



Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015

No. 12, 2015

**An Act to amend various Acts relating to the
criminal law or law enforcement, and for other
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Psychoactive substances		4
	<i>Criminal Code Act 1995</i>	4
	<i>Customs Act 1901</i>	9
Schedule 2—Firearms trafficking offences		15
	<i>Criminal Code Act 1995</i>	15
	<i>Customs Act 1901</i>	21
Schedule 3—International transfer of prisoners		23
Part 1—Suspended sentences		23
	<i>International Transfer of Prisoners Act 1997</i>	23
Part 2—Close family members		27
	<i>International Transfer of Prisoners Act 1997</i>	27
Part 3—Other amendments		29
	<i>International Transfer of Prisoners Act 1997</i>	29
Part 4—Application and transitional provisions		35
Schedule 4—Slavery offences: jurisdiction		36
	<i>Criminal Code Act 1995</i>	36
Schedule 5—Validating airport investigations		37
Schedule 6—Minor amendments		39
	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	39
	<i>Criminal Code Act 1995</i>	40
	<i>Customs Act 1901</i>	40
	<i>Financial Transaction Reports Act 1988</i>	41
	<i>Surveillance Devices Act 2004</i>	41



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**An Act to amend various Acts relating to the
criminal law or law enforcement, and for other
purposes**

[Assented to 5 March 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	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.	5 March 2015
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) 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.	
3. Schedule 2	The day after this Act receives the Royal Assent.	6 March 2015
4. Schedule 3	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
5. Schedule 4	The day after this Act receives the Royal Assent.	6 March 2015
6. Schedule 5	The day this Act receives the Royal Assent.	5 March 2015
7. Schedule 6	The day after this Act receives the Royal Assent.	6 March 2015

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	Assent.	

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.

- (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.

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.

Schedule 1—Psychoactive substances

Criminal Code Act 1995

1 After Part 9.1 of the *Criminal Code*

Insert:

Part 9.2—Psychoactive substances

Division 320—Psychoactive substances

320.1 Definitions

(1) In this Part:

consume, in relation to a substance, includes:

- (a) ingest the substance; and
- (b) inject the substance; and
- (c) inhale the substance; and
- (d) smoke the substance, or inhale fumes caused by heating or burning the substance; and
- (e) apply the substance externally to the body of a person; and
- (f) by any other means introduce the substance into any part of the body of a person.

psychoactive effect, in relation to a person, means:

- (a) stimulation or depression of the person's central nervous system, resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood; or
- (b) causing a state of dependence, including physical or psychological addiction.

psychoactive substance means any substance that, when a person consumes it, has the capacity to induce a psychoactive effect.

serious drug alternative means a substance that:

- (a) has a psychoactive effect that is the same as, or is substantially similar to, the psychoactive effect of a serious drug; or
 - (b) is a lawful alternative to a serious drug.
- (2) Expressions used in this Part that are defined for the purposes of Part 9.1 have the same meaning as in that Part.

320.2 Importing psychoactive substances

- (1) A person commits an offence if:
- (a) the person imports a substance; and
 - (b) the substance is a psychoactive substance.

Penalty: Imprisonment for 5 years, or 300 penalty units, or both.

- (2) Subject to subsection (3), this section does not apply to a substance if it is:
- (a) food (within the meaning of the *Food Standards Australia New Zealand Act 1991*) for which:
 - (i) there is a standard (within the meaning of that Act); or
 - (ii) in the form in which the substance is presented, there is a tradition in Australia and New Zealand of using the substance as food for humans; or
 - (b) a tobacco product (within the meaning of section 8 of the *Tobacco Advertising Prohibition Act 1992*); or
 - (c) goods that are listed goods, or registered goods, within the meaning of the *Therapeutic Goods Act 1989*; or
 - (d) goods that are represented in any way to be:
 - (i) for therapeutic use (within the meaning of that Act); or
 - (ii) for use as an ingredient or component in the manufacture of therapeutic goods (within the meaning of that Act);
 other than goods that are represented as a serious drug alternative; or
 - (e) therapeutic goods that are:
 - (i) exempt goods (within the meaning of that Act); or
 - (ii) exempt under section 18A of that Act; or

- (iii) the subject of an approval or authority under section 19 of that Act; or
- (iv) the subject of an approval under section 19A of that Act; or
- (f) a substance or mixture of substances:
 - (i) that is an agricultural chemical product (within the meaning of the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*); or
 - (ii) that would be such an agricultural chemical product, apart from regulations made for the purposes of paragraph 4(4)(b) of that Code; or
- (g) a substance or mixture of substances:
 - (i) that is a veterinary chemical product (within the meaning of that Code); or
 - (ii) to which paragraph 5(4)(a) of that Code applies; or
 - (iii) that would be such a veterinary chemical product, apart from regulations made for the purposes of paragraph 5(4)(b) of that Code; or
- (h) a substance or mixture of substances that is an active constituent (within the meaning of that Code) for a proposed or existing chemical product (within the meaning of that Code), and that:
 - (i) is an approved active constituent (within the meaning of that Code); or
 - (ii) is an exempt active constituent (within the meaning of subsection 69B(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or
 - (iii) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or
- (i) an industrial chemical within the meaning of the *Industrial Chemicals (Notification and Assessment) Act 1989*; or
- (ia) a plant or fungus, or an extract from a plant or fungus; or
- (j) a controlled drug, controlled plant, controlled precursor, border controlled drug, border controlled plant or border controlled precursor; or

- (k) a prohibited import within the meaning of the *Customs Act 1901*; or
- (l) prescribed by, or included in a class of substances prescribed by, the regulations.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (3) Subsection (2) does not apply to a substance that contains any psychoactive substance that is not of a kind specified in any of paragraphs (2)(a) to (l).
- (4) In a prosecution for an offence under subsection (1), it is not necessary to prove that the defendant was reckless as to:
 - (a) the particular identity of the substance; or
 - (b) whether the substance had a particular psychoactive effect.

320.3 Importing substances represented to be serious drug alternatives

- (1) A person commits an offence if:
 - (a) the person imports a substance; and
 - (b) at the time of the importation, the presentation of the substance includes an express or implied representation that the substance is a serious drug alternative.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- (2) For the purposes of paragraph (1)(b), the presentation of a substance includes, but is not limited to, matters relating to:
 - (a) the name of the substance; and
 - (b) the labelling and packaging of the substance and
 - (c) any advertising or other informational material associated with the substance.
- (3) This section does not apply to a substance if it is:
 - (a) food (within the meaning of the *Food Standards Australia New Zealand Act 1991*) for which:
 - (i) there is a standard (within the meaning of that Act); or

- (ii) in the form in which the substance is presented, there is a tradition in Australia and New Zealand of using the substance as food for humans; or
 - (b) goods that are listed goods, or registered goods, within the meaning of the *Therapeutic Goods Act 1989*; or
 - (c) therapeutic goods that are:
 - (i) exempt goods (within the meaning of that Act); or
 - (ii) exempt under section 18A of that Act; or
 - (iii) the subject of an approval or authority under section 19 of that Act; or
 - (iv) the subject of an approval under section 19A of that Act; or
 - (d) a substance or mixture of substances that is a chemical product (within the meaning of the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*), and that:
 - (i) is a registered chemical product (within the meaning of that Code); or
 - (ii) is a reserved chemical product (within the meaning of that Code); or
 - (iii) is an exempt chemical product (within the meaning of subsection 69B(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or
 - (iv) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or
 - (e) a substance or mixture of substances that is an active constituent (within the meaning of that Code) for a proposed or existing chemical product (within the meaning of that Code), and that:
 - (i) is an approved active constituent (within the meaning of that Code); or
 - (ii) is an exempt active constituent (within the meaning of subsection 69B(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*); or
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- (iii) is imported into Australia with the written consent of the Australian Pesticides and Veterinary Medicines Authority under subsection 69B(1B) of that Act; or
- (f) prescribed by, or included in a class of substances prescribed by, the regulations.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (4) In a prosecution for an offence under subsection (1), it is not necessary to prove that:
 - (a) the representation of the substance to be a serious drug alternative related to a particular serious drug; or
 - (b) the defendant intended to cause any person to believe that the substance:
 - (i) was a particular serious drug; or
 - (ii) has a psychoactive effect that is the same as or similar to a particular serious drug; or
 - (iii) is a lawful alternative to a particular serious drug; or
 - (c) the defendant knew, or was reckless as to:
 - (i) the particular identity of the substance, or
 - (ii) whether the substance has a particular psychoactive effect.

Customs Act 1901

2 Subsection 183UA(1)

Insert:

prohibited psychoactive substance means a psychoactive substance (within the meaning of Part 9.2 of the *Criminal Code*) that:

- (a) is not a substance to which subsection 320.2(2) of the *Criminal Code* applies; and
- (b) has been imported into Australia.

prohibited serious drug alternative means a substance:

- (a) the presentation of which includes an express or implied representation that the substance is a serious drug alternative (within the meaning of Part 9.2 of the *Criminal Code*); and

- (b) that is not a substance to which subsection 320.3(3) of the *Criminal Code* applies; and
- (c) that has been imported into Australia.

3 Subsection 183UA(1) (paragraph (a) of the definition of *special forfeited goods*)

Repeal the paragraph, substitute:

- (a) forfeited goods referred to in paragraph 229(1)(a) that:
 - (i) are narcotic goods; or
 - (ii) are a prohibited psychoactive substance; or
 - (iii) are a prohibited serious drug alternative; or
 - (iv) consist of a border controlled precursor; or

4 Section 205D (heading)

Repeal the heading, substitute:

**205D Treatment of goods seized if a claim for return is made—
general**

5 After subsection 205D(1)

Insert:

- (1A) However, this section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

6 At the end of section 205E

Add:

- (4) This section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

7 After section 205E

Insert:

**205EA Treatment of goods seized if a claim for return is made—
suspected prohibited psychoactive substances**

- (1) This section applies if:
 - (a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and
 - (b) the goods are seized on belief or suspicion that they are a prohibited psychoactive substance; and
 - (c) a claim for the return of the goods may be made under section 205B; and
 - (d) not later than 30 days after the day the seizure notice was served, a claim is made under section 205B for return of the goods.

- (2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:
 - (a) the goods have been dealt with under section 206; or
 - (b) not later than 30 days after the day the claim is made, the CEO gives the claimant a written notice stating that the goods will be condemned as forfeited if the claimant does not, within 30 days after receiving the notice, institute proceedings against the Commonwealth:
 - (i) to recover the goods; or
 - (ii) for a declaration that the goods are not forfeited.

- (3) A notice under paragraph (2)(b):
 - (a) must be served personally or by post; and
 - (b) may be served on a person who is outside Australia.

- (4) The goods are condemned as forfeited to the Crown if:
 - (a) the claimant does not institute proceedings of a kind referred to in paragraph (2)(b) within the period of 30 days after receiving the notice under that paragraph (or within that period as extended, or further extended, under section 205EB); or
 - (b) the claimant institutes such proceedings within that period (or within that period as extended or further extended), and at the end of the proceedings there is not:

- (i) an order for the claimant to recover the goods; or
 - (ii) an order for the Commonwealth to pay the claimant the market value of the goods at the time they were disposed of or destroyed, if they have been disposed of or destroyed before the end of the proceedings; or
 - (iii) a declaration that the goods are not forfeited.
- (5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
- (a) at the end of the period for lodging an appeal against the judgment, if no appeal is lodged within that period; or
 - (b) when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.
- (6) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

205EB Extending the period for instituting proceedings for recovery of suspected prohibited psychoactive substances

- (1) A person who has been given a notice under paragraph 205EA(2)(b) in relation to goods may, before the end of the applicable period under paragraph 205EA(4)(a), apply to a magistrate for an extension, or a further extension, of the period.
- (2) If the magistrate is satisfied that:
- (a) it is necessary that the retention of the goods continue while information is assembled relating to whether the goods are a prohibited psychoactive substance; and
 - (b) there has been no avoidable delay in assembling that information;
- the magistrate may order that the period be extended, or further extended, for a period specified in the order.

205EC Proceedings for recovery of suspected prohibited psychoactive substances

- (1) Proceedings of a kind referred to in paragraph 205EA(2)(b) may be instituted or continued even if the goods to which the proceedings relate are disposed of or destroyed.
- (2) In proceedings of a kind referred to in paragraph 205EA(2)(b):
 - (a) the Commonwealth bears the onus of proving that the goods to which the proceedings relate were imported; and
 - (b) the person instituting the proceedings bears the onus of proving that the goods:
 - (i) are not a psychoactive substance; or
 - (ii) are a substance to which, because of subsection 320.2(2) of the *Criminal Code*, section 320.2 of the *Criminal Code* does not apply.
- (3) If:
 - (a) the goods to which proceedings of a kind referred to in paragraph 205EA(2)(b) relates have been disposed of or destroyed before the end of the proceedings; and
 - (b) the court hearing the proceedings decides that, apart from the disposal or destruction, it would have ordered that the goods be returned to a person;

the court must order the Commonwealth to pay the person an amount equal to the market value of the goods at the time they were disposed of or destroyed.

8 Subsection 205F(1)

After “return”, insert “or recovery”.

9 After subsection 206(2)

Insert:

Prohibited psychoactive substances and prohibited serious drug alternatives

- (2A) If:
 - (a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the CEO or a Regional Director for a State or Territory is satisfied that the goods are a prohibited psychoactive substance or a prohibited serious drug alternative; the CEO or Regional Director concerned may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

10 Subsection 206(3)

Omit “or (2)”, substitute “, (2) or (2A)”.

11 Paragraph 206(5)(c)

Omit “or (2)”, substitute “, (2) or (2A)”.

12 Subsections 206(6) and (7)

Omit “or (2)”, substitute “, (2) or (2A)”.

13 Section 208D

After “205D”, insert “or 205EA”.

Schedule 2—Firearms trafficking offences

Criminal Code Act 1995

1 Section 360.1 of the *Criminal Code* (heading)

Repeal the heading, substitute:

360.1 Disposal and acquisition of a firearm or firearm part

2 Subsection 360.1(1) of the *Criminal Code*

After “firearm” (first occurring), insert “or a firearm part”.

3 Paragraphs 360.1(1)(a), (b) and (c) of the *Criminal Code*

After “firearm” (wherever occurring), insert “or part”.

4 Subsection 360.1(2) of the *Criminal Code*

After “firearm” (first occurring), insert “or a firearm part”.

5 Paragraphs 360.1(2)(a), (b) and (c) of the *Criminal Code*

After “firearm” (wherever occurring), insert “or part”.

6 Section 360.2 of the *Criminal Code* (heading)

Repeal the heading, substitute:

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

7 Subparagraphs 360.2(1)(b)(i) and (ii) of the *Criminal Code*

After “a firearm”, insert “or a firearm part”.

8 Subsection 360.2(3) of the *Criminal Code*

Insert:

firearm part means either of the following within the meaning of the firearm law concerned:

- (a) a firearm part;

(b) a part of, or for, a firearm or weapon.

9 Section 360.3 of the *Criminal Code* (heading)

Repeal the heading, substitute:

360.3 Taking or sending a firearm or firearm part across borders

10 Paragraph 360.3(1)(a) of the *Criminal Code*

After “a firearm”, insert “or a firearm part”.

11 Paragraph 360.3(1)(b) of the *Criminal Code*

After “firearm”, insert “or firearm part”.

12 Subparagraphs 360.3(1)(c)(i) and (ii) of the *Criminal Code*

After “firearm”, insert “or firearm part”.

13 Subsection 360.3(2) of the *Criminal Code*

Insert:

firearm part means either of the following within the meaning of the firearm law mentioned in paragraph (1)(c):

- (a) a firearm part;
- (b) a part of, or for, a firearm or weapon.

15 Section 360.4 of the *Criminal Code*

Before “This”, insert “(1)”.

16 At the end of section 360.4 of the *Criminal Code*

Add:

- (2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
 - (a) an act or omission that is an offence against this Division; or
 - (b) a similar act or omission;an offence against the law of the State or Territory.

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- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Division;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence against this Division;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence against this Division.
- (4) A person punished for an offence against a law of a State or Territory referred to in subsection (2) in respect of particular conduct cannot be punished for an offence against this Division in respect of that conduct.

17 Application of amendments

The amendments made by items 1 to 16 apply in relation to conduct engaged in on or after the commencement of those items.

18 At the end of Part 9.4 of the *Criminal Code*

Add:

Division 361—International firearms trafficking

361.1 Definitions

In this Division:

export a thing, means export the thing from Australia.

firearm has the same meaning as in the *Customs (Prohibited Imports) Regulations 1956*.

firearm part has the same meaning as in the *Customs (Prohibited Imports) Regulations 1956*.

import a thing, means import the thing into Australia, and includes deal with the thing in connection with its importation.

traffic in a thing that is a firearm or a firearm part means:

- (a) transfer the thing; or
 - (b) offer the thing for sale; or
 - (c) invite the making of offers to buy the thing; or
 - (d) prepare the thing for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or
 - (e) transport or deliver the thing with the intention of transferring any of it or believing that another person intends to transfer any of it; or
 - (f) guard or conceal the thing with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or
 - (g) possess the thing with the intention of transferring any of it.
- For the purposes of paragraph (d), preparing a thing for transfer includes packaging the thing or separating the thing into discrete units.

361.2 Trafficking prohibited firearms or firearm parts into Australia

Customs Act prohibits imports absolutely

- (1) A person commits an offence if:
 - (a) the person imports a thing; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person imports the firearm or part with the intention of trafficking in the firearm or part; and
 - (d) importing the firearm or part was prohibited under the *Customs Act 1901* absolutely.

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

- (2) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

Customs Act prohibits imports if requirements not met

- (3) A person commits an offence if:
-

-
- (a) the person imports a thing; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person imports the firearm or part with the intention of trafficking in the firearm or part; and
 - (d) importing the firearm or part was prohibited under the *Customs Act 1901* unless certain requirements were met; and
 - (e) the person fails to meet any of those requirements.

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

- (4) Absolute liability applies to paragraph (3)(d).

Note: For absolute liability, see section 6.2.

- (5) Strict liability applies to paragraph (3)(e).

Note: For strict liability, see section 6.1.

361.3 Trafficking prohibited firearms or firearm parts out of Australia

Customs Act prohibits exports absolutely

- (1) A person commits an offence if:
- (a) the person exports a thing, or enters a thing for export from Australia; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person exports, or enters for export, the firearm or part with the intention of trafficking in the firearm or part; and
 - (d) exporting the firearm or part was prohibited under the *Customs Act 1901* absolutely.

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

- (2) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

Customs Act prohibits exports if requirements not met

- (3) A person commits an offence if:
-

- (a) the person exports a thing; and
- (b) the thing is a firearm or firearm part; and
- (c) the person exports the firearm or part with the intention of trafficking in the firearm or part; and
- (d) exporting the firearm or part, or entering the firearm or part for export, was prohibited under the *Customs Act 1901* unless certain requirements were met; and
- (e) the person fails to meet any of those requirements.

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

- (4) A person commits an offence if:
- (a) the person enters a thing for export from Australia; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person enters the firearm or part for export with the intention of trafficking in the firearm or part; and
 - (d) entering the firearm or part for export was prohibited under the *Customs Act 1901* unless certain requirements were met; and
 - (e) the person fails to meet any of those requirements.

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

- (5) Absolute liability applies to paragraphs (3)(d) and (4)(d).

Note: For absolute liability, see section 6.2.

- (6) Strict liability applies to paragraphs (3)(e) and (4)(e).

Note: For strict liability, see section 6.1.

361.4 Defence—reasonable belief that conduct is justified or excused by or under a law

A person is not criminally responsible for an offence against this Division if:

- (a) at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and

- (b) had the conduct been so justified or excused—the conduct would not have constituted the offence.

Note: A defendant bears an evidential burden in relation to the matter in paragraph (a) (see subsection 13.3(3)).

361.6 Double jeopardy

A person punished for an offence against this Division in respect of particular conduct cannot be punished for an offence against section 233BAB of the *Customs Act 1901* in respect of that conduct.

Note: A similar provision for the opposite case is set out in subsection 233BAB(7) of the *Customs Act 1901*.

Customs Act 1901

19 Subsection 183UA(1) (paragraph (c) of the definition of offence)

After “Division 307”, insert “or 361”.

20 Subsection 183UA(2A)

After “Division 307”, insert “or 361”.

21 Paragraph 183UA(3)(b)

After “Division 307”, insert “or 361”.

22 Subparagraph 210(1)(a)(iv)

After “Division 307”, insert “or 361”.

23 Subsection 233BAB(7)

Repeal the subsection, substitute:

- (7) A person punished for an offence against subsection (5) or (6) in respect of particular conduct cannot be punished, in respect of that conduct, for an offence against:
- (a) section 233; or
 - (b) Division 361 of the *Criminal Code* (about international firearms trafficking).

Schedule 2 Firearms trafficking offences

Note: A similar provision for the opposite case to paragraph (b) is set out in section 361.6 of the *Criminal Code*.

Schedule 3—International transfer of prisoners

Part 1—Suspended sentences

International Transfer of Prisoners Act 1997

1 Subsection 4(1)

Insert:

non-Tribunal offence means an offence other than a Tribunal offence.

2 Subsection 4(1) (definition of *sentence of imprisonment*)

Repeal the definition, substitute:

sentence of imprisonment means any punishment or measure involving:

- (a) deprivation of liberty; or
- (b) potential deprivation of liberty, if the punishment or measure relates to a conviction for a non-Tribunal offence;

ordered by a court or tribunal for a determinate or indeterminate period in the exercise of its criminal jurisdiction, and includes any direction or order given or made by the court or tribunal with respect to the commencement of the punishment or measure.

Note: Paragraph (b) covers suspended sentences.

3 Subsection 4(1)

Insert:

servng: see subsection 4B(1).

suspended part: see subsection 4B(2).

4 After section 4A

Insert:

4B Suspended sentences of imprisonment

- (1) *Serving* a sentence of imprisonment includes being subject to so much of the period of the sentence of imprisonment as involves a potential deprivation of liberty.

Note: While a person is subject to a suspended sentence of imprisonment, he or she is treated under this Act as a prisoner serving that sentence of imprisonment.

- (2) The *suspended part* of a sentence of imprisonment is so much of the period of the sentence of imprisonment as:
- (a) involves a potential deprivation of liberty; and
 - (b) is not a period of release on parole.

5 Paragraph 14(1)(c)

After “parole”, insert “or is serving the suspended part of the sentence”.

6 Paragraph 15(1)(c)

After “parole”, insert “or is serving the suspended part of the sentence”.

7 Paragraph 15(4)(b)

After “parole”, insert “or is serving the suspended part of the sentence”.

8 Subsection 22(3)

Omit “is a prisoner other than a prisoner who has been released on parole”, substitute “has not been released on parole and is not serving the suspended part of the sentence of imprisonment”.

9 After subsection 22(4)

Insert:

- (4A) If the prisoner is serving the suspended part of the sentence of imprisonment, the warrant is:
- (a) to specify any conditions relating to that part of the sentence that have been imposed under an Australian law; and
 - (b) to specify any procedures for the transfer of the prisoner to the transfer country that have been agreed upon with the transfer country, and to give any necessary authorisations and directions.

10 After paragraph 27(5)(b)

Insert:

- (ba) in the case of a prisoner serving the suspended part of the sentence—any recommended terms or conditions on which the prisoner is to complete serving the sentence; and

11 Subsection 30(3)

Omit “is a prisoner other than a prisoner who has been released on parole”, substitute “has not been released on parole and is not serving the suspended part of the sentence of imprisonment”.

12 Subsection 30(4)

Repeal the subsection, substitute:

- (4) However, if the prisoner:
 - (a) has been released on parole; or
 - (b) is serving the suspended part of the sentence of imprisonment;the warrant is to specify any procedures for the transfer of the prisoner to Australia that have been agreed upon with the transfer country and to give any necessary authorisations and directions.

13 Subsection 46(3)

Repeal the subsection, substitute:

- (3) A prisoner who is transferred to Australia under this Act while serving a sentence of imprisonment (other than the suspended part of the sentence) that is:
 - (a) imposed by a transfer country; and
 - (b) enforced under this Act;may be detained in a prison or hospital or other place in a State or Territory.
- (3A) A prisoner who is transferred to Australia under this Act while serving the suspended part of a sentence of imprisonment that is:
 - (a) imposed by a transfer country; and
 - (b) enforced under this Act;may be supervised in a State or Territory in accordance with terms agreed under this Act.

Schedule 3 International transfer of prisoners

Part 1 Suspended sentences

(3B) A Tribunal prisoner who is transferred to Australia under this Act while serving a sentence of imprisonment that is:

(a) imposed by a Tribunal; and

(b) enforced under this Act;

may be detained in a prison or hospital or other place in a State or Territory.

14 After paragraph 46(5)(b)

Insert:

(ba) serving the suspended part of a sentence of imprisonment;

Part 2—Close family members

International Transfer of Prisoners Act 1997

15 Subsection 4(1)

Insert:

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

close family member: see section 4AA.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this subsection.

16 Paragraphs 4(4)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the principal place of residence of a close family member of the prisoner is in the transfer country; or

17 Paragraphs 4(5)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the principal place of residence of a close family member of the prisoner is in that State or Territory; or

18 After section 4

Insert:

4AA *Close family member*

- (1) A ***close family member*** of a person is:
 - (a) the person's spouse or de facto partner; or

Schedule 3 International transfer of prisoners

Part 2 Close family members

- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, stepchild or grandchild of the person; or
- (d) a brother, sister, stepbrother or stepsister of the person; or
- (e) a guardian or carer of the person.

Note: *De facto partner, parent* and *child* are defined in subsection 4(1).

- (2) For the purposes of, and without limiting, subsection (1):
 - (a) if one person is the child of another person because of the definition of *child*, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person; and
 - (b) someone is the *stepchild, stepbrother, stepsister* or *step-parent* of another person if this would be the case except that 2 persons who are each other's de facto partner are not legally married.

19 Subsection 6(2)

Repeal the subsection, substitute:

- (2) A prisoner's close family member, or legal representative, (the *prisoner's representative*) may consent to the prisoner's transfer under this Act if:
 - (a) the prisoner is not an adult; or
 - (b) the prisoner is incapable of consenting to the transfer.

20 Subsection 6(7) (definition of *child*)

Repeal the definition.

Part 3—Other amendments

International Transfer of Prisoners Act 1997

21 Subsection 4(1) (definition of *joint prisoner*)

Repeal the definition, substitute:

joint prisoner means:

- (a) a prisoner who is serving sentences of imprisonment imposed under the laws of 2 or more of the States and Territories; or
- (b) a federal prisoner who is also serving one or more sentences of imprisonment imposed under the laws of one or more of the States and Territories.

22 After section 10

Insert:

10A Decisions by the Attorney-General about transfers

- (1) The Attorney-General need not take any steps for making:
 - (a) a decision on an application under section 16 (about transfers from Australia) for the transfer of a prisoner; or
 - (b) a decision under section 24 (about transfers to Australia) about a request for the transfer of a prisoner;if any of the following requirements for the transfer are not met:
 - (c) paragraph 10(a), (c), (e) or (f);
 - (d) paragraph 10(b), to the extent that it requires the agreement of the transfer country to the transfer;
 - (e) paragraph 10(d), to the extent that it requires the consent of State Ministers or Territory Ministers to the transfer.

Note: The prisoner will be kept informed about the progress of the application or request (see section 52).

- (2) The Attorney-General need not take any steps for making a decision referred to in paragraph (1)(a) or (b) for the transfer of a prisoner if:
 - (a) the prisoner had made an earlier application or request; and

- (b) the Attorney-General received the current application or request less than 12 months after the later of either:
 - (i) the day the prisoner was informed under section 52 that the earlier application or request did not meet one or more of the requirements in section 10;
 - (ii) the day the prisoner informed the Attorney-General that the prisoner was withdrawing the earlier application or request.

(3) Parts 3 and 4 have effect subject to this section.

23 Paragraph 14(1)(b)

After “if the acts or omissions had occurred in the transfer country”, insert “at the time the Attorney-General received the application under section 16 for the prisoner”.

24 Paragraph 14(1)(c)

Omit “request for transfer”, substitute “application”.

25 Paragraph 14(2)(b)

After “if the acts or omissions had occurred in the transfer country”, insert “at the time the Attorney-General received the application under section 16 for the prisoner”.

26 Paragraph 14(2)(c)

Omit “request for transfer”, substitute “application”.

27 Paragraph 15(1)(b)

After “if the acts or omissions had occurred in Australia”, insert “at the time the Attorney-General received the request under section 24 for the prisoner”.

28 Paragraph 15(1)(c)

Omit “for transfer”.

29 Paragraph 15(2)(b)

After “if the acts or omissions had occurred in Australia”, insert “at the time the Attorney-General received the request under section 24 for the prisoner”.

30 Paragraph 15(2)(c)

Omit “for transfer”.

31 Section 16

Omit “in the manner prescribed by the regulations”, substitute “using a form approved in writing by the Attorney-General”.

32 At the end of section 16

Add:

Note: The Attorney-General need not take any steps to decide the application if certain requirements are not met, or if it is less than 12 months since an earlier application for the prisoner was not proceeded with (see section 10A).

33 Sections 17, 18 and 19

Repeal the sections, substitute:

17 Copies of applications to be given to State and Territory Ministers

- (1) The Attorney-General must give:
 - (a) a copy of an application given under section 16; and
 - (b) any other information the Attorney-General considers relevant;to any State Ministers and Territory Ministers whose consent is required for the transfer to have appropriate Ministerial consent.
- (2) Any of those State Ministers or Territory Ministers may:
 - (a) advise the Attorney-General of any matters that Minister considers relevant to the processing of the application; and
 - (b) request the Attorney-General to obtain information from the transfer country that is relevant to that Minister’s assessment of the application.

18 Asking the transfer country to consent to the transfer

- (1) The Attorney-General must ask the transfer country:
 - (a) whether it consents to the transfer of a prisoner for whom an application has been given under section 16; and

- (b) to propose any terms on which any consent is to be subject.
- (2) When asking the transfer country, the Attorney-General must give the transfer country the following:
- (a) a copy of the application given under section 16 for the prisoner;
 - (b) any information required to be provided in accordance with arrangements made with the transfer country; and
 - (c) any other information the Attorney-General considers relevant, including details of:
 - (i) any request for extradition of the prisoner that has been made under the *Extradition Act 1988*; and
 - (ii) any expression of interest made to the Attorney-General by another country to extradite the prisoner.

Note: The Attorney-General may also ask the transfer country for information relevant to the transfer.

34 Subsection 20(3)

Repeal the subsection, substitute:

- (3) The Attorney-General must decide whether to consent to the transfer of the prisoner on the terms proposed by the transfer country.
- (4) The Attorney-General must notify the transfer country of his or her decision under subsection (3).
- (5) If the Attorney-General decides not to consent to the transfer on those terms, the Attorney-General may state in the notice that consent may be given if the transfer country agrees to a specified variation of those terms.

35 Section 24

Before “The”, insert “(1)”.

36 Section 24

Omit “from a transfer country”.

37 Section 24

Omit “that country”, substitute “a transfer country”.

38 At the end of section 24

Add:

Note: The Attorney-General need not take any steps to decide the request if certain requirements are not met, or if it is less than 12 months since an earlier request for the prisoner was not proceeded with (see section 10A).

- (2) The request may be made by the transfer country, the prisoner or the prisoner's representative.

39 Section 28

Repeal the section, substitute:

28 Transfer country's consent to transfer

- (1) The Attorney-General must, as soon as possible after the matters mentioned in subsection (2) are satisfied for a transfer, notify the transfer country of this and ask it:
- (a) whether it consents to the transfer on the terms proposed in the notice; and
 - (b) to advise whether the prisoner, or the prisoner's representative, consents to the transfer on those terms.
- (2) The matters are as follows:
- (a) paragraphs 10(a), (e) and (f);
 - (b) consent in writing, by any applicable State Ministers and Territory Ministers, has been given to transfer on those terms.

40 Section 52

Repeal the section, substitute:

52 Prisoner and prisoner's representative to be kept informed

The Attorney-General must arrange for a prisoner or prisoner's representative to be kept informed of the progress of:

- (a) any application made under section 16; or
 - (b) any request made under section 24 or 33;
- for the transfer of the prisoner.

41 At the end of section 53

Add:

; or (c) an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position in the Department.

Part 4—Application and transitional provisions

42 Application of amendments

- (1) The amendments made by this Schedule apply in relation to an application under section 16 of the *International Transfer of Prisoners Act 1997*, or a request under section 24 of that Act, received by the Attorney-General:
 - (a) at or after the commencement of this Part; or
 - (b) before the commencement of this Part, if, at that commencement, the Attorney-General had yet to make a decision on the application or request.
- (2) However, disregard paragraph (1)(b) for the purposes of section 10A of the *International Transfer of Prisoners Act 1997* (as inserted by this Schedule).

Note: Section 10A of that Act only applies in relation to making a decision on an application or request received by the Attorney-General at or after the commencement of this Part.

- (3) For the purposes of subsection 10A(2) of that Act (as inserted by this Schedule), it does not matter if the earlier application or request referred to in paragraph (a) of that subsection was made before, at or after the commencement of this Part.

43 Transitional—saving current prescribed forms

- (1) This item applies to a form prescribed by regulations:
 - (a) made for the purposes of section 16 of the *International Transfer of Prisoners Act 1997*; and
 - (b) in force immediately before the commencement of this Schedule.
- (2) On and after that commencement, treat the form as if it were the form approved in writing by the Attorney-General for the purposes of section 16 of the *International Transfer of Prisoners Act 1997*.
- (3) Subitem (2) does not prevent the Attorney-General from approving a new form for the purposes of that section.

Schedule 4—Slavery offences: jurisdiction

Criminal Code Act 1995

1 At the end of Subdivision B of Division 270 of the *Criminal Code*

Add:

270.3A Slavery offences—geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against section 270.3.

270.3B Prosecutions

- (1) Proceedings for an offence against section 270.3, where the conduct constituting the alleged offence occurs wholly outside Australia, must not take place except with the consent in writing of the Attorney-General.
- (2) Even though a consent in accordance with subsection (1) has not been given in relation to an offence against section 270.3:
 - (a) a person may be arrested for the offence, and a warrant for the arrest of a person for the offence may be issued and executed; and
 - (b) a person may be charged with the offence; and
 - (c) a person so charged may be remanded in custody or on bail; but no further step in proceedings referred to in subsection (1) is to be taken until such a consent has been given.
- (3) Subsection (2) does not prevent the discharge of the accused if proceedings are not continued within a reasonable time.

2 Application of amendment

The amendment made by this Schedule applies in relation to offences committed on or after the commencement of this Schedule.

Schedule 5—Validating airport investigations

1 Definitions

In this Schedule:

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

designated State airport has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

member of the Australian Federal Police has the same meaning as in the *Australian Federal Police Act 1979*.

relevant Crimes Act provision has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

relevant period means the period:

- (a) starting on 19 March 2014; and
- (b) ending on 16 May 2014.

special member has the same meaning as in the *Australian Federal Police Act 1979*.

2 Validating airport investigations

(1) This item applies:

- (a) in relation to a thing done during the relevant period in relation to an investigation by a member of the Australian Federal Police, or a special member, in or in relation to a Commonwealth place; and
- (b) to the extent that the doing of the thing would, apart from this item, be invalid or ineffective because the Commonwealth place was not a designated State airport;

if, on the day after the relevant period, the Commonwealth place was a designated State airport.

(2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the Commonwealth place been a designated State airport for the purposes of the *Commonwealth Places (Application of Laws) Act 1970* during the relevant period.

Note: This means relevant Crimes Act provisions validly apply in relation to the thing done (see subsection 5(3A) of the *Commonwealth Places (Application of Laws) Act 1970*).

- (3) However, this item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this Schedule, to the extent that those rights or liabilities arose from, or were affected by, a thing done as described in subitem (1).

3 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Schedule 6—Minor amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1A Section 5 (after paragraph (s) of the definition of *designated agency*)

Insert:

- (sa) the Independent Broad-based Anti-corruption Commission of Victoria; or

1B Section 5 (paragraph (t) of the definition of *designated agency*)

Repeal the paragraph, substitute:

- (t) the Crime and Corruption Commission of Queensland; or

1C After paragraph 122(3)(g)

Insert:

- (ga) if the entrusted investigating official is the Commissioner of Taxation or a taxation officer—the disclosure is:
 - (i) of information relating to a communication under section 43 or 45; and
 - (ii) for the purposes of, or in connection with, the performance of the entrusted investigating official’s duties;

1D After subsection 122(3)

Insert:

- (3A) Without limiting subparagraph (3)(ga)(ii), a disclosure for the purposes of, or in connection with, the performance of an entrusted investigating official’s duties includes a disclosure of a kind mentioned in subsection 355-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

1E Application of amendments

The amendments made by items 1C and 1D apply to disclosures of information on or after the commencement of those items (whenever the information was given under section 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*).

Criminal Code Act 1995

1 Section 301.11 of the *Criminal Code* (table item 3, column headed “Marketable quantity (minimum)”)

Omit “commercial” (wherever occurring), substitute “marketable”.

2 Paragraph 312.1(1)(b) of the *Criminal Code*

Omit “in Division 314”, substitute “, in regulations made for the purposes of item 1 of the table in section 301.10, 301.11 or 301.12,”.

3 Paragraph 312.1(3)(b) of the *Criminal Code*

Omit “in Division 314”, substitute “, in regulations made for the purposes of item 1 of the table in section 301.10 or 301.11,”.

4 Paragraph 312.2(4)(b) of the *Criminal Code*

Omit “in Division 314”, substitute “, in regulations made for the purposes of item 1 of the table in section 301.10, 301.11 or 301.12,”.

5 Paragraph 312.2(5)(b) of the *Criminal Code*

Omit “in Division 314”, substitute “, in regulations made for the purposes of item 1 of the table in section 301.10 or 301.11,”.

Customs Act 1901

6 Subsection 205E(2)

Omit “it is necessary”.

7 Paragraph 205E(2)(a)

Before “that the retention”, insert “it is necessary”.

8 Paragraph 205E(2)(b)

Omit “that” (first occurring).

Financial Transaction Reports Act 1988

9 Subsection 3(1) (definition of *FTR information*)

Omit “18(8A) or”.

10 Sections 18 and 19

Repeal the sections.

11 Paragraph 20(1)(b)

Omit “;”, substitute “.”.

12 Subsection 20(1)

Omit “(whether or not subsection 18(1) has applied to the account).”.

13 Paragraph 29(3)(a)

Omit “a statement for the purposes of section 18”.

14 Paragraph 29(3)(b)

Omit “, statement” (wherever occurring).

15 Section 42

Omit “or 19(2) or (3)”.

Surveillance Devices Act 2004

16 Subsection 6(1) (paragraph (c) of the definition of *relevant offence*)

Omit “or 18”.

*[Minister's second reading speech made in—
House of Representatives on 17 July 2014
Senate on 26 November 2014]*

(179/14)
