for law
15 enforcement in a foreign country or a part of a foreign
16 country; or
17 (b) the European Police Office (Europol); or
18 (c) the International Criminal Police Organization (Interpol); or
19 (d) an international body prescribed by the regulations for the
20 purposes of this paragraph.

21 **3 At the end of subsection 22(1)**

22 Add:

- 23 ; and (j) in the case of the Independent Commissioner Against
24 Corruption of South Australia:
25 (i) a person appointed as the Independent Commissioner
26 Against Corruption under the *Independent*
27 *Commissioner Against Corruption Act 2012* (SA) or
28 acting in that office; and
29 (ii) a person appointed as the Deputy Commissioner under
30 that Act or acting in that office; and
31 (iii) a person appointed as an examiner or investigator under
32 that Act.

1 **4 After paragraph 122(3)(b)**

2 Insert:

3 (c) the disclosure is for the purposes of, or in connection with,
4 the performance of the duties of the entrusted investigating
5 official (other than the Commissioner of Taxation or a
6 taxation officer);

7 **5 Application provision**

8 Paragraph 122(3)(c) of the *Anti-Money Laundering and*
9 *Counter-Terrorism Financing Act 2006*, as inserted by this Schedule,
10 applies in relation to the disclosure of information after the
11 commencement of this item, whether the information was obtained
12 before or after that commencement.

1 **Schedule 5—Disclosure etc. of AusCheck**
2 **scheme personal information**
3

4 *AusCheck Act 2007*

5 **1 Subsection 4(1) (definition of *Commonwealth authority*)**

6 Repeal the definition, substitute:

7 *Commonwealth authority* means a body (whether incorporated or
8 or not) established for a public purpose by or under a law of the
9 Commonwealth.

10 **2 Subsection 4(1)**

11 Insert:

12 *State or Territory authority* means a body (whether incorporated
13 or not) established for a public purpose by or under a law of a State
14 or Territory.

15 **3 Subparagraph 14(2)(b)(iii)**

16 Repeal the subparagraph, substitute:

17 (iii) the performance of functions relating to law
18 enforcement or national security by the Commonwealth
19 or a Commonwealth authority;

20 (iiia) the performance of functions relating to law
21 enforcement or national security by a State or Territory
22 or a State or Territory authority;

23 **4 Subparagraph 14(2)(b)(iv)**

24 After “subparagraph (iii)”, insert “or (iiia)”.

25 **5 Application provision**

26 The amendments of the *AusCheck Act 2007* made by this Schedule
27 apply in relation to the use or disclosure of information after the
28 commencement of this item, whether the information was collected
29 before or after that commencement.