



Crimes and Other Legislation Amendment (Omnibus No. 2) Act 2023

No. 98, 2023

**An Act to amend legislation relating to the criminal
law and law enforcement, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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An Act to amend legislation relating to the criminal law and law enforcement, and for related purposes

[Assented to 27 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Crimes and Other Legislation Amendment
(Omnibus No. 2) Act 2023*.

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 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 28 November 2023 |

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Release on parole

Crimes Act 1914

1 Subsection 16(1) (definition of *parole order*)

Omit “subsection 19AL(1) or (2)”, substitute “subsection 19AL(1) or (1A), paragraph 19AL(2)(b) or subsection 19AL(2A), (6) or (7)”.

2 After subsection 19AL(1)

Insert:

- (1A) If the Attorney-General does not, under subsection (1), make, or refuse to make, a parole order for a person before the end of the non-parole period referred to in that subsection, the Attorney-General must, as soon as practicable after the end of that period, make, or refuse to make, a parole order for the person.

3 Subsection 19AL(2)

Omit “subsection (1) or paragraph (b) of this subsection”, substitute “subsection (1) or (1A), paragraph (b) of this subsection, or subsection (2A), (6) or (7)”.

4 After subsection 19AL(2)

Insert:

- (2A) If the Attorney-General does not, under paragraph (2)(b), reconsider the making of a parole order for a person and either make, or refuse to make, such an order before the end of the 12 month period referred to in that paragraph, the Attorney-General must, as soon as practicable after the end of that period, reconsider and either make, or refuse to make, a parole order for the person.

Contents of parole order

5 Subsection 19AL(4)

Omit “and (6)”, substitute “to (7)”.

6 Subsection 19AL(5)

Omit “subsection (1) or paragraph (2)(b)”, substitute “subsection (1) or (1A), paragraph (2)(b) or subsection (2A)”.

7 After subsection 19AL(6) (before the note)

Insert:

- (7) If the Attorney-General does not, in accordance with subsection (6), make, or refuse to make, a parole order for a person before:
- (a) the end of the period referred to in paragraph (6)(a); or
 - (b) the date of the expected release referred to in paragraph (6)(b);
- the Attorney-General must, as soon as practicable after the end of that period or the date of that expected release, make, or refuse to make, a parole order for the person.

8 Subsection 19AL(6) (note)

Omit “(6)”, substitute “(7)”.

9 Paragraph 23WA(8)(c)

Omit “subsection 19AL(1) or (2)”, substitute “subsection 19AL(1) or (1A), paragraph 19AL(2)(b) or subsection 19AL(2A), (6) or (7)”.

10 Application provision

The amendments made by this Schedule apply in relation to a non-parole period fixed before, on or after the commencement of this Schedule, whether or not that non-parole period ended before that commencement.

Schedule 2—Border controlled drugs, plants and precursors

Criminal Code Act 1995

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

Repeal the definition, substitute:

border controlled drug:

- (a) means a substance that is a border controlled drug within the meaning of subsection 301.4(1); and
- (b) to avoid doubt, includes a substance that is, under subsection 301.4(2), (3) or 301.13(1A), taken, for the purposes of this Part, to be a border controlled drug only in relation to particular offences against this Part or particular elements of those offences.

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

Repeal the definition, substitute:

border controlled plant:

- (a) means a growing plant that is a border controlled plant within the meaning of subsection 301.5(1); and
- (b) to avoid doubt, includes a growing plant that is, under subsection 301.5(2) or 301.13(1A), taken, for the purposes of this Part, to be a border controlled plant only in relation to particular offences against this Part or particular elements of those offences.

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

Repeal the definition, substitute:

border controlled precursor:

- (a) means a substance that is a border controlled precursor within the meaning of subsection 301.6(1); and

- (b) to avoid doubt, includes a substance that is, under subsection 301.6(1A), (1B) or 301.14(1A), taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part or particular elements of those offences.

4 Section 300.2 of the *Criminal Code* (paragraph (c) of the definition of *listed*)

Omit “301.4(a)”, substitute “301.4(1)(a)”.

5 Section 300.2 of the *Criminal Code* (paragraph (d) of the definition of *listed*)

Omit “301.5(a)”, substitute “301.5(1)(a)”.

6 Section 301.4 of the *Criminal Code*

Omit “For the purposes of this Part, a”, substitute “(1) A”.

7 Section 301.4 of the *Criminal Code* (paragraph (b) of note 1)

Omit “301.8(2)”, substitute “301.13(2)”.

8 At the end of section 301.4 of the *Criminal Code*

Add:

(2) However:

- (a) the regulations may provide that a listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to particular offences against this Part, or particular elements of those offences; and
- (b) if the regulations so provide, then the listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to those offences or elements.

- (3) To avoid doubt, if a listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to particular offences against this Part, or particular elements of those offences, then a drug analogue of the listed border controlled drug is taken, for the purposes of this Part, to be a border controlled drug only in relation to those offences or elements.

9 Section 301.5 of the *Criminal Code*

Omit “For the purposes of this Part, a”, substitute “(1) A”.

10 At the end of section 301.5 of the *Criminal Code*

Add:

(2) However:

- (a) the regulations may provide that a listed border controlled plant is taken, for the purposes of this Part, to be a border controlled plant only in relation to particular offences against this Part, or particular elements of those offences; and
- (b) if the regulations so provide, then the listed border controlled plant is taken, for the purposes of this Part, to be a border controlled plant only in relation to those offences or elements.

11 Subsection 301.6(1) of the *Criminal Code*

Omit “For the purposes of this Part, a”, substitute “A”.

12 After subsection 301.6(1) of the *Criminal Code*

Insert:

(1A) However:

- (a) the regulations may provide that a listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences; and
- (b) if the regulations so provide, then the listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.

(1B) To avoid doubt, if a listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences, then a salt, ester or immediate precursor of the listed border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.

Definition of immediate precursor

13 Subsection 301.9(1) of the *Criminal Code*

Omit “For the purposes of this Part, a”, substitute “A”.

14 At the end of subsection 301.9(1) of the *Criminal Code*

Add:

Note: Some substances are taken, for the purposes of this Part, to be drug analogues only in relation to particular offences against this Part, or particular elements of those offences: see subsection 301.4(3).

15 Sections 301.10 and 301.11 of the *Criminal Code* (note)

Omit “301.4(b)”, substitute “301.4(1)(b)”.

16 After subsection 301.13(1) of the *Criminal Code*

Insert:

(1A) However:

(a) a determination made under subsection (1) may provide that:

- (i) a determined border controlled drug is taken, for the purposes of this Part, to be a border controlled drug; or
- (ii) a determined border controlled plant is taken, for the purposes of this Part, to be a border controlled plant;

only in relation to particular offences against this Part, or particular elements of those offences; and

(b) if such a determination so provides, then:

- (i) the determined border controlled drug is taken, for the purposes of this Part, to be a border controlled drug; or
- (ii) the determined border controlled plant is taken, for the purposes of this Part, to be a border controlled plant;

only in relation to those offences or elements.

Conditions on making a determination

17 After subsection 301.14(1) of the *Criminal Code*

Insert:

(1A) However:

- (a) a determination made under subsection (1) may provide that a determined border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to particular offences against this Part, or particular elements of those offences; and
- (b) if such a determination so provides, then the determined border controlled precursor is taken, for the purposes of this Part, to be a border controlled precursor only in relation to those offences or elements.

Conditions on making a determination

Customs Act 1901

18 Subsection 51A(1)

Repeal the subsection, substitute:

- (1) This section applies if a substance or plant is a border controlled drug, a border controlled plant or a border controlled precursor because of a determination made under Subdivision C of Division 301 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs and precursors).

Note: ***Border controlled drug, border controlled plant and border controlled precursor*** have the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, those terms include substances or plants that are, under Subdivision C of Division 301 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled drugs, border controlled plants or border controlled precursors only in relation to particular offences against the Part, or particular elements of those offences.

19 Subsection 112A(1)

Repeal the subsection, substitute:

- (1) Subsection (2) applies if a substance or plant is a border controlled drug or a border controlled plant because of a determination made under section 301.13 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs).

Note: ***Border controlled drug and border controlled plant*** have the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, those terms include substances or plants that

are, under section 301.13 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled drugs or border controlled plants only in relation to particular offences against the Part, or particular elements of those offences.

20 Subsection 112A(3)

Repeal the subsection, substitute:

- (3) Subsection (4) applies if a substance is a border controlled precursor because of a determination made under section 301.14 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drug precursors).

Note: ***Border controlled precursor*** has the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, that term includes substances that are, under section 301.14 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled precursors only in relation to particular offences against the Part, or particular elements of those offences.

Defence Force Discipline Act 1982

21 Subsection 3(1) (paragraph (a) of the definition of ***prohibited drug***)

Omit “section 301.4”, substitute “Part 9.1”.

22 Subsection 3(1) (paragraph (b) of the definition of ***prohibited drug***)

Omit “section 301.5”, substitute “Part 9.1”.

23 Application provision

The amendments of the *Customs Act 1901* made by this Schedule apply in relation to determinations under Subdivision C of Division 301 of the *Criminal Code* made before, on or after the commencement of this Schedule.

Schedule 3—Validations relating to the Australian Crime Commission Act 2002

1 Validations relating to the *Australian Crime Commission Act 2002*

Scope of this item

- (1) This item applies:
 - (a) in relation to a thing done by a person in reliance upon, or otherwise in relation to:
 - (i) an authorisation (the ***relevant authorisation***) given by the Board of the Australian Crime Commission on or after 4 September 2013, and before 10 December 2019, under paragraph 7C(1)(c) of the ACC Act; or
 - (ii) a determination (the ***relevant determination***) made by the Board of the Australian Crime Commission on or after 4 September 2013, and before 10 December 2022, under subsection 7C(2) or (3) of the ACC Act; and
 - (b) where that thing was done before the commencement of this item; and
 - (c) where that thing related to federally relevant criminal activity within the meaning of the ACC Act as in force at the time when the relevant authorisation was given or the relevant determination was made; and
 - (d) to the extent that the doing of that thing would, apart from this item, be invalid or ineffective because the relevant authorisation or relevant determination was invalid or ineffective (including because, at the time when the authorisation was given or the determination was made, the authorisation or determination failed to specify or identify federally relevant criminal activity within the meaning of the ACC Act as in force at that time).
- (2) To avoid doubt, a determination made by the Board of the Australian Crime Commission that is a relevant determination may also be:

- (a) if the determination was made on or after 4 September 2013 and before 10 December 2019—a determination made by the Board in the performance of the Board’s functions under paragraph 7C(1)(d) of the ACC Act; or
- (b) if the determination was made on or after 10 December 2019 and before 10 December 2022—a determination made by the Board in the performance of the Board’s functions under paragraph 7C(1)(c) or (d) of the ACC Act.

Validation

- (3) The thing done is as valid and effective, and is taken for all purposes always to have been as valid and effective, as it would have been if the relevant authorisation or relevant determination were not invalid or ineffective.
- (4) To avoid doubt, and without limiting subitem (3), that subitem has effect for the purposes of legal proceedings.

Compensation for acquisition of property

- (5) If the operation of this item 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.
- (6) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Definitions

- (7) In this item:
 - ACC Act* means the *Australian Crime Commission Act 2002*.
 - authorisation* includes a purported authorisation.
 - determination* includes a purported determination.
 - legal proceedings* include any proceedings before a court or tribunal, and include proceedings that are pending or concluded.
 - relevant authorisation* has the meaning given by subparagraph (1)(a)(i).

relevant determination has the meaning given by subparagraph (1)(a)(ii).

thing includes:

- (a) issuing, or purporting to issue, a summons or notice under the ACC Act; and
- (b) requiring, or purporting to require, a person to answer a question or produce a document under the ACC Act; and
- (c) taking steps in or in relation to:
 - (i) legal proceedings; or
 - (ii) matters arising in, or as a result of, legal proceedings; and
- (d) the exercise, or purported exercise, of any other power, whether or not under the ACC Act; and
- (e) the performance, or purported performance, of any other function, whether or not under the ACC Act.

[*Minister's second reading speech made in—
House of Representatives on 14 November 2023
Senate on 15 November 2023*]

(140/23)
