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Reconciliation and Aboriginal and Torres Strait
Islander Affairs Legislation Amendment
(Application of Criminal Code) Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 3 2001–02

Reconciliation and Aboriginal and Torres Strait Islander
Affairs Legislation Amendment (Application of Criminal
Code) Bill 2001

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16 July 2001

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Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Bill 2001

Date Introduced: 6 June 2001

House: House of Representatives

Portfolio: Reconciliation and Aboriginal and Torres Strait Islander Affairs

Commencement: Twenty-eight days after the date of Royal Assent.

Purpose

The Bill's primary purpose is revise criminal offence provisions in seven statutes in the Reconciliation and Aboriginal and Torres Strait Islander Affairs portfolio so that they harmonise with the principles of criminal responsibility found in Chapter 2 of the Criminal Code. The amendments also remove gender specific language in three of those statutes and replace it with gender neutral language.

Background

For an account of the background to the Criminal Code and a brief description of Chapter 2 of the Code, see the Bills Digest for the Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000 (Bills Digest No.92, 2000-2001). Chapter 2 of the Criminal Code contains principles of criminal responsibility. Since 1995 there has been a staggered program of applying those principles to Commonwealth criminal laws. Chapter 2 applies to all offences against the Code. From 1 January 1997 it applied to all new Commonwealth offences. From 15 December 2001 it will apply to pre-existing Commonwealth offences. In order to meet this deadline, the Commonwealth has been reviewing pre-existing offence provisions with a view to harmonising them with Chapter 2, modifying the application of Chapter 2 where necessary or clarifying how Chapter 2 will apply.

The Parliament has passed the following laws which apply Chapter 2 to legislation in a range of portfolios—*Communication and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, *Environment and Heritage Legislation Amendment (Application*

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of Criminal Code) Act 2001, Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001, Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001, Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001, Treasury Legislation Amendment (Application of Criminal Code) Act (No.1) 2001, and Veterans' Affairs Legislation Amendment (Application of Criminal Code) Act 2001. Currently before the Parliament are the Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Bill 2001, Finance and Administration Legislation Amendment (Application of Criminal Code) Bill (No.1) 2001, Treasury Legislation Amendment (Application of Criminal Code) Bill (No.2) 2001, Treasury Legislation Amendment (Application of Criminal Code) Bill (No.3) 2001, Migration Legislation Amendment (Application of Criminal Code) Bill 2001 and the present Bill.

Some major aspects of criminal responsibility relevant to the Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Bill 2001 are described below.

Offences—Physical elements and fault elements

The Criminal Code provides that an offence consists of physical elements and fault elements. Physical elements relate to external events such as conduct or the result of conduct. Fault elements relate to a person's state of mind eg intention, knowledge, recklessness and negligence.

The Criminal Code defines the physical elements of an offence to be conduct, the circumstances in which it occurs and the results of conduct.¹ An omission to act can be a physical element if there is appropriate statutory provision or if it is the result of a breach of duty to act.² Each offence must contain at least one of these physical elements, but any combination of physical elements may be present in an offence provision.

In general, for every physical element of an offence, the prosecution must also prove a corresponding fault element. The Code establishes four fault elements—intention, knowledge, recklessness and negligence—in descending order of culpability. Where the physical element of an offence consists of conduct, intention is the default fault element. However, if the physical element is a circumstance or a result of conduct the default fault element is recklessness.³ The Code does not prevent an offence from specifying an alternative fault element, but indicates that the default fault element will apply in the absence of a specified fault element.

Proof of criminal responsibility

It is the duty of the prosecution to prove the guilt of the accused person.⁴ The prosecution bears the legal burden of proving every element of an offence. The legal burden means 'in relation to a matter, the burden of proving the existence of the matter'.⁵ The prosecution

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bears the legal burden of proof beyond reasonable doubt, unless the law creating the offence provides otherwise.

Generally, where a burden of proof is placed on a defendant it is an evidential burden only.⁶ The evidential burden can be discharged by the defendant pointing to evidence suggesting there was a reasonable possibility that a matter existed or did not exist.⁷ The Code provides that a defendant will have a legal burden of proof only if the law creating the offence so provides. When a legal burden is placed on the defendant it must be discharged on the balance of probabilities.⁸

The Bill places removes some existing legal burdens on defendants and also identifies evidential burdens.⁹

Corporate criminal responsibility

In general, the Bill applies Chapter 2 to all offence provisions in relevant legislation administered by the Reconciliation and Aboriginal and Torres Strait Islander Affairs portfolio. However, in some cases, the application of Chapter 2 is modified. For example, where a statute contains its own scheme relating to corporate criminal responsibility this is retained and Chapter 2 principles of corporate criminal responsibility are expressly excluded. This is in keeping with policy expressed when the Criminal Code Bill 1994 was introduced. At that time, the responsible Minister said, 'Part 2.5 [of the Criminal Code dealing with corporate criminal responsibility] concerns general principles suitable for ordinary offences. It will be the basis of liability if no other basis is provided.'¹⁰

Strict liability

At common law there is a presumption that every offence contains a mental element. However, an increasing number of statutory offences dispense with fault elements.¹¹ Whether an offence is a strict liability offence depends on the interpretation of the offence provision. However, if a defence of honest and reasonable mistake of fact is available, such offences are called strict liability offences. Working from common law principles, Chapter 2 of the Criminal Code requires offences of strict liability to be expressly identified as such.¹² Failure to do so means that fault elements are applied to all the physical elements in the offence. The Bill identifies some strict liability offences and also some elements of strict liability in offences.

The Criminal Code supplies a defence of mistake of fact to strict liability offences¹³ but does not prevent particular statutes from supplying additional defences. The Bill retains additional defences to some strict liability offences. For example, the Bill relocates and re-phrases defences of reasonable excuse where they presently exist in offences identified as strict liability offences.

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Defences

Defences to criminal offences are usually external to the physical and fault elements of offences and to offences themselves.¹⁴ Possibly for this reason, and to clearly identify defences as defences and not as elements of offences which have to be proved or disproved by the prosecution, the amendments relocate defences from provisions which set out the physical elements of an offence into their own separate subsections.

Removing and replacing inappropriate fault elements

The Bill amends a number of offence provisions so that their constituent fault and physical elements correspond with the scheme supplied by the Criminal Code. For example, amendments ensure that the Code fault element of knowledge does not apply to the physical element of conduct in an offence. In the process of applying appropriate fault elements, some of the amendments also restructure offence provisions so that their constituent physical elements are clearly identified and the Code's default fault elements can be applied to them.

Non-Code expressions

Many offence provisions in Commonwealth statutes do not specify fault elements. In other cases, a variety of expressions may be used including 'a purpose intended to be', 'wilfully', and 'for the purpose of'. The meaning of many of these expressions is uncertain.

The Bill replaces non-Code expressions such as 'for the purpose of' with the Code fault element of 'intention' in order to remove ambiguity.

Ancillary offences

Many Commonwealth statutes contain references to provisions in the *Crimes Act 1914* which deal with ancillary offences such as attempts, incitement and conspiracy. These Crimes Act provisions are being disapplied and will be replaced by equivalent provisions in the Criminal Code. The Bill thus contains amendments removing references to the Crimes Act and replacing them with references to equivalent provisions in the Criminal Code.

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Main Provisions

Application of amendments

Clause 4 provides that an amendment applies to acts and omissions commencing or concluding after the amendment commences.

Schedule 1—Application of the Criminal Code

Aboriginal and Torres Strait Islander Commission Act 1989

The Aboriginal and Torres Strait Islander Commission was established by the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act). ATSIC is the primary national policy-making body in Indigenous affairs and also administers programs for Indigenous people. ATSIC also has a representative arm consisting of 35 Regional Councils whose members are elected by Indigenous Australians.

Item 1 inserts **new section 5A** into the ATSIC Act. **New section 5A** applies Chapter 2 of the Criminal Code, except for its principles of corporate criminal responsibility, to the ATSIC Act. The ATSIC Act contains its own scheme of corporate criminal responsibility (section 199).

The ATSIC Act establishes an Office of Evaluation and Audit to audit ATSIC, Aboriginal Hostels Limited, Indigenous Business Australia and the Torres Strait Regional Authority. Paragraph 78A(5)(c) empowers the Office to require a person to answer questions and produce documents. Subsection 78A(6) states that a person who, ‘without reasonable excuse’ refuses or fails to comply with such a requirement is guilty of an offence and may be fined up to 20 penalty units (\$2200). **Items 2 and 3** affect subsection 78A(6) of the ATSIC Act by:

- identifying a subsection 78A(6) offence as one of strict liability
- omitting the word ‘refuses’ from subsection 78A(6)
- re-structuring and re-wording the element of ‘reasonable excuse’ in the offence so it is clear that the words are a defence and not an element of the offence.

The first two amendments are related. The Criminal Code provides that failure to identify an offence as one of strict liability means that the offence will be interpreted as containing a fault element. As a result of the identification of this offence as a strict liability offence, the word ‘refuses’ is omitted because it suggests that the offence contains a mental element.

Amendments made by **item 4** flow from the amendments made by **items 2 and 3** and preserve the existing law which states that fear of self-incrimination is not a reasonable

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excuse for not answering a question or producing a document when required to do so by the Office of Evaluation and Audit.

Paragraphs 90(4)(a), 191(4)(a) and 199(9)(b) of the ATSI Act provide that references to offences against the Act include references to certain ancillary offences in the Crimes Act. These Crimes Act offences are being disappplied by the *Law and Justice Legislation (Application of Criminal Code) Act 2001*. **Items 5 and 10** generally remove references in paragraphs 90(4)(a), 191(4)(a) and 199(9)(b) to ancillary offences in the Crimes Act and replace them with references to ancillary offences in the Criminal Code. The amendments preserve references to section 6 of the Crimes Act—accessory after the fact—because section 6 will continue to operate.

Subsection 193S(4) of the ATSI Act provides that an Indigenous Land Corporation officer who ‘intentionally or recklessly’ discloses certain information is guilty of an offence. The physical element of this offence is conduct—disclosing proscribed information. The Criminal Code default fault element for conduct is intention. The Code fault element, recklessness, applies to circumstances or results, not to conduct. Thus, the word ‘intentionally’ is redundant and the word ‘recklessly’ is inappropriate. **Item 6**, therefore, removes the words ‘intentionally or recklessly’ from subsection 193S(4) of the ATSI Act.

Paragraph 198(1)(d) of the ATSI Act reads:

A person shall not, in relation to an election under this Act, ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for the person or any other person, on an understanding that:

...

(d) the doing of any act or thing by the first-mentioned person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of an elector;

will, in any manner, be influenced or affected.

Item 7 restructures paragraph 198(1)(d) of the ATSI Act by clarifying its constituent physical elements of conduct and result, substituting a Code fault element (‘intention’) for an ambiguous non-Code expression (‘the purpose of’), and clarifying a fault element, ‘recklessness’. **Item 9** makes similar amendments to paragraph 198(2)(d).¹⁵

Item 8 replaces an ambiguous non-Code expression in subsection 198(2), ‘in order to influence or affect’, with an expression which includes the Code fault element intention—‘with the intention of influencing or affecting’.

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Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978

The *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978* (Reserves and Communities Act) enables communities on Aboriginal and Islander reserves in Queensland to manage their own affairs. If an Indigenous community so requests, the Commonwealth Minister can declare that the Reserves and Communities Act applies to that community. Indigenous councils established under or recognised by the Act are empowered to manage and control the affairs of the Indigenous community, make by-laws and authorise entry onto reserves.

Item 11 inserts **new section 4A** into the Reserves and Communities Act. **New section 4A** applies Chapter 2 of the Criminal Code to all offences against the Act.

Subsection 10(10) of the Queensland Reserves and Communities Act enables an Aboriginal Council to make by-laws applying to Indigenous people who live in the relevant community or reserve. The by-laws may include offence provisions. The effect of **items 12 and 13** is to change the defendant's burden in proceedings for an offence against the by-laws from a legal to an evidential burden. This is in keeping with Criminal Code policy.

Aboriginal Councils and Associations Act 1976

The purpose of the Aboriginal Councils and Associations Act is 'to provide Aboriginal and Torres Strait Islander communities, groups and organisations with a simple and inexpensive means of incorporation, with the flexibility to take account of indigenous customs and traditions'.¹⁶ One of the original reasons for proposing this legislation was to provide Indigenous communities with a legal entity for dealing with outsiders and a means of receiving government funding for employment, business and other purposes.

Item 14 applies Chapter 2 of the Criminal Code to all offences against the Aboriginal Councils and Associations Act.

Section 30 of the Aboriginal Councils and Associations Act enables an Aboriginal Council to make by-laws applying to local Indigenous people. Subsection 30(10) provides that the by-laws may include offence provisions. **Items 15-17** do two things. First, they effectively change a defendant's burden of proof from a legal to an evidential burden. Second, they consequentially re-phrase the provision and in the process remove gender specific language.

Items 18, 23-26, 31 and 34 identify a number of offences against the Aboriginal Councils and Associations Act as offences of strict liability. These offences generally relate to failure to inform the Registrar of Aboriginal Councils and Associations of certain matters—such as a change of the name or objects of a council or association.¹⁷ The penalties for these offences range from \$50 to \$200.

The Criminal Code does not prevent strict liability offences attracting defences other than mistake of fact. In a number of instances, the amendments identify offences as strict

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liability offences and clarify and preserve existing defences (**items 19-22, 27-30, 32, 33, 35 and 36**). For example, section 38 of the Aboriginal Councils and Associations Act requires an Aboriginal Council to report annually to the Registrar. If required by the Registrar to do so, it must also make its accounting records available for inspection. It is an offence, ‘without reasonable excuse’ to fail to do these things and each councillor is liable to a maximum fine of \$200 [subsection 38(7)]. Existing subsection 38(8) provides that it is a defence for a councillor to prove that he or she did not aid or abet the contravention and was not knowingly concerned in the contravention. **Items 19 and 20** amend subsections 38(7) and (8) by re-wording and re-structuring the provisions. They make it clear that a defence of reasonable excuse is available to a defendant. They also provide a defence of lack of knowledge. While the latter defence will no longer contain any reference to aiding and abetting, the Explanatory Memorandum explains that the defence should continue to operate in the same manner as it does at present.¹⁸

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

The Aboriginal Land Grant (Jervis Bay Territory) Act provides for the grant of inalienable freehold title to 403 hectares of land in Jervis Bay Territory to the Wreck Bay Aboriginal Community. Land title is vested in the Wreck Bay Aboriginal Community Council under a trust arrangement.¹⁹ The Wreck Bay Aboriginal Community Council is established under the Act. The Act also contains provisions relating to significant sites and public access to Aboriginal Land.

Item 37 applies Chapter 2 of the Criminal Code to all offences against the Aboriginal Land Grant (Jervis Bay Territory) Act.

Item 38 amends subsections 48(3) and (4) of the Aboriginal Land Grant (Jervis Bay Territory) Act. Subsection 48(3) prohibits anyone who is not a member of the Wreck Bay Aboriginal Community from entering a place on Aboriginal Land which has been declared by the Minister to be a place of special significance to members of the Aboriginal community and which is signposted as such. The amendments restructure the subsection into its constituent fault and physical elements and identify two of those physical elements as attracting strict liability (elements relating to the Ministerial declaration and the sign). **Item 38** also restates existing defences to a subsection 48(3) proceeding. Subsection 48(4) creates an offence of damaging or disturbing a site of special significance. Once again, the offence is re-structured by the amendments and two of its physical elements are identified as attracting strict liability (elements relating the Ministerial declaration and the sign).

In relation to strict liability and these offences, the Explanatory Memorandum states:

These physical elements of circumstance are appropriate candidates for the application of strict liability because in most applicable instances the person concerned will not possess any fault element concerning these physical elements, and accordingly the offence would become almost unenforceable if the prosecution were obliged to demonstrate fault. Further, the person’s degree of culpability under this offence is not materially affected by absence of the subject fault.²⁰

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Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

The Aboriginal Land (Lake Condah and Framlingham Forest) Act vests certain land in Condah and Framlingham Forest, Victoria, in two Aboriginal corporations. The corporations are empowered to make local government-like by-laws²¹ in relation to matters such as economic enterprises, cultural activities, land management and conservation, the control of visitors and the enforcement of by-laws. The Act also establishes two Committees of Elders to make decisions about spiritual, cultural and religious matters.

Item 39 applies Chapter 2 of the Criminal Code to all offences against the Aboriginal Land (Lake Condah and Framlingham Forest) Act—with the exception of principles of corporate criminal responsibility. The Aboriginal Land (Lake Condah and Framlingham Forest) Act contains its own principles of corporate criminal responsibility (section 37).

Items 40 and 41 amend paragraph 30(1)(b) and section 35 by replacing two non-Code fault elements (‘for the purpose’ and ‘for the purposes of’) with the Code fault element of intention.

Aboriginal Land Rights (Northern Territory) Act 1976

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) establishes a scheme for claiming, granting and managing Aboriginal land in the Northern Territory. The Act enables the traditional Aboriginal owners of land to obtain inalienable freehold title to it in two ways. The first is via legislative amendment of the Land Rights Act and a Ministerial recommendation that the Governor-General grant the land to an Aboriginal Land Trust. The second way is through a land claim application made to the Aboriginal Land Commissioner. The Commissioner conducts a hearing and presents a report and recommendation to the Minister. If the Minister decides to accept a recommendation to grant land, then a recommendation is made that the Governor-General make a grant to the relevant Aboriginal Land Trust.

Item 42 applies Chapter 2 of the Criminal Code, except for principles of corporate criminal responsibility, to all offences against the Land Rights Act. The Land Rights Act contains its own scheme of corporate criminal responsibility (section 77B).

Item 43 repeals and replaces subsection 23E(4) of the Land Rights Act. Section 23E makes it an offence for members or staff of a Land Council to divulge information acquired in the course of their duties. There are some exceptions to this rule. For example, information can be disclosed to the Departmental Secretary or a member of the ATSIC Board. Subsection 23E(4) is a secondary disclosure provision—it is an offence for those people to disclose information given to them by Land Council members or staff ‘except for the purpose of advising the Minister’. **Item 43** restructures subsection 23E(4) into its constituent physical and fault elements, identifies three physical elements in the offence as attracting strict liability and re-states the existing words of excuse so that they are clearly identified as a defence and not as an element of the offence.

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Section 54 of the Land Rights Act empowers the Aboriginal Land Commissioner to require a person to answer questions and produce documents. Subsection 54(6) provides that:

(6) A person shall not, without lawful excuse, refuse or fail:

- (a) to attend before a Commissioner;
- (b) to be sworn or make an affirmation; or
- (c) to answer a question or produce a document or record;

when so required in pursuance of this section.

Penalty: \$1,000.

Subsection 54A(1) of the Land Rights Act deals with the examination of a person at an inquiry conducted by the Aboriginal Land Commissioner where that person wishes to give information to the Commissioner. Subsection 54A(2) provides that:

(2) A person shall not, without lawful excuse, refuse or fail to answer a question put to him by a Commissioner in the course of an examination under subsection (1).

Penalty: \$1,000.

Items 44 and 46 amend subsections 54(6) and 54A(2) in two ways:

- first, they remove the words ‘without lawful excuse’ from the provisions. A defence of lawful authority will be supplied by the Criminal Code (section 10.5).
- second, they remove the word ‘refuse’ from the offences. The offences are identified as strict liability offences by **items 45 and 47**. The word ‘refuse’ suggests that the offence contains a fault element—which would be inappropriate in a strict liability offence.

Item 48 aligns the element of conduct contained in the offence against subsection 54AA(3)—contravening or failing to comply with an Aboriginal Land Commissioner’s direction restricting the publication of information—with the Code fault element of intention. At present the fault element is knowledge. Under the Criminal Code knowledge is the fault element for physical elements of circumstance or result, not conduct. Further, the Explanatory Memorandum says that the pre-Code fault element of knowledge is equivalent to the Code fault element of intention.²²

Items 49 and 50 affect section 69. Subsection 69(1) provides that:

Except in the performance of functions under this Act or otherwise in accordance with this Act or a law of the Northern Territory, a person shall not enter or remain on land in the Northern Territory that is a sacred site.

Penalty: \$1,000.

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The amendments restructure section 69 so it is clear that the underlined words constitute a defence and not an element of the offence.

Subsection 70(1)²³ of the Land Rights Act is worded like subsection 69(1) but prohibits entry onto Aboriginal land (rather than entry to a sacred site). The amendments made by **items 51 and 52** to subsection 70(1) are similar to those made by **items 49 and 50** to subsection 69(1).

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

The Australian Institute of Aboriginal and Torres Strait Islander Studies is an independent statutory authority whose functions are to conduct and promote Aboriginal and Torres Strait Islander studies, undertake and publish research, maintain a collection of cultural resources and promote understanding of Aboriginal and Torres Strait Islander cultures in the general community.

Item 53 applies Chapter 2 of the Criminal Code, with the exception of principles of corporate criminal responsibility, to all offences against the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* (AIATSIS Act). The AIATSIS Act contains its own provisions dealing with the conduct of directors, servants and agents (section 47).

Item 54 removes references to certain Crimes Act ancillary offences in paragraph 47(9)(b) of the AIATSIS Act and replaces them with references to ancillary offence provisions in the Criminal Code.²⁴

Schedule 2—Other amendments

For the most part, the amendments in Schedule 2 remove gender specific language in the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978*, the *Aboriginal Councils and Associations Act 1976*, and the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act).

The exceptions are **items 132, 137 and 142**—all of which amend the Land Rights Act.

Subsection 53(3) of the Land Rights Act provides that when a Judge is appointed as an Aboriginal Land Commissioner their judicial tenure, rank, allowances and service are not affected. **Item 132** repeals and replaces subsection 53(3) by restructuring the provision. The meaning of the subsection 53(3) is not changed by the amendments.

Existing subsection 54(3) of the Land Rights Act provides that the possibility of self-incrimination does not excuse a person from answering questions or producing documents when required to do so by the Aboriginal Land Commissioner. However, the person's answer can only be used against him or her in three circumstances. These are in proceedings for an offence of failing to answer a question or produce a document

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[paragraph 54(6)(c)] and in proceedings for an offence of providing false or misleading information or documents (sections 137.1 and 137.2, Criminal Code).

Item 137 repeals subsection 54(3) and inserts replacement provisions. The amendments re-structure the current provision. They also remove references in the current provision to paragraph 54(6)(c) and sections 137.1 and 137.2 and replace them with references to paragraph 54(6)(b) and section 54B. Paragraph 54(6)(b) creates an offence of failing to be sworn or make an affirmation. Section 54B created an offence of providing misleading information. However, it was repealed by *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*²⁵ which commenced on 24 May 2001. The reason for the repeal of section 54B is that the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* contains equivalent offences of providing false or misleading information (see above), making section 54B unnecessary. It is unclear why the reference to paragraph 54(6)(c) of the Land Rights Act has been replaced with a reference to paragraph 54(6)(b) or why there is a reference to repealed section 54B in the amendments.²⁶

Item 142 makes similar amendments to section 54A(3)—which deals with refusal to answer questions put by the Aboriginal Land Commissioner (in this case, after a person has indicated a willingness to give information to the Commissioner).

Endnotes

- 1 Criminal Code, section 4.1.
- 2 Criminal Code, section 4.3.
- 3 Criminal Code, section 5.6.
- 4 This is the ‘golden thread’ of English criminal law referred to *Woolmington v. DPP* (1935) AC 462.
- 5 Criminal Code, subsection 13.1(3).
- 6 Criminal Code, subsection 13.1(1).
- 7 Criminal Code, subsection 13.1(6).
- 8 Criminal Code, sections 13.4 and 13.5.
- 9 See items **3, 13, 17, 20, 22, 28, 30, 33, 36, 38, 43, 50 and 52**.
- 10 Second Reading Speech, *Parliamentary Debates (Hansard)*, 30 June 1994, p. 2381.
- 11 *He Kaw Teh v. R* (1985) 157 CLR 523.
- 12 Criminal Code, subsection 6.1(1).
- 13 Criminal Code, paragraph 6.1(1)(b).

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- 14 Matthew Goode, 'The Modern Criminal Code Project', *Australian Law Librarian*, 5(4), December 1997, pp.267-76 at p. 267.
- 15 Paragraph 198(2)(d) creates an offence of doing an act in relation to an ATSIC election to confer a benefit on another person by doing something likely to influence the preferences of a voter in an ATSIC election.
- 16 <http://www.orac.gov.au> (current at 10 July 2001).
- 17 These are offences of failing to notify the Registrar of Aboriginal Councils and Associations that the Rules of the Council have been altered [subsection 35(1)], failing to notify the Registrar that the objects of an Aboriginal Association have been altered [subsection 52(1)—penalty \$50], failing to notify the Registrar that an Incorporated Aboriginal Association has changed its name [subsection 53(3)—penalty \$50], failing to notify the Registrar that an Incorporated Aboriginal Association has changed its rules [subsection 54(1)—penalty \$50], failure, by an Incorporated Aboriginal Association, to make publicly available a copy of a register [subsection 58(2)—penalty \$200], failure to comply with requirements set down by the Registrar as to keeping of accounts and records by an Incorporated Aboriginal Association [subsection 59A(2)—penalty \$200], and failure to notify the Registrar that an Incorporated Aboriginal Association has resolved to wind itself up [subsection 64(2)—penalty \$50].
- 18 Explanatory Memorandum, p. 8.
- 19 Second Reading Speech, Aboriginal Land Grant (Jervis Bay Territory) Bill 1986, House of Representatives, *Parliamentary Debates (Hansard)*, 29 May 1986, p.4193.
- 20 Explanatory Memorandum, p. 13.
- 21 Subject to approval by the Minister and disallowance by either house of the Commonwealth Parliament.
- 22 Explanatory Memorandum, p. 17.
- 23 Subsection 70(1) provides that: 'Except in the performance of functions under this Act or otherwise in accordance with this Act or a law of the Northern Territory, a person shall not enter or remain on Aboriginal land. Penalty: \$1,000'.
- 24 The reference to section 6 of the Crimes Act—dealing with accessory after the fact—is retained because it is not affected by the Criminal Code.
- 25 Item 16 of Schedule 2.
- 26 Note also that **items 143-145** also amend section 54B. These amendments replace gender specific language.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.