Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001

Jennifer Norberry
Law and Bills Digest Group
24 September 2001
Contents

Purpose ......................................................................................................................... 1
Background .................................................................................................................. 1
Offences—Physical elements and fault elements ......................................................... 2
Non-Code expressions ................................................................................................. 3
Proof of criminal responsibility .................................................................................... 3
Corporate criminal responsibility .................................................................................. 4
Strict liability ................................................................................................................ 4
Defences ...................................................................................................................... 5
Ancillary offences ........................................................................................................ 5
Main Provisions ........................................................................................................... 6
Schedule 1—Amendments of the Airports Act 1996 ..................................................... 6
Schedule 2—Amendments of the Navigation Act 1912 ................................................ 7
Schedule 3—Amendment of other transport legislation .............................................. 8
   Adelaide Airport Curfew Act 2000 ........................................................................... 9
   Air Navigation Act 1920 .......................................................................................... 9
   Interstate Road Transport Act 1985 ........................................................................ 10
Schedule 4—Amendment of territories and regional services legislation ................. 11
Schedule 5—Amendment of road transport legislation .............................................. 12
Endnotes .................................................................................................................... 13
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001

Date Introduced: 19 September 2001
House: House of Representatives
Portfolio: Transport and Regional Services
Commencement: The day after Royal Assent is given.

Purpose

The major purpose of the Bill is to amend statutes in the Transport and Regional Services portfolio to harmonise them with the principles of criminal responsibility contained in Chapter 2 of the Criminal Code.

The Bill also:

- modifies the application of Chapter 2 in relation to certain of the laws in force in Australia’s external territories and the Jervis Bay Territory, and
- excludes the application of Chapter 2 from a number of Commonwealth statutes which are part of a national cooperative scheme relating to road transport.

Background


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.

As part of this exercise, 20 bills designed to amend legislation across a range of portfolios have been introduced into the Parliament. The Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001 is the last of these. In all, 38 statutes are amended by the Bill.


At the time of writing, one Bill—the Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Bill 2001—had passed the Parliament but not received Royal Assent.


Some major aspects of criminal responsibility relevant to the Transport and Regional Services 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. 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. Each offence must contain at least one physical element, 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. 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.

In the main, the Bill amends offence provisions so that their constituent fault and physical elements correspond with the scheme supplied by the Criminal Code. However, it also retains existing fault elements in some offences which do not correspond with the default fault elements supplied by the Criminal Code.

Non-Code expressions

Many offence provisions in Commonwealth statutes do not specify fault elements. In other cases, a variety of expressions are used including 'a purpose intended to be', 'wilfully', 'maliciously', and 'for the purpose of'. The meaning of some of these expressions is uncertain. For example, it is not certain, when reading expressions like 'for the purpose of' whether they incorporate a fault element of intention which attaches to conduct or a physical element of result (to which the default fault element of recklessness would apply).

The Bill removes ambiguous and non-Code expressions such as ‘for the purpose’, ‘wilfully’ and ‘maliciously’ where they occur in offence-creating provisions.

Proof of criminal responsibility

It is the duty of the prosecution to prove the guilt of the accused person. 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'. The prosecution must discharge the legal burden of proof beyond reasonable doubt, unless the law creating the offence provides otherwise. Further, the prosecution bears a legal burden of disproving any matter where the defendant has discharged an evidential burden.
Generally, where a burden of proof is placed on a defendant it is an evidential burden only. 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. 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. The prosecution must still prove that the defendant committed the offence beyond reasonable doubt.

The Bill inserts a number of notes explaining where a defendant carries an evidential burden of proof. The amendments also identify instances where a defendant carries a legal burden of proof.

Corporate criminal responsibility

For the most part, the Bill applies Chapter 2 to offence provisions in relevant legislation administered by the Transport and Regional Affairs portfolio. However, in some cases, the application of Chapter 2 is modified. The application of the Code's principles of corporate criminal responsibility is one example. At the time the Criminal Code Bill 1994 was introduced, 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. For a discussion of the issue of corporate criminal responsibility, see Bills Digest No. 20, 2001-02.

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. Whether an offence is a strict liability offence depends on the interpretation of the offence provision. Working from common law principles, Chapter 2 of the Criminal Code requires offences of strict liability to be expressly identified as such. Failure to do so means that fault elements are applied to all the physical elements in the offence.

Strict liability is most often used in minor or regulatory offences attracting small penalties where requiring the prosecution to prove a fault element would render the legislation unenforceable because it would inhibit prosecution and make the hearing of cases more complex and lengthy.

As well as providing for the identification of strict liability offences, the Criminal Code allows a law which creates an offence to provide that strict liability applies to some physical elements of that offence.

Although the prosecution need not prove fault in relation to strict liability, the Criminal Code supplies a defence of mistake of fact to strict liability offences and to other offences...
to where strict liability is applied to some of their physical elements.\textsuperscript{19} The Code does not prevent defences other than mistake of fact applying.\textsuperscript{20}

The Bill identifies strict liability offences and particular physical elements of other offences as attracting strict liability.

At the time of writing the Senate Standing Committee on the Scrutiny of Bills had not reported on the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001. However, its Alert Digests for companion ‘application of criminal code’ bills have generally sought an assurance from the Minister that no new strict liability offences are created by the proposed amendments.\textsuperscript{21} Similar assurances have been sought where ‘application of criminal code’ bills contain absolute liability provisions.\textsuperscript{22} However, the Bill does not identify any absolute liability offences or particular elements of other offences to which absolute liability is applied.

Defences

Defences to criminal offences are usually external to the physical and fault elements of offences and to offences themselves.\textsuperscript{23} 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, some amendments relocate and re-phrase elements of excuse—such as ‘without reasonable excuse’, ‘without reasonable cause’ or ‘without the leave of the master’—so it is clear that they are defences.

The amendments in general remove statutory defences relating to lawful excuse or statutory authority. A general defence of lawful authority will supplied by the Criminal Code.\textsuperscript{24}

Ancillary offences

Many Commonwealth statutes contain references to provisions in the \textit{Crimes Act 1914} which deal with ancillary offences such as attempts to commit offences, 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 the Criminal Code.
Main Provisions

Schedule 1—Amendments of the Airports Act 1996

Item 1 of Schedule 1 inserts a definition of ‘engage in conduct’ into the Airports Act to ensure that acts and omissions are covered by the expression. The Criminal Code provides that an omission to perform an act can only be a physical element of an offence if the law creating the offence expressly provides or if the law impliedly provides that the offence is committed by an omission to perform a statutory duty.25


Offences in the Airports Act are relevant to matters such as the grant of airport leases, restrictions on the ownership of airport-operator-companies, cross-ownership, land use, planning and building controls and environmental management.

Items 3-22, 27-33, 45-57, 59-63 amend offence provisions in the Airports Act in a number of ways. First, they restructure the offences to clearly identify their constituent physical elements, thus allowing the Criminal Code’s default fault elements to apply. In doing so they also remove existing fault elements such as ‘intentionally or recklessly’ which are either redundant or may apply inappropriately according to the standards of the Criminal Code.

The amendments to the Airports Act do not identify any strict liability offences. However, many of them identify particular physical elements to which strict liability applies. In general, these amendments relieve the prosecution of having to show that the defendant put his or her mind to the letter of the law. An example is new subsection 85(2) which provides that a company will commit an offence if it is required to give a written notice under subsection 85(1), it engages in conduct, and the conduct contravenes the requirement. Strict liability applies to the first of these three physical elements [new subsection 85(3)]. Note, however, that in a number of facially similar offences, strict liability is not applied to identical or similar physical elements. For example, item 6 identifies a physical element in the offence against subsection 46(2) of the Navigation Act—being required to take steps under subsection 46(1)—as attracting strict liability.26 However, strict liability is not applied to one of the physical elements in the offence against subsection 42(2)—being required to take steps under subsection 42(1) of the Airports Act (see item 5).27 In both offences, the penalty is 500 penalty units.

Where statutory elements of excuse presently exist in offences under the Airports Act, the amendments reconstitute the words ‘without reasonable excuse’ so that they are clearly identified as a defence and not as elements of the offence which would have to be proved by the prosecution.
The amendments also insert notes indicating where a defendant carries an evidential burden in relation to matters raised in his or her defence.

**Item 58** repeals and replaces subsection 224(6) of the Airports Act in order to substitute references to ancillary offences in the Criminal Code for the existing references to ancillary offences under the Crimes Act. The Crimes Act provisions are repealed by the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2000*.

**Items 34, 37, 40 and 44** omit references in offences to ‘acts or omissions’ and substitute references to ‘conduct’ or ‘engages in conduct’. These amendments are consequential on **item 1**.

**Schedule 2—Amendments of the Navigation Act 1912**

**Item 1 of Schedule 2** applies Chapter 2 of the Criminal Code, except for principles of corporate criminal responsibility, to all offences against the Navigation Act. The Act’s existing provision dealing with corporate criminal responsibility (section 395A) is thus retained.

**Item 2** inserts a definition of ‘engage in conduct’ into the Airports Act to ensure that acts and omissions are covered by the expression. The Criminal Code provides that an omission to perform an act can only be a physical element of an offence if the law creating the offence expressly provides or if the law impliedly provides that the offence is committed by an omission to perform a statutory duty.28

The Navigation Act contains a range of offences relating to such things as the qualifications of masters, officers and seamen, dead seamen’s belongings, the keeping of log books and ships and shipping.

A number of amendments identify offences against the Navigation Act as strict liability offences (items 3-5, 7, 8, 12-16, 20, 22, 23, 25, 27, 31-35, 37, 40, 46-55, 63-66, 75, 76, 83, 85, 88 and 89). An example of an offence which is identified as a strict liability offence is the offence against subsection 17(1) (see **item 7**). This is an offence of failure by a person serving on a ship to produce their certificates of qualification when required to do so by the proper authority. The penalty is $500.

**Items 9, 19 and 90** identify physical elements in a number of offences29 in the Navigation Act as attracting strict liability.

**Items 6, 7, 21, 23-26, 28, 29, 39, 40, 42-45, 69, 70, 72, 73, 77-80 and 84-87** all omit words of excuse in offence provisions and reconstitute them in a way that clearly indicates that they are statutory defences, not elements of the offences which would have to be proved by the prosecution. The statutory defences include reasonable excuse and reasonable cause. Another example of a statutory defence which is preserved is seen in the amendments effected by **items 44 and 45**. Subsection 265(1) of the Navigation Act makes
it an offence for a ship’s master not to assist persons in distress on a ship or aircraft ‘unless he or she is unable to do so, or in the special circumstances of the case, considers it unreasonable or unnecessary to do so’. **Item 44** omits these words from subsection 265(1) and reconstitutes them as a defence in **new subsection 265(1A)**.

**Items 9, 11, 18, 19, 26, 40, 57, 58, 60, 65, 71, 74 and 90** re-word and restructure offence provisions in the Navigation Act. As a result, the constituent physical elements of each offence are identified and the default fault elements supplied by the Criminal Code can be applied.

**Items 10, 30, 41, 61, 62, 68, 81 and 82** omit redundant, inappropriate or non-Criminal Code fault elements from offence provisions under the Navigation Act. Default fault elements will be supplied by the Criminal Code. For example, **item 68** omits the word ‘wilfully’ from subsection 296(2) of the Navigation Act which presently reads, ‘No person shall wilfully disobey the directions of the [Australian Maritime Safety Authority]’. Wilfully is a non-Code fault element which is equivalent to the Code fault element of intention. ‘Intention’ will apply by default to the physical element of conduct in the offence—disobeying the instructions of the Authority. Another example is **item 61** which omits the word, ‘knowingly’, from the offence against paragraph 282(1)(d). This is an offence of ‘knowingly’ proceeding further on board a ship than the fare allows. The appropriate Criminal Code fault element for the physical element of conduct in the offence is ‘intention’ not ‘knowledge’.

**Items 29, 38 and 56** insert notes into the Navigation Act indicating where a defendant will bear a legal burden of proof. For instance, section 227B of the Navigation Act creates an offence of overloading a ship. It is a defence ‘if it is proved that the circumstances giving rise to the offence were due only to a deviation or delay of the ship caused solely by stress of weather or other circumstances which neither the master not owner of the ship could have prevented or forestalled’. **Item 38** provides that the defendant bears a legal burden in relation to this matter. This reflects the existing intention of the provision and is a matter likely to be within the knowledge of the ship’s master or owner.

**Item 36** omits the words, ‘except as permitted by or under the regulations’, in subsection 227B(1) of the Navigation Act. A defence of lawful authority will apply to Commonwealth offences by operation of section 10.5 of the Criminal Code. A similar amendment is effected by **item 72**.

**Schedule 3—Amendment of other transport legislation**

Some examples of statutes amended by **Schedule 3** are provided below. Questions about other amendments can be directed to the author of this Digest.
**Adelaide Airport Curfew Act 2000**

**Item 1 of Schedule 3** applies Chapter 2 of the Criminal Code, with the exception of the Code’s principles of corporate criminal responsibility, to all offences against the Adelaide Airport Curfew Act. The relevant provision in the Act is section 23.

**Items 2, 3 and 5** reword and restructure offence provisions in the Act so that their constituent physical elements are clearly identified and the Code’s default fault elements can be applied.

**Items 2 and 4** provide that in sections 6 and 19 of the Adelaide Airport Curfew Act, the expression, ‘engage in conduct’ includes omissions as well as acts.

**Item 6** replaces references to ancillary offences under the Crimes Act with references to equivalent provisions in the Criminal Code.

**Air Navigation Act 1920**

**Item 11** applies Chapter 2 of the Criminal Code, except for the Code’s principles of corporate criminal responsibility, to the Air Navigation Act. The relevant provision in the Air Navigation Act is section 24A.

**Items 12, 15, 23, 24, 29 and 31** remove the words ‘intentionally or recklessly’ in a number of offence provisions under the Act. In doing so, the amendments remove the possibility that these fault elements might be inappropriately applied to the physical elements of the offences. The amendments also allow the default fault elements in the Criminal Code to apply to the offences so that the provisions operate harmoniously with the Code. For example, **item 12** omits the words, ‘intentionally or recklessly’ from subsection 10(2) of the Act. As it presently reads, this is an offence of ‘intentionally or recklessly’ flying an aircraft in contravention of subsection 10(1). With the application of the Criminal Code, the word ‘intentionally’ is redundant because it will apply by default to the physical element of conduct in the offence—flying an aircraft. The fault element, ‘recklessness’ is an inappropriate fault element in relation to the element of conduct in the offence. Recklessness is the default fault element for elements of circumstance or result.

**Items 13, 14, 16, 17, 18, 21, 25 and 27** remove existing elements of excuse from a number of offences against the Air Navigation Act and relocate them in separate provisions so it is clear that they operate as statutory defences and not as elements of the offences which would have to be proved by the prosecution. Examples are reasonable excuse and the existence of a permission.

**Items 18, 21 and 28** reword and restructure offence provisions in the Air Navigation Act. These amendments clearly identify the constituent physical elements of these offences and, in general, the default fault elements supplied by the Criminal Code will apply. However, in some cases these fault elements are modified. For instance, **item 28** replaces existing section 19CS but retains the existing fault element of ‘knowledge’ which applies
to the physical element of result in the offence. Recklessness is the default fault element which would ordinarily apply to this physical element.

**Item 18** applies strict liability to certain physical elements in offence against **new subsections 15A(1) and (2)**. For example, strict liability will apply to the physical element of discharging passengers for reward at an ‘intermediate stopping place’ during a non-scheduled flight. **Item 21** applies strict liability to paragraph 1(b) of the offence against section 17 of the Air Navigation Act.

**Items 27 and 30** identify some offences as strict liability offences. Examples are offences against paragraphs 19CC(4)(a), (c) and (d). These are offences of failing to provide information when required to do so by the Director of Air Safety Investigation, refusing or failing to answer a question lawfully put by the Director or failing to produce a document to the Director. As a consequence of the offence of ‘refusing or failing to answer questions’ being identified as a strict liability offence the word, ‘refusing’ is omitted from the provision (**item 26**). ‘Refusing’ suggests a mental element which is inappropriate in a strict liability offence.

**Item 32** removes references to ancillary offences in the Crimes Act and replaces them with references to ancillary offences in the Criminal Code.

**Interstate Road Transport Act 1985**

**Item 59** applies Chapter 2 of the Criminal Code, except for the Code’s principles of corporate criminal responsibility, to all offences against the Interstate Road Transport Act. The relevant section in the Interstate Road Transport Act is section 47A.

**Items 62, 67, 68, 69, 72 and 73** identify a number of offences against the Interstate Road Transport Act as strict liability offences. An example is **item 69** which identifies the offences of destroying, damaging, hindering the operation of or removing a monitoring device on a motor vehicle as strict liability offences (**new subsection 40(3)**).

**Items 63-66, 69, 72 and 73** remove existing words of excuse in a number of provisions and reconstitute them as statutory defences so it is clear they are not elements of the offences which would have to be proved by the prosecution. The Criminal Code applies a mistake of fact defence to strict liability offences but allows other defences to be supplied. In some cases, the statutory defences which are retained by the amendments apply to strict liability offences. **Item 69** can be used as an example. Apart from the Code’s defence of mistake of fact, statutory defences which are retained for offences relating to destroying or damaging monitoring devices include removal which is permitted by the regulations. A question which might be asked here is why this statutory defence is retained when the Criminal Code will supply a defence of lawful authority (section 10.5).

**Item 69** also restructures the offence against section 40 of the Interstate Road Transport Act to clearly identify its constituent physical elements. The Criminal Code’s default fault elements will be applied to these elements.

---

**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.*
Schedule 4—Amendment of territories and regional services legislation

**Items 1, 6, 16 and 43** apply Chapter 2 of the Criminal Code to a number of ‘regional services’ statutes. These statutes are the *Albury-Wodonga Development Act 1973*, the *Australian Capital Territory Taxation (Administration) Act 1969*, the *Canberra Water Supply (Googong Dam) Act 1974* and the *Pay-roll Tax (Territories) Assessment Act 1971*.

**Items 4, 5, 25, 32, 39, 40 and 41** determine how Chapter 2 will apply to Australia’s external territories and the Jervis Bay Territory. Australia has seven external territories. Section 3A of the *Criminal Code Act 1995* provides that the Criminal Code applies to every external Territory. However, this general principle needs to be modified because the law applying in Australia’s territories may include Commonwealth, State and Territory laws. Applying Chapter 2 to the State and Territory laws in force in those jurisdictions could make the laws unworkable. In a number of cases where Chapter 2 is applied by the amendments, consequential changes are made to the relevant statutes. Some examples appear below.

Ashmore and Cartier Islands are situated in the Timor Sea, 800 km west of Darwin. The laws applying in these islands include Northern Territory laws, Commonwealth Acts and Ordinances made by the Governor-General. **Item 4** provides that Chapter 2 does not apply to, or in relation to matters arising under, a law in force in Ashmore and Cartier Islands as a result of section 6 of the *Ashmore and Cartier Islands Acceptance Act 1933*. This is because section 6 applies the laws of the Northern Territory to Ashmore and Cartier Islands. The Explanatory Memorandum points out:

> As the Commonwealth cannot harmonise State and Territory offences, [if the amendment were not made] … Ashmore and Cartier Islands Territory [may have] unworkable criminal offences.\(^3^0\)

**Item 5** provides that Chapter 2 does not apply to or matters arising under a law in force in the Australian Antarctic Territory as a result of subsections 6(1) or (2) of the *Australian Antarctic Territory Act 1954*. Subsections 6(1) and (2) apply the law of the Jervis Bay Territory—for the most part, ACT laws—to the Australian Antarctic Territory.

The law in force on Christmas Island includes Commonwealth Acts which extend to the island, Christmas Island Ordinances and Western Australian laws. **Item 25** provides that Chapter 2 applies to all offences created by the *Christmas Island Act 1958*. An example of such an offence is attempting to corrupt a juror [section 12B(3), Christmas Island Act].

**Items 26 and 27** remove the words ‘without reasonable excuse’ from subsection 12B(1) of the Christmas Island Act and relocate them in a new subsection so it is clear that they are words of defence and not an element of the offence which would have to be proved by the prosecution. **Item 28** rewords the offence of impersonating a juror contained in subsection 12B(2), in part by omitting the words ‘for the purpose’. This is an ambiguous non-Code expression. The Code fault element, ‘intention’ is inserted in their place. **Item 30** removes the statutory defence of lawful authority in paragraph 12B(3)(b) of the...
Christmas Island Act. A general defence of lawful authority is provided by section 10.5 of the Criminal Code.

Item 25 also provides that Chapter 2 will not apply to, or in relation to matters arising under, a law in force on Christmas Island because of section 8A of the Christmas Island Act. Section 8A applies Western Australian laws to Christmas Island.

Cocos (Keeling) Islands are located in the Indian Ocean about 2,700 km northwest of Perth. The law in the Cocos (Keeling) Islands includes Commonwealth laws extending either expressly or impliedly to the islands, Ordinances made by the Governor-General and Western Australian laws. Item 32 applies Chapter 2 to all offences created by the Cocos (Keeling) Islands Act 1955. An example of such an offence is impersonating a juror [subsection 15AE(3), Cocos (Keeling) Islands Act]. Amendments effected by items 33-37 make similar changes to offences relating to jurors as are made by amendments to the Christmas Island Act (see above). The amendments also provide that Chapter 2 will not apply to, or in relation to matters arising under, a law in force on Cocos (Keeling) Islands because of section 8A of the Cocos (Keeling) Islands Act (item 32). Section 8A is the provision which applies Western Australian laws to Cocos (Keeling) Islands.

Item 39 provides that Chapter 2 does not apply to, or in relation to matters arising under, a law in force in Heard Island or McDonald Islands under subsections 5(1) or (2) of the Heard Island and McDonald Islands Act 1953. These subsections apply Jervis Bay Territory laws—for the most part, ACT laws—to the Territory of Heard Island and McDonald Islands.

The Jervis Bay Territory covers an area of about 70 square km and is situated about 160 km south of Sydney. Laws in force in the Jervis Bay Territory include ACT laws and Ordinances made by the Governor-General. Item 40 provides that Chapter 2 does not apply to, or in relation to matters arising under, a law in force in the Jervis Bay Territory under section 4A of the Jervis Bay Territory Acceptance Act 1915. Section 4A is the provision that applies ACT laws to the Jervis Bay Territory.

Norfolk Island is a self-governing territory. Its laws include Commonwealth Acts extending to Norfolk Island, Ordinances made by the Governor-General and laws made by the Norfolk Island Legislative Assembly under the Norfolk Island Act 1979. Item 41 applies Chapter 2 to all offences against the Norfolk Island Act. Item 42 provides that an offence against subsection 51E(4) of the Norfolk Island Act is a strict liability offence. This is an offence of contravening a requirement to provide information to the Norfolk Island Auditor.

Schedule 5—Amendment of road transport legislation

Items 1-3 of Schedule 5 provide that Chapter 2 does not apply to, or in relation to matters arising under, offences created by the following statutes:
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001

- Road Transport Reform (Dangerous Goods) Act 1995
- Road Transport Reform (Heavy Vehicles Registration) Act 1997

The Explanatory Memorandum states that these statutes have been temporarily exempted from the application of the Chapter 2 because they form part of Commonwealth, State and Territory cooperative schemes which need to be amended in concert, something which is done after a recommendation from the National Road Transport Commission (NTRC) and an endorsement by the relevant Ministerial Council. The Explanatory Memorandum states that the Commonwealth will refer the question of amending the statutes to the NTRC.

Endnotes

1 Two of the statutes amended—the Australian Antarctic Territory Act 1954 and the Heard Island and McDonald Islands Act 1953—are administered by the Environment and Heritage portfolio. The rest are administered by the Transport and Regional Services portfolio.

2 Criminal Code, section 4.1.

3 Criminal Code, section 4.3.

4 ‘Knowledge’ is not a default fault element but can be applied to the physical elements of circumstance and result—see Criminal Code, section 5.3. ‘Negligence’ is not a default fault element but can be applied to a physical element of an offence—see Criminal Code, section 5.5.

5 Criminal Code, section 5.6. If ‘recklessness’ is the fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy the fault element—Criminal Code, subsection 5.4(4).

6 Criminal Code, subsection 5.1(1).

7 Criminal Code, section 5.6.

8 See item 21 of Schedule 4 which omits the expression, ‘maliciously or fraudulently’ from section 15 of the Canberra Water Supply (Googong Dam) Act 1974.

9 This is the ‘golden thread’ of English criminal law referred to in Woolmington v. DPP (1935) AC 462.

10 Criminal Code, subsection 13.1(3).

11 Criminal Code, subsection 13.3(1).

12 Criminal Code, subsection 13.3(6).

13 Criminal Code, sections 13.4 and 13.5.


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.
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.