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Bills Digest

No. 66 2001–02

Employment, Workplace Relations and Small
Business Legislation Amendment (Application of
Criminal Code) Bill 2001

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Employment, Workplace Relations and Small Business
Legislation Amendment (Application of Criminal Code) Bill
2001

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Law and Bills Digest Group
25 September 2001

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Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001

Date Introduced: 23 August 2001

House: House of Representatives

Portfolio: Employment, Workplace Relations and Small Business

Commencement: Mainly the day after the Act receives Royal Assent

Purpose

The Bill's main purpose is to revise criminal offence provisions in legislation administered by the Department of Employment, Workplace Relations and Small Business in the light of uniform principles of criminal responsibility contained in Chapter 2 of the Criminal Code.

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— *Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001*, *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, *Environment and Heritage*

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Legislation Amendment (Application of Criminal Code) Act 2001, Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001, Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001, Health and Aged Care Legislation Amendment (Application 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, Migration Legislation Amendment (Application of Criminal Code) Act 2001, Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001, Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Act 2001, Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001, Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001, and Veterans' Affairs Legislation Amendment (Application of Criminal Code) Act 2001.

Currently before the Parliament are the Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Bill 2001, Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001, Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001, Defence Legislation Amendment (Application of Criminal Code) Bill 2001 and the present Bill.

Some major aspects of criminal responsibility relevant to the Employment, Workplace Relations and Small Business 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.

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The Bill amends a number of offence provisions within Employment portfolio legislation so that their constituent fault and physical elements correspond with the scheme supplied by the Criminal Code.

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 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 inserts standard notes after those offence provisions which present defences so as to indicate the defendant bears an evidential burden if s/he wishes to rely upon such a defence.

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.⁹ 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.¹⁰ 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.¹¹ The Bill identifies some physical elements of offences as attracting strict liability.

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

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to where strict liability is applied to some of their physical elements.¹² The Code does not prevent defences other than mistake of fact applying.¹³

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.

The Minister's Second Reading Speech notes that the Bill does not change the criminal law but rather ensures the current law is maintained following application of the Criminal Code.¹⁴ As with other 'application of criminal code' Bills, the Senate Standing Committee for the Scrutiny of Bills has requested an assurance from the Minister that no new strict liability offences are created by the Bill.¹⁵

Corporate criminal responsibility

In general, the Bill applies Chapter 2 to all offence provisions in relevant legislation administered by the Department of Employment, Workplace Relations and Small Business. 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.'¹⁶

For a discussion of the issue of corporate criminal responsibility, see *Bills Digest No. 20, 2001-02*.¹⁷

Defences

Defences to criminal offences are usually external to the physical and fault elements of offences and to offences themselves.¹⁸ 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 away 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

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constituent physical elements are clearly identified and the Code's default fault elements can be applied to them.

Ancillary offences

Many Commonwealth statutes contain references to provisions in the *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 contains amendments removing references to the Crimes Act and replacing them with references to the Criminal Code.

Additionally, some Commonwealth statutes themselves contain provisions creating ancillary offences. These provisions will no longer be necessary once the Criminal Code is applied as it contains ancillary offence provisions. The Bill therefore removes ancillary offence provisions from statutes administered by the Department of Employment, Workplace Relations and Small Business. Equivalent Criminal Code provisions will take their place.

Main Provisions

Amendments to the *Building Industry Act 1985*

Item 1 applies the principles of criminal responsibility contained in Chapter 2 of the Criminal Code to all offences against the Building Industry Act.

Amendments to the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*

Items 2-9 amend sections of the Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 2**)
- identify offences as offences of strict liability (**items 3, 4 and 6**)
- relocate and re-phrase the defence of reasonable excuse (**items 5 and 6**)
- relocate and re-phrase other defences (**items 8 and 9**)
- reword an offence provision so that the fault element of knowledge applies to the physical elements of circumstance rather than the physical element of conduct (**item 7**), and

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- insert a standard note after the offence provision which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 6 and 9**).

Amendments to the *Equal Opportunity for Women in the Workplace Act 1999*

Items 10-14 amend sections of the Equal Opportunity for Women in the Workplace Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 10**), and
- relocate and re-phrase the elements of excuse so it is clear they are defences and not elements of the offence which would have to be proved by the prosecution (**items 11-14**).

Amendments to the *Industrial Chemicals (Notification and Assessment) Act 1989*

Items 15-57 amend sections of the Industrial Chemicals (Notification and Assessment) Act. These amendments relate to the following matters.

Application of Chapter 2 of the Criminal Code

Item 15 applies Chapter 2 of the Criminal Code to all offences against the Industrial Chemicals (Notification and Assessment) Act.

Strict liability

Items 45 and 49 identify offences against subsections 80QD(1) and 85(2) respectively, as offences of strict liability. 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. In addition, **items 35, 38, 44, 47 and 54** identify certain physical elements of offence provisions as offences of strict liability. For example, **item 35** identifies strict liability in relation to the physical element of conduct that the importer, manufacturer (subsection 61(4)) or person (subsection 61(5)) failed to comply with a notice from the Minister to prohibit an activity in relation to a chemical because of an unacceptable risk of adverse health or environmental risks. The maximum penalty for this offence is \$30,000 for an importer or manufacturer and \$24,000 for an individual. The Explanatory Memorandum argues that while these penalties are high, this offence is suitable for the application of strict liability because the subject matter being regulated is that of chemical substances which pose unacceptable risks and is typically the type of regulatory provision where strict liability is applied.¹⁹

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Re-structuring offences to clearly identify their constituent physical elements

Items 22 and 23 restructure and reword subsections 21L(4) and 21W(5) to clearly identify the physical elements of conduct and result in the offences. Identification of the physical elements of the offence will allow the relevant default fault elements (ie, intention and recklessness) to be applied by the Criminal Code.

Inappropriate fault elements

Items 16, 17, 24, 27, 28, 36, 39, 40 and 41 remove the words 'knowingly or recklessly' from offence provisions. The Explanatory Memorandum explains that following application of the Criminal Code, it will not be possible to apply a fault element of knowledge or recklessness to a physical element consisting of conduct. Intention will be the default fault element of conduct.

Other amendments

Other amendments are designed to:

- relocate and re-phrase the defence of reasonable excuse so it is clear it is a defence and not an element of the offence which would have to be proved by the prosecution (**items 22, 25, 26, 30-35, 37, 38, 43, 44, 46, 47, 51, 52 and 53**)
- relocate and re-phrase other defences so it is clear that they are defences and not elements of the offence which would have to be proved by the prosecution (**items 17, 18, 29 and 42**)
- insert a standard note in the offence provisions which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 18-21, 26, 29, 31, 33, 35, 38, 42, 44, 47, 52 and 54**). 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.²⁰
- remove a reference to an ancillary offence provision in the Crimes Act and replace it with a reference to the equivalent offence provision in the Criminal Code (**item 48**), and
- repeal subsections 109(1) and (2) dealing with corporate criminal responsibility (**items 55-57**).

Amendments to the *National Occupational Health and Safety Commission Act 1985*

Items 58-70 amend sections of the National Occupational Health and Safety Commission Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 58**)

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- relocate and re-phrase the defence of reasonable excuse so it is clear it is a defence and not an element of the offence which would have to be proved by the prosecution (**items 60, 62, 63, 64, 67 and 69**)
- relocate and re-phrase other defences so it is clear that they are defences and not elements of the offence which would have to be proved by the prosecution (**items 61, 62, 68 and 69**)
- insert a standard note in the offence provisions which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 62, 64 and 69**). 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 exist²¹.
- remove a reference to procuring an offence against paragraphs 52(1)(b) and (c) (**item 66**). An equivalent Criminal Code provision, section 11.2, will automatically take its place, and
- remove a reference to an ancillary offence provision in the Crimes Act and replace it with a reference to the equivalent offence provision in the Criminal Code (**item 59**).

Amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

Items 71-88 amend sections of the Occupational Health and Safety (Commonwealth Employment) Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code—apart from Part 2.5 which deals with corporate criminal responsibility—to all offences against the Act (**item 72**)
- relocate and re-phrase the defence of reasonable excuse so it is clear it is a defence and not an element of the offence which would have to be proved by the prosecution (**items 73-79, 81-83, 85 and 87**)
- relocate and re-phrase other defences so it is clear that they are defences and not elements of the offence which would have to be proved by the prosecution (**items 80 and 81**)
- insert a standard note in the offence provisions which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 74, 76, 78, 81, 83 and 87**). 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 exist²².

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- restructure and reword offence provisions to clearly identify the physical elements of conduct and result in the offences (**items 84 and 88**). Identification of the physical elements of the offence will allow the relevant default fault elements (ie, intention and recklessness) to be applied by the Criminal Code.
- remove a reference to an ancillary offence provision in the Crimes Act and replace it with a reference to the equivalent offence provision in the Criminal Code (**item 71**), and
- remove the words 'wilfully and recklessly' from an offence provision (**item 85**).

Amendments to the Occupational Health and Safety (Commonwealth Employment) Amendment Act 2001

Items 89-97 will only take effect if the amendments made to the Occupational Health and Safety (Commonwealth Employment) Act (see above) commence before the Occupational Health and Safety (Commonwealth Employment) Amendment Act 2001.

Amendments to the Occupational Health and Safety (Maritime Industry) Act 1993

Items 98-110 amend sections of the Occupational Health and Safety (Maritime Industry) Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 98**)
- identify the offence in subsection 85(3) as an offence of strict liability (**item 100**)
- relocate and re-phrase the defence of reasonable excuse so it is clear they are defences and not elements of the offence which would have to be proved by the prosecution (**items 101-105 and 107**), and
- insert a standard note after offence provisions which present defences of reasonable excuse, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 102, 104, 105 and 107**). 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.²³

Amendments to the Safety, Rehabilitation and Compensation Act 1988

Items 111-115 amend sections of the Safety, Rehabilitation and Compensation Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 111**), and

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- identify offences as offences of strict liability (**items 112-115**).

*Amendments to the Safety, Rehabilitation and Compensation and Other Legislation
Amendment Act 2001*

Items 116-118 make minor consequential amendments to the Safety, Rehabilitation and Compensation Amendment Act. These are consequential to the amendments made by **items 112 and 113** of the Bill.

Amendments to the Seafarers Rehabilitation and Compensation Act 1992

Items 119-132 amend sections of the Seafarers Rehabilitation and Compensation Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 119**)
- identify offences as offences of strict liability (**items 120-122, 124-127 and 129-132**)
- relocate and re-phrase the defence of reasonable excuse so it is clear they are defences and not elements of the offence which would have to be proved by the prosecution (**items 123, 124, 128 and 129**), and
- insert a standard note after offence provisions which present defences of reasonable excuse, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 124 and 129**). 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.²⁴

*Amendments to the Seafarers Rehabilitation and Compensation Levy Collection Act
1992*

Items 133-139 amend sections of the Seafarers Rehabilitation and Compensation Levy Collection Act. These amendments are designed to:

- apply Chapter 2 of the Criminal Code to all offences against the Act (**item 133**)
- identify the offence in subsection 14(5) as an offence of strict liability (**item 139**)
- identify the physical element of circumstance in the offences in subsections 7(1) and (2) as strict liability (**items 135 and 136**)
- relocate and re-phrase the defence of reasonable excuse so it is clear they are defences and not elements of the offence which would have to be proved by the prosecution (**items 134-139**)

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- insert a standard note after offence provisions which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 135, 137 and 139**). 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,²⁵ and
- remove the fault element of knowledge from an offence provision (**item 136**).

Amendments to the *Workplace Relations Act 1996*

Items 140-205 amend sections of the Workplace Relations Act. These amendments relate to the following matters.

Application of Chapter 2 of the Criminal Code

Item 140 applies Chapter 2 of the Criminal Code—apart from Part 2.5 which deals with corporate criminal responsibility—to all offences against the Act.

Strict liability

Items 142, 146, 156, 176-179, 181, 183, 184-189, 190, 195, 196, 199 and 201 identify certain offences against the Workplace Relations Act as offences of strict liability. 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. In addition, **items 150, 155, 158, 189 and 194** identify certain physical elements of offence provisions as offences of strict liability. For example, **item 150** identifies strict liability in relation to the physical element of conduct that the person fails to be sworn, fails to answer a question or fails to produce a document (paragraphs 303(1)(b), (c) and (d)). The Explanatory Memorandum explains that factors such as the low penalty and regulatory nature of the offence support identification of this offence as one that attracts strict liability.²⁶

The defence of lawful excuse

Items 160, 163, 165, 166, 170, 173 and 175 omit the defence of lawful authority from offence provisions in the Workplace Relations Act. A general defence of lawful authority will be provided by section 10.5 of the Criminal Code.

Re-structuring offences to clearly identify their constituent physical elements

Items 161-162, 171 and 172 restructure and reword offence provisions to clearly identify the physical elements of conduct and result in the offence. Identification of the physical elements of the offence will allow the relevant default fault elements (ie, intention and recklessness) to be applied by the Criminal Code.

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Inappropriate fault elements

Item 159 removes the words 'knowingly and recklessly' from section 314A. The Explanatory Memorandum explains that following application of the Criminal Code, it will not be possible to apply a fault element of knowledge or recklessness to a physical element consisting of conduct. Intention will be the default fault element of conduct. **Items 200 and 202** reword section 337 and subsection 340(1) respectively, to also remove the fault element of knowledge. **Item 148** removes the word 'wilfully' from paragraph 299(1)(a) because it is a non-Code expression.

Other amendments

Other amendments are designed to:

- relocate and re-phrase the defence of reasonable excuse so it is clear it is a defence and not an element of the offence which would have to be proved by the prosecution (**items 141, 149, 150, 151, 152, 153, 154, 182, 183, 191, 194, 197 and 198**)
- relocate and re-phrase other defences so it is clear that they are defences and not elements of the offence which would have to be proved by the prosecution (**items 158, 168 and 169**)
- insert a standard note in the offence provisions which present defences, that the defendant bears an *evidential burden* if s/he wishes to rely upon such defences (**items 142, 150, 152, 154, 158, 183, 194 and 198**). 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 exist²⁷, and
- remove the ancillary offence of 'procuring' an offence from offence provisions of the Act (**item 164, 167, 169 and 174**). This will no longer be necessary once the Criminal Code is applied as section 11.2 of the Code creates an offence of aiding, abetting, counselling or procuring the commission of an offence by another person.

Amendments to the Workplace Relations (Registered Organisations) Act 2001

Application of Chapter 2 of the Criminal Code

Item 205 applies Chapter 2 of the Criminal Code to all offences against the Workplace Relations (Registered Organisations) Act.

The defence of lawful excuse

Items 207, 211, 213, 215, 219, 221-223, 226, 230, 231, 233, 234 and 243 omit the defence of lawful authority from offence provisions in the Workplace Relations (Registered Organisations) Act. A general defence of lawful authority will be provided by section 10.5 of the Criminal Code.

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Ancillary offences

Items 212, 222 and 230 remove the ancillary offence of 'procuring' an offence from provisions in the Act. These will no longer be necessary once the Criminal Code is applied as section 11.2 of the Code creates an offence of aiding, abetting, counselling or procuring the commission of an offence by another person.

Strict liability

Items 206, 214, 224, 225, 235, 236, 238 and 242 identify a number of offences against the Workplace Relations (Registered Organisations) Act as offences of strict liability. 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.

Re-structuring offences to clearly identify their constituent physical elements

Items 209, 210, 217, 218, 220, 228, 229 and 237 restructure and reword a number of offence provisions to clearly identify the physical elements of conduct and result in the offences. Identification of the physical elements of the offence will allow the relevant default fault elements (ie, intention and recklessness) to be applied by the Criminal Code.

Other amendments

Other amendments are designed to:

- relocate and re-phrase the defence of 'inability to comply', so it is clear it is a defence and not an element of the offence which would have to be proved by the prosecution (**item 225**)
- insert a standard note in the offence provision which presents this defence, that the defendant bears an *evidential burden* if s/he wishes to rely upon such a defence (**item 225**). 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 exist²⁸.
- remove the fault element of knowledge from an offence provision (**item 243**), and
- remove the words 'intentionally' and 'recklessly' from an offence provision (**item 240**).

Amendments to the *Workplace Relations (Registered Organisations) (Consequential Provisions) Act 2001*

Item 49 of Schedule 1 of the Workplace Relations (Registered Organisations) (Consequential Provisions) Bill 2001 proposes to substitute new subsections 316(1) and (2) into the *Workplace Relations Act 1996*.

Warning:

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Item 244 of the Bill restructures and rewords these new subsections 316(1) and (2) in several ways. It:

- replaces the concept of 'refuse or fail' with the concept of a person not complying with the relevant requirements
- identifies new paragraph 316(1)(a) as an offence of strict liability, and
- creates a defence of reasonable excuse in relation to this offence of strict liability.

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 in *Woolmington v. DPP* (1935) AC 462.
- 5 Criminal Code, subsection 13.1(3).
- 6 Criminal Code, subsection 13.3(1).
- 7 Criminal Code, subsection 13.3(6).
- 8 Criminal Code, sections 13.4 and 13.5.
- 9 *He Kaw Teh v R* (1985) 157 CLR 523.
- 10 Criminal Code, subsection 6.1(1).
- 11 Criminal Code, subsection 6.1(2).
- 12 Criminal Code, paragraphs 6.1(1)(b) and 6.1(2)(b).
- 13 Criminal Code, subsection 6.1(3).
- 14 Second Reading Speech, *Parliamentary Debates (Hansard)*, 23 August 2001, p.30094.
- 15 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest, No. 11 of 2001*, 22 August 2001, p. 9.
- 16 Second Reading Speech, Senate, *Parliamentary Debates (Hansard)*, 30 June 1994, p. 2381.
- 17 James Prest, *Bills Digest No. 20, 2001–02*, Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Bill 2001.
- 18 Matthew Goode, 'The Modern Criminal Code Project', *Australian Law Librarian*, 5(4), December 1997, pp. 267–76 at p. 267.
- 19 *Explanatory Memorandum*, p. 17.
- 20 Criminal Code, subsection 13.3(6).

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- 21 Criminal Code, subsection 13.3(6).
- 22 Criminal Code, subsection 13.3(6).
- 23 Criminal Code, subsection 13.3(6).
- 24 Criminal Code, subsection 13.3(6).
- 25 Criminal Code, subsection 13.3(6).
- 26 *Explanatory Memorandum*, pp. 40–41.
- 27 Criminal Code, subsection 13.3(6).
- 28 Criminal Code, subsection 13.3(6).

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