



Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002

No. 141, 2002

An Act to amend various Acts relating to law and justice, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 19 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	19 December 2002
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent	16 January 2003
3. Schedule 3, items 1 to 22	The 28th day after the day on which this Act receives the Royal Assent	16 January 2003
4. Schedule 3, item 23	At the same time as sections 3 to 338 of the <i>Proceeds of Crime Act 2002</i> commence	1 January 2003
5. Schedule 3, items 24 to 26	The 28th day after the day on which this Act receives the Royal Assent	16 January 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Transitional—items 1, 2 and 3 of Schedule 3

The amendments made by items 1, 2 and 3 of Schedule 3 apply to any sentence imposed after the commencement of those items, whether or not the offence concerned was committed before that commencement.

Schedule 1—People smuggling

Criminal Code Act 1995

1 The Schedule (at the end of Chapter 4 of the *Criminal Code*)

Add:

Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

73.1 Offence of people smuggling

- (1) A person (the *first person*) is guilty of an offence if:
- (a) the first person organises or facilitates the entry of another person (the *other person*) into a foreign country (whether or not via Australia); and
 - (b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and
 - (c) the other person is not a citizen or permanent resident of the foreign country; and
 - (d) the first person organises or facilitates the entry:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.
- (3) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of people smuggling.

73.2 Aggravated offence of people smuggling (exploitation etc.)

- (1) A person (the *first person*) is guilty of an offence if the first person commits the offence of people smuggling in relation to another person (the *victim*) and any of the following applies:
- (a) the first person commits the offence intending that the victim will be exploited after entry into the foreign country (whether by the first person or another);
 - (b) in committing the offence, the first person subjects the victim to cruel, inhuman or degrading treatment;
 - (c) in committing the offence, the first person's conduct:
 - (i) gives rise to a danger of death or serious harm to the victim; and
 - (ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

- (2) For the purposes of subsection (1), and without limitation, the victim will be *exploited* by a person (the *exploiter*) if either of the following applies:
- (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude;
 - (b) the exploiter's conduct causes an organ of the victim to be removed and:
 - (i) neither the victim nor the victim's legal guardian consented to the removal of the organ; and
 - (ii) the organ was not removed to meet a medical or therapeutic need of the victim.

- (3) In this section:

forced labour means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- (a) is not free to cease providing labour or services; or
- (b) is not free to leave the place or area where the person provides labour or services.

sexual servitude has the same meaning as in Division 270.

slavery has the same meaning as in Division 270.

threat means:

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person.

73.3 Aggravated offence of people smuggling (at least 5 people)

- (1) A person (the *first person*) is guilty of an offence if:
 - (a) the first person organises or facilitates the entry of a group of at least 5 persons (the *other persons*) into a foreign country (whether or not via Australia); and
 - (b) the entry of at least 5 of the other persons into the foreign country does not comply with the requirements under that country's law for entry into that country; and
 - (c) at least 5 of the other persons whose entry into the foreign country is covered by paragraph (b) are not citizens or permanent residents of the foreign country; and
 - (d) the first person organises or facilitates the entry:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.
- (3) If, on a trial for an offence against subsection (1), the trier of fact is not satisfied that the defendant is guilty of that offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 73.1(1), the trier of fact may find the defendant not guilty of an offence against subsection (1) but guilty of an offence against subsection 73.1(1), so long as the defendant

has been accorded procedural fairness in relation to that finding of guilt.

73.4 Jurisdictional requirement

A person commits an offence against this Subdivision only if:

(a) both:

- (i) the person is an Australian citizen or a resident of Australia; and
- (ii) the conduct constituting the alleged offence occurs wholly outside Australia; or

(b) both:

- (i) the conduct constituting the alleged offence occurs wholly or partly in Australia; and
- (ii) a result of the conduct occurs, or is intended by the person to occur, outside Australia.

73.5 Attorney-General's consent required

- (1) Proceedings for an offence against this Subdivision must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody or released on bail in connection with an offence against this Subdivision before the necessary consent has been given.

Subdivision B—Document offences related to people smuggling and unlawful entry into foreign countries

73.6 Meaning of travel or identity document

- (1) For the purposes of this Subdivision, a document is a *travel or identity document* if it is:
 - (a) a travel document; or
 - (b) an identity document.
- (2) In subsection (1):

identity document includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country.

travel document includes any kind of document required, under the law of a country, to enter or leave that country.

73.7 Meaning of false travel or identity document

- (1) For the purposes of this Subdivision, a travel or identity document is a *false travel or identity document* if, and only if:
- (a) the document, or any part of the document:
 - (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
 - (b) the document, or any part of the document:
 - (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
 - (c) the document, or any part of the document:
 - (i) purports to have been altered in any respect by a person who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or
 - (d) the document, or any part of the document:
 - (i) purports to have been made or altered by a person who did not exist; or
 - (ii) purports to have been made or altered on the authority of a person who did not exist; or
 - (e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

- (2) For the purposes of this Subdivision, a person is taken to *make* a false travel or identity document if the person alters a document so as to make it a false travel or identity document (whether or not it was already a false travel or identity document before the alteration).
- (3) This section has effect as if a document that purports to be a true copy of another document were the original document.

73.8 Making, providing or possessing a false travel or identity document

A person (the *first person*) is guilty of an offence if:

- (a) the first person makes, provides or possesses a false travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person made, provided or possessed the document:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.9 Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats

- (1) A person (the *first person*) is guilty of an offence if:
 - (a) the first person provides or possesses a travel or identity document; and
 - (b) the first person knows that:
 - (i) the issue of the travel or identity document; or
 - (ii) an alteration of the travel or identity document;has been obtained dishonestly or by threats; and

- (c) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (d) the first person provided or possessed the document:
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) For the purposes of subsection (1), a *threat* may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (3) For the purposes of subsection (1), *dishonest* means:
 - (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

73.10 Providing or possessing a travel or identity document to be used by a person who is not the rightful user

A person (the *first person*) is guilty of an offence if:

- (a) the first person provides or possesses a travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the *other person*) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person knows that the other person is not the person to whom the document applies; and
- (d) the first person provided or possessed the document:

- (i) having obtained (whether directly or indirectly) a benefit to do so; or
- (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.11 Taking possession of or destroying another person's travel or identity document

A person (the *first person*) is guilty of an offence if:

- (a) the first person takes possession of, or destroys, a travel or identity document that applies to another person (the *other person*); and
- (b) the first person does so intending to conceal the other person's identity or nationality; and
- (c) at the time of doing so, the first person intends to organise or facilitate the entry of the other person into a foreign country:
 - (i) having obtained, or with the intention of obtaining, whether directly or indirectly, a benefit to organise or facilitate that entry; and
 - (ii) where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

73.12 Jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

Schedule 2—Cross-border firearms trafficking

Criminal Code Act 1995

1 The Schedule (after Chapter 8 of the Criminal Code)

Insert:

Chapter 9—Dangers to the community

Part 9.4—Dangerous weapons

Division 360—Cross-border firearms trafficking

360.1 Disposal and acquisition of a firearm

- (1) For the purposes of this Division, and without limitation, a person *disposes* of a firearm if any of the following applies:
 - (a) the person sells the firearm (whether or not the person to whom the firearm is sold also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm to another person;
 - (c) the person passes physical control of the firearm to another person (whether or not the person to whom physical control is passed also acquires ownership of the firearm).
- (2) For the purposes of this Division, and without limitation, a person *acquires* a firearm if any of the following applies:
 - (a) the person purchases the firearm (whether or not the person also acquires physical control of the firearm);
 - (b) the person hires, leases or rents the firearm from another person;
 - (c) the person obtains physical control of the firearm (whether or not the person also acquires ownership of the firearm).

360.2 Cross-border offence of disposal or acquisition of a firearm

- (1) A person is guilty of an offence if:
- (a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person engages in conduct that constitutes an offence against a firearm law; and
 - (b) the primary element of the offence is:
 - (i) the disposal of a firearm by the person; or
 - (ii) the acquisition of a firearm by the person.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

- (2) Absolute liability applies to the paragraph (1)(a) element of the offence.
- (3) In this section:

firearm means a firearm within the meaning of the firearm law concerned.

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.3 Taking or sending a firearm across borders

- (1) A person is guilty of an offence if:
- (a) in the course of trade or commerce among the States, between Territories or between a Territory and a State, the person takes or sends a firearm from one State or Territory to another State or Territory; and
 - (b) the person does so intending that the firearm will be disposed of in the other State or Territory (whether by the person or another); and
 - (c) the person knows that, or is reckless as to whether:
 - (i) the disposal of the firearm; or
 - (ii) any acquisition of the firearm that results from the disposal;

would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory.

Penalty: Imprisonment for 10 years or a fine of 2,500 penalty units, or both.

(2) In this section:

firearm means a firearm within the meaning of the firearm law mentioned in paragraph (1)(c).

firearm law means a law of a State or Territory which is prescribed by the regulations for the purposes of this Division.

360.4 Concurrent operation intended

This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

Schedule 3—Other measures

Crimes Act 1914

1 Section 16G

Repeal the section.

2 Section 19AG

Repeal the section.

3 Subsection 19AR(6)

Omit “19AG,”.

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

4 Part 1 of Schedule 3 (after table item dealing with Fenetylline)

Insert:

Gamma-hydroxybutyric acid	2.00	1.00
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Criminal Code Act 1995

5 The Schedule (paragraph 131.7(1)(b) of the Criminal Code)

Omit “or its proceeds”, substitute “, its proceeds or value”.

6 The Schedule (subsection 135.2(1) of the Criminal Code)

Repeal the subsection, substitute:

- (1) A person is guilty of an offence if:
 - (a) the person obtains a financial advantage for himself or herself from another person, knowing or believing that he or she is not eligible to receive that financial advantage; and
 - (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

7 The Schedule (subsection 135.2(2) of the Criminal Code)

Repeal the subsection, substitute:

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

- (a) the person obtains a financial advantage for another person from a third person, knowing or believing that the other person is not eligible to receive that financial advantage; and
- (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 12 months.

(2A) Absolute liability applies to the paragraph (2)(b) element of the offence.

8 The Schedule (after subsection 136.1(1) of the Criminal Code)

Insert:

(1A) Absolute liability applies to each of the subparagraph (1)(d)(i), (ii) and (iii) elements of the offence.

9 The Schedule (after subsection 136.1(4) of the Criminal Code)

Insert:

(4A) Absolute liability applies to each of the subparagraph (4)(d)(i), (ii) and (iii) elements of the offence.

10 The Schedule (after subsection 137.1(1) of the Criminal Code)

Insert:

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

11 The Schedule (subparagraph 145.2(3)(a)(i) of the Criminal Code)

Before “cause”, insert “dishonestly”.

12 The Schedule (after subsection 147.1(1A) of the Criminal Code)

Insert:

(1B) If:

- (a) a person is charged with an offence against subsection (1);
and
- (b) the public official concerned is a Commonwealth judicial officer or a Commonwealth law enforcement officer;

a court of summary jurisdiction may, with the consent of the defendant and the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

(1C) If a court of summary jurisdiction convicts a person of an offence against subsection (1) in accordance with subsection (1B), the penalty that the court may impose is a sentence of imprisonment not exceeding 2 years or a fine not exceeding 120 penalty units, or both.

13 The Schedule (paragraphs 148.1(2)(a) and (b) of the Criminal Code)

Repeal the paragraphs, substitute:

- (a) the person falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
- (b) the person does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

14 The Schedule (subsection 148.1(2A) of the Criminal Code)

Repeal the subsection, substitute:

(2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

15 The Schedule (subparagraph 148.1(3)(a)(ii) of the Criminal Code)

Repeal the subparagraph, substitute:

- (ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

16 The Schedule (subsection 148.1(3A) of the Criminal Code)

Repeal the subsection, substitute:

- (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

17 The Schedule (paragraphs 148.2(2)(a) and (b) of the Criminal Code)

Repeal the paragraphs, substitute:

- (a) the official falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and
- (b) the official does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

18 The Schedule (subsection 148.2(2A) of the Criminal Code)

Repeal the subsection, substitute:

- (2A) For the purposes of subsection (2), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

19 The Schedule (subparagraph 148.2(3)(a)(ii) of the Criminal Code)

Repeal the subparagraph, substitute:

- (ii) falsely represents himself or herself to be a Commonwealth public official in a particular capacity; and

20 The Schedule (subsection 148.2(3A) of the Criminal Code)

Repeal the subsection, substitute:

- (3A) For the purposes of subparagraph (3)(a)(ii), it is immaterial whether that capacity as a Commonwealth public official exists or is fictitious.

Financial Transaction Reports Act 1988

21 Subsection 3(1) (subparagraph (k)(ib) of the definition of cash dealer)

After “commercial instruments”, insert “, or making electronic funds transfers,”.

22 Subsection 3(1) (after paragraph (k) of the definition of cash dealer)

Insert:

- (l) a person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business in Australia of:
 - (i) on behalf of other persons, arranging for funds to be made available outside Australia to those persons or others; or
 - (ii) on behalf of persons outside Australia, making funds available, or arranging for funds to be made available, in Australia to those persons or others;

23 Section 17

Omit “sections 81 and 82 of the *Proceeds of Crime Act 1987*”, substitute “Division 400 of the *Criminal Code*”.

International Transfer of Prisoners Act 1997

24 Subsection 4(1)

Insert:

Immigration Minister means the Minister administering the *Migration Act 1958*.

25 At the end of section 13

Add:

- (2) If a request is made for the transfer of a prisoner (other than a Tribunal prisoner) to Australia, the Attorney-General must consult with the Immigration Minister about whether the prisoner:
 - (a) is eligible under subsection (1) for a transfer to Australia; or

(b) is likely to be eligible under subsection (1) for a transfer to Australia at a future time specified by the Attorney-General for the purposes of the consultation.

26 Section 57

Repeal the section, substitute:

57 Consent of the Immigration Minister

If the Attorney-General proposes to consent to the transfer to Australia of a Tribunal prisoner, the Attorney-General must first obtain the consent of the Immigration Minister.

*[Minister's second reading speech made in—
House of Representatives on 4 December 2002
Senate on 12 December 2002]*