



Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012

No. 167, 2012

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

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

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No. 167, 2012

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

[Assented to 28 November 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012*.

Schedule 1 Serious drugs
Part 1 Amendments

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.	28 November 2012
2. Schedule 1, Part 1	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.	
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	29 November 2012
4. Schedule 2	The day after this Act receives the Royal Assent.	29 November 2012
5. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	29 November 2012
6. Schedule 3, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 1 month beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
7. Schedule 3, Part 3	The day after this Act receives the Royal Assent.	29 November 2012
Note:	This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Serious drugs

Part 1—Amendments

Criminal Code Act 1995

1 Subsection 300.1(1) of the *Criminal Code*

After “20 December 1988”, insert “(the *TINDAPS Convention*)”.

2 Section 300.2 of the *Criminal Code* (definition of *border controlled drug*)

Repeal the definition, substitute:

border controlled drug has the meaning given by section 301.4.

3 Section 300.2 of the *Criminal Code* (definition of *border controlled plant*)

Repeal the definition, substitute:

border controlled plant has the meaning given by section 301.5.

4 Section 300.2 of the *Criminal Code* (definition of *border controlled precursor*)

Repeal the definition, substitute:

border controlled precursor has the meaning given by section 301.6.

5 Section 300.2 of the *Criminal Code* (definition of *commercial quantity*)

Repeal the definition, substitute:

commercial quantity of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.10.

6 Section 300.2 of the *Criminal Code* (definition of *controlled drug*)

Repeal the definition, substitute:

controlled drug has the meaning given by section 301.1.

7 Section 300.2 of the *Criminal Code* (definition of *controlled plant*)

Repeal the definition, substitute:

controlled plant has the meaning given by section 301.2.

8 Section 300.2 of the *Criminal Code* (definition of *controlled precursor*)

Repeal the definition, substitute:

controlled precursor has the meaning given by section 301.3.

9 Section 300.2 of the *Criminal Code*

Insert:

determined, in relation to a serious drug, controlled precursor or border controlled precursor, means:

- (a) for a serious drug—determined by the Minister under section 301.13; or
- (b) for a precursor—determined by the Minister under section 301.14.

10 Section 300.2 of the *Criminal Code*

Insert:

drug analogue has the meaning given by section 301.9.

11 Section 300.2 of the *Criminal Code*

Insert:

listed, in relation to a serious drug, means:

- (a) for a controlled drug—listed by a regulation made for the purposes of paragraph 301.1(a); or
- (b) for a controlled plant—listed by a regulation made for the purposes of paragraph 301.2(a); or
- (c) for a border controlled drug—listed by a regulation made for the purposes of paragraph 301.4(a); or

- (d) for a border controlled plant—listed by a regulation made for the purposes of paragraph 301.5(a).

12 Section 300.2 of the *Criminal Code* (definition of *marketable quantity*)

Repeal the definition, substitute:

marketable quantity of a serious drug, controlled precursor or border controlled precursor has the meaning given by section 301.11.

13 Section 300.2 of the *Criminal Code*

Insert:

serious drug means one of the following:

- (a) a controlled drug;
- (b) a controlled plant;
- (c) a border controlled drug;
- (d) a border controlled plant.

14 Section 300.2 of the *Criminal Code*

Insert:

TINDAPS Convention has the meaning given by section 300.1.

15 Section 300.2 of the *Criminal Code* (definition of *trafficable quantity*)

Repeal the definition, substitute:

trafficable quantity of a controlled drug, or a controlled plant, has the meaning given by section 301.12.

16 Division 301 of the *Criminal Code*

Repeal the Division, substitute:

Division 301—Serious drugs and precursors

Subdivision A—Serious drugs and precursors: definitions

301.1 Meaning of *controlled drug*

- (1) For the purposes of this Part, a ***controlled drug*** is a substance, other than a growing plant, that is:
- (a) listed by a regulation as a controlled drug; or
 - (b) a drug analogue of a listed controlled drug; or
 - (c) determined by the Minister as a controlled drug under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (1)(a) (see section 301.7); or
- (b) a determination can be made for paragraph (1)(c) (see subsection 301.13(2)).

- (2) The purpose of subsection (1) is to permit certain substances that are covered by the TINDAPS Convention, or drug analogues of such substances, to be treated as ***controlled drugs*** for the purposes of this Part (see also section 300.1).

Note: For the meaning of ***drug analogue***, see section 301.9.

301.2 Meaning of *controlled plant*

- (1) For the purposes of this Part, a ***controlled plant*** is a growing plant that is:
- (a) listed by a regulation as a controlled plant; or
 - (b) determined by the Minister as a controlled plant under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (1)(a) (see section 301.7); or
- (b) a determination can be made for paragraph (1)(b) (see subsection 301.13(2)).

- (2) The purpose of subsection (1) is to permit growing plants that are covered by the TINDAPS Convention to be treated as **controlled plants** for the purposes of this Part (see also section 300.1).

301.3 Meaning of **controlled precursor**

- (1) For the purposes of this Part, a **controlled precursor** is a substance (including a growing plant) that is:
- (a) listed by a regulation as a controlled precursor; or
 - (b) a salt or ester of a controlled precursor that is so listed; or
 - (c) determined by the Minister as a controlled precursor under section 301.14 (which deals with emergency determinations of serious drug precursors).

Note: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (a) (see section 301.8); or
- (b) a determination can be made for paragraph (c) (see subsection 301.14(2)).

- (2) The purpose of subsection (1) is to permit certain substances that are covered by the TINDAPS Convention, or salts or esters of such substances, to be treated as **controlled precursors** for the purposes of this Part (see also section 300.1).

301.4 Meaning of **border controlled drug**

For the purposes of this Part, a **border controlled drug** is a substance, other than a growing plant, that is:

- (a) listed by a regulation as a border controlled drug; or
- (b) a drug analogue of a listed border controlled drug; or
- (c) determined by the Minister as a border controlled drug under section 301.13 (which deals with emergency determinations of serious drugs).

Note 1: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (a) (see section 301.7); or
- (b) a determination can be made for paragraph (c) (see subsection 301.8(2)).

Note 2: For the meaning of **drug analogue**, see section 301.9.

301.5 Meaning of *border controlled plant*

For the purposes of this Part, a ***border controlled plant*** is a growing plant:

- (a) listed by a regulation as a border controlled plant; or
- (b) determined by the Minister as a border controlled plant under section 301.13 (which deals with emergency determinations of serious drugs).

Note: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (a) (see section 301.7); or
- (b) a determination can be made for paragraph (b) (see subsection 301.13(2)).

301.6 Meaning of *border controlled precursor*

(1) For the purposes of this Part, a ***border controlled precursor*** is a substance (including a growing plant) that is:

- (a) listed by a regulation as a border controlled precursor; or
- (b) a salt or ester of a precursor that is so listed; or
- (c) an immediate precursor of a precursor that is so listed; or
- (d) determined by the Minister as a border controlled precursor under section 301.14 (which deals with emergency determinations of serious drug precursors).

Note: Some conditions must be satisfied before:

- (a) a regulation can be made for paragraph (a) (see section 301.8); or
- (b) a determination can be made for paragraph (d) (see subsection 301.14(2)).

(2) In this section:

immediate precursor of a precursor listed for the purposes of paragraph (1)(a) means a chemical or compound (other than another precursor that is so listed) that is an immediate precursor in the manufacture by a chemical process of the listed precursor.

301.7 Serious drugs—conditions for listing by regulation

Before a regulation is made listing a substance or plant as a serious drug for the purposes of this Part, the Minister must be satisfied that:

- (a) the substance or plant is likely to be taken without appropriate medical supervision; and

- (b) one or more of the following conditions is met:
 - (i) taking the substance or plant would create a risk of death or serious harm;
 - (ii) taking the substance or plant would have a physical or mental effect substantially similar to that caused by taking a serious drug that is already listed;
 - (iii) the substance or plant has the capacity to cause physiological dependence;
 - (iv) possession or conduct in relation to the substance or plant is proscribed under a law of a State, a Territory or a foreign country that has purposes similar to those of this Part;
 - (v) the substance or plant poses a substantial risk to the health or safety of the public.

301.8 Serious drug precursors—conditions for listing by regulation

Before a regulation is made listing a substance as a controlled precursor or a border controlled precursor, the Minister must be satisfied that there is a risk that the substance will be used to unlawfully manufacture a controlled drug (other than a determined controlled drug).

301.9 Meaning of *drug analogue*

- (1) For the purposes of this Part, a substance is a *drug analogue* of a listed controlled drug, or a listed border controlled drug, if the substance is any of the following in relation to the listed drug (or in relation to a primary analogue of the listed drug), however the substance is obtained:
 - (a) one of the following (a *primary analogue*):
 - (i) a stereoisomer;
 - (ii) a structural isomer having the same constituent groups;
 - (iii) an alkaloid;
 - (b) a structural modification obtained by the addition of one or more of the following groups:
 - (i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;

- (ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;
 - (iii) halogen, hydroxy, nitro or amino groups;
 - (c) a structural modification obtained in one or more of the following ways:
 - (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
 - (ii) by the addition of hydrogen atoms to one or more unsaturated bonds;
 - (iii) by the replacement of one or more of the groups specified in paragraph (b) with another such group or groups;
 - (iv) by the conversion of a carboxyl or an ester group into an amide group;
 - (d) any other homologue, analogue, chemical derivative or substance substantially similar in chemical structure.
- (2) However, a *drug analogue* does not include a substance that is itself a listed controlled drug or a listed border controlled drug.

Subdivision B—Serious drugs and precursors: commercial, marketable and trafficable quantities

301.10 Meaning of *commercial quantity*

For the purposes of this Part, a *commercial quantity* of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that provided by the following table:

Commercial quantities of serious drugs and precursors		
Item	Serious drug or precursor	Commercial quantity (minimum)
1	A serious drug (other than a drug analogue), controlled precursor or border controlled precursor	Either: (a) the quantity listed as a commercial quantity of the drug or precursor in a regulation made for the purposes of this section; or

Schedule 1 Serious drugs
Part 1 Amendments

Commercial quantities of serious drugs and precursors

Item	Serious drug or precursor	Commercial quantity (minimum)
		(b) the quantity determined as a commercial quantity of the drug or precursor by the Minister under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest commercial quantity of any of the listed drugs.
3	A drug analogue of 1 or more listed border controlled drugs	Either: (a) for a drug analogue of a single listed border controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed border controlled drugs—the smallest commercial quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug, or a listed border controlled drug, is itself a controlled drug or border controlled drug (see paragraphs 301.1(b) and 301.4(b), and the definition of *drug analogue* in section 301.9).

301.11 Meaning of marketable quantity

For the purposes of this Part, a *marketable quantity* of a serious drug, controlled precursor or border controlled precursor is a quantity not less than that provided by the following table:

Marketable quantities of serious drugs and precursors

Item	Serious drug or precursor	Marketable quantity (minimum)
1	A serious drug (other than a drug analogue), controlled precursor or border controlled precursor	Either: (a) the quantity listed as a marketable quantity of the drug or precursor in a regulation made for the purposes of this section; or (b) the quantity determined as a marketable

Marketable quantities of serious drugs and precursors

Item	Serious drug or precursor	Marketable quantity (minimum)
		quantity of the drug or precursor by the Minister under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the marketable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest marketable quantity of any of the listed drugs.
3	A drug analogue of 1 or more listed border controlled drugs	Either: (a) for a drug analogue of a single listed border controlled drug—the commercial quantity of the listed drug; or (b) for a drug analogue of 2 or more listed border controlled drugs—the smallest commercial quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug, or a listed border controlled drug, is itself a controlled drug or border controlled drug (see paragraphs 301.1(b) and 301.4(b), and the definition of *drug analogue* in section 301.9).

301.12 Meaning of *trafficable quantity*

For the purposes of this Part, a *trafficable quantity* of a controlled drug or a controlled plant is a quantity not less than that provided by the following table:

Trafficable quantities of controlled drugs and plants

Item	Controlled drug or plant	Trafficable quantity (minimum)
1	A controlled drug (other than a drug analogue) or a controlled plant	Either: (a) the quantity listed as a trafficable quantity of the drug or plant in a regulation made for the purposes of this section; or (b) the quantity determined as a trafficable quantity of the drug or plant by the Minister

Trafficable quantities of controlled drugs and plants

Item	Controlled drug or plant	Trafficable quantity (minimum)
		under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the trafficable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest trafficable quantity of any of the listed drugs.

Note: A drug analogue of a listed controlled drug is itself a controlled drug (see paragraph 301.1(b) and the definition of *drug analogue* in section 301.9).

Subdivision C—Serious drugs and precursors: emergency determinations

301.13 Emergency determinations—serious drugs

- (1) The Minister may, by legislative instrument, determine that:
 - (a) a substance, other than a growing plant, is a controlled drug or a border controlled drug; or
 - (b) a growing plant is a controlled plant or a border controlled plant.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied:
 - (a) that there is an imminent and substantial risk that the substance or plant will be taken without appropriate medical supervision; and
 - (b) one or more of the following conditions is met:
 - (i) taking the substance or plant may create a risk of death or serious harm;
 - (ii) taking the substance or plant may have a physical or mental effect substantially similar to that caused by taking a listed serious drug;
 - (iii) there is limited or no known lawful use of the substance or plant in Australia, and the substance or plant has been

found by a public official in the course of the performance of the official's duties;

- (iv) the substance or plant may pose a substantial risk to the health or safety of the public.
- (3) The Minister must not make more than one determination under this section in relation to a particular substance or plant.

301.14 Emergency determinations—serious drug precursors

- (1) The Minister may, by legislative instrument, determine that a substance (including a growing plant) is a controlled precursor or a border controlled precursor.
- (2) The Minister must not make a determination under subsection (1) unless he or she is satisfied that there is an imminent and substantial risk that the substance will be used to unlawfully manufacture a controlled drug.
- (3) The Minister must not make more than one determination under this section in relation to a particular substance or plant.

301.15 Emergency determinations—commercial, marketable and trafficable quantities

- (1) The Minister may, by legislative instrument, determine:
 - (a) a quantity of a serious drug as a commercial or marketable quantity of the drug; or
 - (b) a quantity of a controlled drug or a controlled plant as a trafficable quantity of the drug or plant; or
 - (c) a quantity of a controlled precursor or a border controlled precursor as a commercial or marketable quantity of the precursor.
- (2) However, the Minister may only make a determination of a commercial, marketable or trafficable quantity of a serious drug, controlled precursor or border controlled precursor under subsection (1) if there is no regulation currently in force listing such a quantity of the drug or precursor.

Note: The definitions of *commercial quantity*, *marketable quantity* and *trafficable quantity* in Subdivision B allow for regulations to list such quantities of serious drugs and precursors.

301.16 Emergency determinations—effectiveness

- (1) A determination under this Subdivision in relation to a substance (including a growing plant) or a quantity of such a substance has effect:
 - (a) from the time the determination is registered (within the meaning of the *Legislative Instruments Act 2003*); and
 - (b) for the period of 12 months from that registration, or such shorter period as is specified in the determination, as extended (if at all) under subsection (2).
- (2) If exceptional circumstances prevent the listing (by regulation) of the substance or quantity, to the same effect, the Minister may, by legislative instrument, extend the period during which the determination is in force by a further period or periods.
- (3) The Minister must not extend the period under subsection (2) with the effect that the determination would stay in force for longer than 18 months after the time the determination is registered (within the meaning of the *Legislative Instruments Act 2003*).
- (4) A determination made under this Subdivision has no effect to the extent that it is inconsistent with a regulation made for the purposes of Subdivision A.

301.17 Emergency determinations—publication

- (1) The Minister must, on or before the day on which a determination under this Subdivision is registered (within the meaning of the *Legislative Instruments Act 2003*):
 - (a) make a public announcement of the determination; and
 - (b) cause a copy of the announcement to be published:
 - (i) on the internet; and
 - (ii) in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory.
- (2) An announcement made under subsection (1) is not a legislative instrument.

17 At the end of paragraphs 307.4(1)(b), 307.7(1)(c) and 307.10(1)(c) of the *Criminal Code*

Add “, other than a determined border controlled drug or a determined border controlled plant”.

18 At the end of paragraph 308.1(1)(b) of the *Criminal Code*

Add “, other than a determined controlled drug”.

19 Division 314 of the *Criminal Code*

Repeal the Division.

Customs Act 1901

20 Subsection 51A(1)

Omit “301.8 or 301.9 of the *Criminal Code*”, substitute “Subdivision C of Division 301 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs and precursors)”.

21 Subsection 112A(1)

Omit “301.8 of the *Criminal Code*”, substitute “section 301.13 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs)”.

22 Subsection 112A(3)

Omit “301.9 of the *Criminal Code*”, substitute “section 301.14 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drug precursors)”.

Part 2—Application and transitional

23 Application—offences committed after commencement

The amendments made by this Schedule apply in relation to offences against Part 9.1 of the *Criminal Code* that are committed on or after the commencement of Part 1 of this Schedule.

Note: For the commencement of Part 1 of this Schedule, see section 2 of this Act.

24 Transitional—listing of existing serious drugs and precursors by regulation

- (1) This item applies in relation to a substance or plant that, immediately before the commencement of this item, was listed under Division 314 of the *Criminal Code* as belonging to any of the following classes of substances or plants (the substance's or plant's *Criminal Code class*):
 - (a) a controlled drug;
 - (b) a controlled plant;
 - (c) a controlled precursor;
 - (d) a border controlled drug;
 - (e) a border controlled plant;
 - (f) a border controlled precursor.
- (2) Sections 301.7 and 301.8 of the *Criminal Code*, as amended by Part 1 of this Schedule, do not apply in relation to a regulation made for the purposes of Subdivision A of Division 301 of the *Criminal Code* (as so amended) listing the substance or plant as belonging to the same *Criminal Code class* as that to which it belonged immediately before the commencement of this item.

Note 1: Sections 301.7 and 301.8 of the *Criminal Code*, as so amended, provide that some conditions must be satisfied before new regulations can be made listing a substance or plant as belonging to a *Criminal Code class*.

Note 2: For the commencement of this item, see section 2 of this Act.

Schedule 2—Identity crime and air travel

Part 1—Identity crime

Criminal Code Act 1995

1 At the end of Division 370 of Part 9.5 of the *Criminal Code*

Add:

370.2 Definition of *foreign indictable offence*

In Division 372:

foreign indictable offence means an offence against a law of a foreign country or part of a foreign country that is constituted by conduct that, if engaged in in Australia, would constitute an indictable offence against a law of the Commonwealth.

370.3 Concurrent operation intended

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) Without limiting subsection (1), this Part 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 a provision of this Part; or
 - (b) a similar act or omission;
an offence against the law of the State or Territory.
- (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 Part;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;

- (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.

2 Paragraph 372.1(1)(c) of the *Criminal Code*

Repeal the paragraph, substitute:

- (c) the offence referred to in paragraph (b) is:
- (i) an indictable offence against a law of the Commonwealth; or
 - (ii) a foreign indictable offence.

3 After section 372.1 of the *Criminal Code*

Insert:

372.1A Dealing in identification information that involves use of a carriage service

Dealing in identification information using a carriage service

- (1) A person (the **first person**) commits an offence if:
- (a) the first person deals in identification information; and
 - (b) the first person does so using a carriage service; and
 - (c) the first person intends that any person (the **user**) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:
 - (i) committing an offence; or
 - (ii) facilitating the commission of an offence; and
 - (d) the offence referred to in paragraph (c) is:
 - (i) an indictable offence against a law of the Commonwealth; or
 - (ii) an indictable offence against a law of a State or Territory; or
 - (iii) a foreign indictable offence.

Penalty: Imprisonment for 5 years.

Note: **Deal**, in identification information, includes make, supply or use any such information. See section 370.1.

- (2) Absolute liability applies to the paragraphs (1)(b) and (d) elements of the offence.

Note: For absolute liability, see section 6.2.

Dealing in identification information obtained using a carriage service

- (3) A person (the **first person**) commits an offence if:
- (a) the first person obtains identification information; and
 - (b) the first person does so using a carriage service; and
 - (c) the first person deals in the identification information; and
 - (d) the first person intends that any person (the **user**) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:
 - (i) committing an offence; or
 - (ii) facilitating the commission of an offence; and
 - (e) the offence referred to in paragraph (d) is:
 - (i) an indictable offence against a law of the Commonwealth; or
 - (ii) an indictable offence against a law of a State or Territory; or
 - (iii) a foreign indictable offence.

Penalty: Imprisonment for 5 years.

Note: **Deal**, in identification information, includes make, supply or use any such information. See section 370.1.

- (4) Absolute liability applies to the paragraphs (3)(b) and (e) elements of the offence.

Note: For absolute liability, see section 6.2.

Presumption that conduct was engaged in using carriage service

- (5) If the prosecution proves beyond reasonable doubt that a person engaged in the conduct referred to in paragraph (1)(a) or (3)(a), then it is presumed, unless the person proves to the contrary, that the person used a carriage service to engage in that conduct.

Note: A defendant bears a legal burden in relation to the matter in this subsection. See section 13.4.

Application of section

- (6) This section applies:
- (a) even if:
 - (i) committing the offence referred to in paragraph (1)(c) or (3)(d) is impossible; or
 - (ii) the offence referred to in paragraph (1)(c) or (3)(d) is to be committed at a later time; and
 - (b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.
- (7) This section does not apply to dealing in the first person's own identification information.

4 Paragraph 372.2(1)(c) of the *Criminal Code*

After "section 372.1", insert "or subsection 372.1A(1) or (3)".

5 Paragraph 372.3(1)(d) of the *Criminal Code*

After "section 372.1", insert "or subsection 372.1A(1) or (3)".

6 Subsection 372.5(1) of the *Criminal Code*

After "section 372.1", insert "or subsection 372.1A(1) or (3)".

7 Subsection 372.5(2) of the *Criminal Code*

After "section 372.1", insert "or subsection 372.1A(1) or (3) (as the case requires)".

Part 2—False identity and air travel

Crimes Act 1914

8 After Division 3A of Part IAA

Insert:

Division 3B—Powers to require identity information at airports

3UL Definitions—Division 3B

In this Division:

constitutional airport means:

- (a) a Commonwealth aerodrome within the meaning of the *Crimes (Aviation) Act 1991* (see section 3 of that Act); or
- (b) another airport, if the airport is in a Territory.

government photographic identity document means an identity document providing photographic identification of a person that is issued by:

- (a) the government of the Commonwealth or a State or Territory;
or
- (b) the government of a foreign country or part of a foreign country.

identity document:

- (a) means a document (such as a driver's licence, birth certificate, credit card or identity card) that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity; but
- (b) does not include a document prescribed by regulation for the purposes of this definition.

3UM Identity information at airports—requirements

Scope of section

- (1) A constable may make a request under this section of a person (a *suspect*) if:
 - (a) the request is made at a constitutional airport; and
 - (b) the constable reasonably suspects that the suspect has committed, is committing or intends to commit an offence against a law of the Commonwealth, or a law of a State or Territory, punishable by imprisonment for 12 months or more.
- (2) A constable may also make a request under this section of a person (a *suspect*) if:
 - (a) the request is made at an airport other than a constitutional airport; and
 - (b) the constable reasonably suspects that the suspect has committed, is committing or intends to commit an offence against a law of the Commonwealth punishable by imprisonment for 12 months or more.

Evidence of identity

- (3) The constable may request the suspect to give the constable evidence of the suspect's identity by:
 - (a) producing a government photographic identity document issued in relation to the suspect, if held by the suspect; and
 - (b) if the suspect does not produce a government photographic identity document as requested under paragraph (a)—producing another identity document in relation to the suspect, if held by the suspect; and
 - (c) if the suspect does not produce an identity document as requested under paragraph (a) or (b)—giving the constable the suspect's name and address.

Constable's duties

- (4) The constable must, before making a request under subsection (3):
 - (a) if the constable is not in uniform:

- (i) show the suspect evidence that the constable is a constable; and
 - (ii) if the suspect requests—comply with subsection (5); and
 - (b) in any case—inform the suspect that it may be an offence not to comply with the request, or to give the constable a false or misleading document, or false or misleading information, in response to the request.
- (5) If the constable is not in uniform, the constable must give the suspect any of the following information if requested by the suspect:
- (a) the constable's name;
 - (b) the address of the constable's place of duty;
 - (c) the constable's identification number (if any);
 - (d) if the constable has no identification number—the constable's rank.

3UN Identity information at airports—offences relating to section 3UM

Offence by suspect

- (1) A person commits an offence if:
- (a) a constable makes a request of the person under subsection 3UM(3); and
 - (b) the person fails to comply with the request; and
 - (c) the constable complies with subsection 3UM(4).

Penalty: 20 penalty units.

Note: The following more serious offences may also apply:

- (a) giving false or misleading information (see section 137.1 of the *Criminal Code*);
- (b) producing a false or misleading document (see section 137.2 of the *Criminal Code*);
- (c) obstructing a Commonwealth public official (see section 149.1 of the *Criminal Code*).

- (2) Strict liability applies to paragraphs (1)(a) and (c).

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

Offence by constable

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 3UM(4); and
 - (b) the person engages in conduct; and
 - (c) the conduct breaches the requirement.

Penalty: 5 penalty units.

- (4) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Criminal Code Act 1995

9 At the end of Part 9.5 of the *Criminal Code*

Add:

Division 376—False identity and air travel

376.1 Definitions for Division 376

In this Division:

air passenger ticket, for a flight, means a ticket, or electronic record, on the basis of which a person is treated as being entitled to travel as a passenger on:

- (a) the flight; or
- (b) a journey that includes the flight.

false: identification information relating to a person is *false* if it is false in a material particular that affects the capacity of the information to be used (whether alone or in conjunction with other information or documents) to identify the person.

Note: For the meaning of *identification information*, see section 370.1.

376.2 False identification information—at constitutional airports

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant uses information at a place; and
 - (b) the defendant does so reckless as to whether the information is used to identify the defendant as a passenger on a flight; and
 - (c) the information is identification information; and
 - (d) the information is false in relation to the defendant; and
 - (e) the place is a constitutional airport.

Penalty: Imprisonment for 12 months.

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

Note: For absolute liability, see section 6.2.

- (3) In this section:

constitutional airport means:

- (a) a Commonwealth aerodrome within the meaning of the *Crimes (Aviation) Act 1991* (see section 3 of that Act); or
- (b) another airport, if the airport is in a Territory.

376.3 False identification information—air passenger tickets obtained using a carriage service

Carriage service offence—using information to obtain an air passenger ticket

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant uses information; and
 - (b) the defendant does so:
 - (i) with the result that an air passenger ticket for a flight is obtained (whether by the defendant or another person); and
 - (ii) reckless as to whether the information is used to identify the defendant, or another person, as a passenger on the flight; and
 - (c) the information is identification information; and
 - (d) the information is false in relation to the person who takes, or intends to take, the flight using the ticket; and

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- (e) a carriage service is used (whether by the defendant or another person) to obtain the ticket; and
- (f) the flight starts or ends within Australia.

Penalty: Imprisonment for 12 months.

Carriage service offence—taking a flight using an air passenger ticket

- (2) A person (the *defendant*) commits an offence if:
- (a) the defendant takes a flight using an air passenger ticket; and
 - (b) identification information was used (whether by the defendant or another person) to obtain the ticket; and
 - (c) the information resulted in the identification of a person as a passenger on the flight; and
 - (d) the information is false in relation to the defendant; and
 - (e) a carriage service was used (whether by the defendant or another person) to obtain the ticket; and
 - (f) the flight starts or ends within Australia.

Penalty: Imprisonment for 12 months.

General

- (3) In a prosecution for an offence against subsection (1) or (2), if the prosecution proves beyond reasonable doubt that an air passenger ticket was obtained, then it is presumed, unless the defendant proves to the contrary, that a carriage service was used to obtain the ticket.

Note: A defendant bears a legal burden in relation to the matter in this subsection: see section 13.4.

- (4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e) and (f).

Note: For absolute liability, see section 6.2.

376.4 False identification information—air passenger tickets for constitutional flights

Constitutional flight offence—using information to obtain an air passenger ticket

- (1) A person (the *defendant*) commits an offence if:
- (a) the defendant uses information; and
 - (b) the defendant does so:
 - (i) with the result that an air passenger ticket for a flight is obtained (whether by the defendant or another person); and
 - (ii) reckless as to whether the information is used to identify the defendant, or another person, as a passenger on the flight; and
 - (c) the information is identification information; and
 - (d) the information is false in relation to the person who takes, or intends to take, the flight using the ticket; and
 - (e) the flight is a constitutional flight.

Penalty: Imprisonment for 12 months.

Constitutional flight offence—taking a flight using an air passenger ticket

- (2) A person (the *defendant*) commits an offence if:
- (a) the defendant takes a flight using an air passenger ticket; and
 - (b) identification information was used (whether by the defendant or another person) to obtain the ticket; and
 - (c) the information resulted in the identification of a person as a passenger on the flight; and
 - (d) the information is false in relation to the defendant; and
 - (e) the flight is a constitutional flight.

Penalty: Imprisonment for 12 months.

General

- (3) Absolute liability applies to paragraphs (1)(e) and (2)(e).

Note: For absolute liability, see section 6.2.

(4) In this section:

constitutional flight means:

- (a) a flight that starts or ends in a Territory; or
- (b) a flight between Australia and a foreign country in which an aircraft is used in the course of trade or commerce, for the carriage of passengers; or
- (c) a flight between one State and another State in which an aircraft is used in the course of trade or commerce, for the carriage of passengers.

**376.5 False identification information—extended jurisdiction
(Category D)**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to the offences in sections 376.3 and 376.4.

Part 3—Application of amendments

10 Amendments made by Part 2

- (1) Division 3B of Part IAA of the *Crimes Act 1914*, as inserted by Part 2 of this Schedule, applies in relation to persons reasonably suspected of offences whether the offences are suspected of having been committed before, on or after the commencement of this item.
- (2) Division 376 of the *Criminal Code*, as inserted by Part 2 of this Schedule, applies in relation to conduct and circumstances arising on or after the commencement of this item.

Note: This item commences on the day after this Act receives the Royal Assent (see section 2).

Schedule 3—Other measures

Part 1—Integrity Commissioner functions

Division 1—Amendments

Law Enforcement Integrity Commissioner Act 2006

1 Before paragraph 15(a)

Insert:

- (aa) to detect corrupt conduct in law enforcement agencies;

2 After paragraph 15(d)

Insert:

- (da) to prevent corrupt conduct in law enforcement agencies;

3 Subsection 104(5)

Omit “an authorisation”, substitute “a delegation”.

4 Subsection 156(3)

Repeal the subsection, substitute:

- (3) The Minister must not refer the ACLEI corruption issue to the Integrity Commissioner for investigation under Division 3 if the ACLEI corruption issue relates to the conduct of:
 - (a) the Integrity Commissioner; or
 - (b) an Assistant Integrity Commissioner.

5 Subsection 219(2)

Repeal the subsection.

Division 2—Application

6 Application of amendment

Subsection 156(3) of the *Law Enforcement Integrity Commissioner Act 2006*, as in force after the commencement of this item, applies in relation to corrupt conduct engaged in before, on or after that commencement.

Part 2—Penalty units

Division 1—Amendments

Crimes Act 1914

7 Subsection 4AA(1) (definition of *penalty unit*)

Omit “\$110”, substitute “\$170”.

8 After subsection 4AA(1)

Insert:

- (1A) The Attorney-General must cause a review of the amount of a penalty unit to be conducted as soon as possible after each third anniversary of the day an alteration of the amount of a penalty unit last came into force.

Division 2—Application

9 Application of amendments

- (1) The amendment made by item 7 of this Schedule applies in relation to an offence committed after the commencement of this item.

Note: Subitem (1) mirrors subsection 4F(1) of the *Crimes Act 1914*.

- (2) Subsection 4AA(1A) of the *Crimes Act 1914*, as inserted by this Schedule, applies in relation to the alteration of the amount of a penalty unit made by this Schedule, and future alterations.

Part 3—Superannuation orders

Division 1—Amendments

Australian Federal Police Act 1979

10 Paragraph 46(3)(a)

After “superannuation scheme”, insert “for any period of employment (not just a period during which the offence was committed)”.

11 Paragraph 46(4)(a) (definition of *AB* (amount of benefits))

After “the scheme”, insert “for any period of employment (not just a period during which the offence was committed)”.

Crimes (Superannuation Benefits) Act 1989

12 Paragraph 19(3)(a)

After “superannuation scheme”, insert “for any period of employment (not just a period during which the offence was committed)”.

13 Paragraph 19(4)(a) (definition of *AB* (amount of benefits))

After “the scheme”, insert “for any period of employment (not just a period during which the offence was committed)”.

Division 2—Application

14 Application of amendments: the *Australian Federal Police Act 1979*

Section 46 of the *Australian Federal Police Act 1979*, as amended by this Schedule, applies in relation to a superannuation order applied for on or after the commencement of this item, whether an offence to which the order relates was committed before, on or after that commencement.

15 Application of amendments: the *Crimes (Superannuation Benefits) Act 1989*

Schedule 3 Other measures
Part 3 Superannuation orders

Section 19 of the *Crimes (Superannuation Benefits) Act 1989*, as amended by this Schedule, applies in relation to a superannuation order applied for on or after the commencement of this item, whether an offence to which the order relates was committed before, on or after that commencement.

[*Minister's second reading speech made in—
House of Representatives on 10 October 2012
Senate on 31 October 2012*]

(183/12)

36 *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* No. 167, 2012