



Bills Digest

No. 89 2001-02

Criminal Code Amendment (Anti-hoax and Other
Measures) Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2002

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2002

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. 89 2001-02

Criminal Code Amendment (Anti-hoax and Other
Measures) Bill 2002

Jennifer Norberry
Law and Bills Digest Group
6 March 2002

Contents

Purpose.....	1
Background.....	1
Existing Commonwealth postal offences	1
State and Territory laws.....	2
11 September 2001	2
Anthrax	2
Government and Opposition responses to anthrax scares	3
New State and Territory laws	4
Main Provisions	4
Commonwealth constitutional power.....	4
Hoaxes—explosives and dangerous substances	5
Using a postal or similar service to make a threat.....	5
Using a postal or similar service to menace, harass or cause offence.....	6
Causing dangerous articles or explosives to be carried by post	6
Geographical jurisdiction and the new offences.....	8
Concluding Comments.....	8
Retrospective criminal laws.....	8
The definition of 'postal and similar services'	9
An ambiguity?	9
Endnotes.....	10

Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002

Date Introduced: 13 February 2002

House: House of Representatives

Portfolio: Attorney-General

Commencement: Schedule 1 which creates an offence entitled 'Hoaxes—explosives and dangerous substances' commences at 2pm on 16 October 2001. Schedule 2 which repeals some existing offences relating to postal services and creates new offences commences on Royal Assent.

Purpose

To reform a number of Commonwealth laws relating to postal offences—in part, to extend the application of those offences to commercial postal services and to increase penalties. The commencement of one reformulated offence is backdated to 2pm on 16 October 2001—the date of the Prime Minister's announcement that new anti-hoax legislation would be introduced if the Coalition was returned to Government.¹

Background

Existing Commonwealth postal offences

Postal offences are found in a number of Commonwealth statutes. Offences in Part VIIA of the *Crimes Act 1914* (Cwlth) relate to postal services provided by Australia Post—including forging postal stamps, improper use of postal services, causing dangerous things to be carried by post, and using postal services to send hoax explosives.² Offences are also contained in the Criminal Code which was relevantly amended by the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Act 2000* (Cwlth). This Act repealed a number of then existing postal offences and inserted reformulated offences—such as stealing or receiving stolen mail articles and tampering with mail-receptacles—into Part 10.5 of the Commonwealth Criminal Code. There is also a small number of offence provisions in the *Australian Postal Corporation Act 1989*.³

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.

State and Territory laws

There are constitutional limits on the Commonwealth's power to make criminal laws.⁴ As a result, most criminal offences are found in State and Territory laws. Offences contained in the Bill criminalise the use of postal and similar services to perpetrate hoaxes or send dangerous goods. However, State and Territory laws may also apply to such conduct. A number of individuals have already been charged under State laws in relation to post-11 September hoaxes.⁵

Depending on the circumstances, a wide range of State and Territory offences could be relevant when a person threatens public safety or engages in a hoax designed to cause public alarm or other damage. Potentially relevant offences include murder, assault, sabotage, endangering a person's safety, extortion, damaging property, threatening to injure a person or property, creating a public mischief and making a false report to police.⁶

Additionally, most Australian States and Territories have anti-hoax and contamination of goods offences in their Crimes Acts or Criminal Codes. For example, contamination of goods offences attract penalties of up to 21 years imprisonment and/or a fine in Tasmania⁷, 15 years imprisonment in South Australia⁸, 10 years imprisonment in the Northern Territory⁹, the Australian Capital Territory¹⁰ and New South Wales¹¹, and 10 years imprisonment and/or a fine of 1200 penalty units in Victoria.¹² Making false statements about the contamination of goods attracts penalties of up to 21 years in Tasmania¹³, 10 years in the Northern Territory¹⁴, the ACT¹⁵, South Australia¹⁶ and NSW¹⁷, and 10 years imprisonment and/or 1200 penalty units in Victoria.¹⁸ Bomb hoaxes attract a penalty of up to 5 years imprisonment and/or 600 penalty units in Victoria.¹⁹ In the ACT, it is an offence to make an untrue representation that persons or property are in danger.²⁰ The maximum penalty is imprisonment for 5 years. In Queensland, the Criminal Code imposes penalties of up to 7 years imprisonment for making hoax threats about bombs or the contamination of goods.²¹ In the aftermath of September 2001 and concerns about bioterrorism new offences were created under State law. These are described below.

11 September 2001

The Bill is part of the Government's foreshadowed package of anti-terrorism laws.²² Other parts of the package include enhanced powers for ASIO, a general offence of terrorism, an offence of preparing for or planning terrorist acts, and a statutory scheme to allow certain property to be frozen and seized.²³

Anthrax

Following the attacks on the World Trade Center and the Pentagon on 11 September 2001, there were a number of incidents involving the use of anthrax—particularly in the United States, but also in Europe, Africa, the Bahamas, and Pakistan.²⁴ Most of these incidents involved contaminated mail.²⁵ Amid concerns about bioterrorism, there was considerable

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.

public alarm about 'suspicious' postal items in Australia and a number of hoaxes were perpetrated involving letters supposedly contaminated with anthrax. In the period 15-16 October 2001, there were 131 suspicious packages or letters reported to the police in Australia. On 16 October 2001, the Attorney-General said that 'Of these, 49 have been investigated and the reported incident was groundless, six have been confirmed as hoaxes and 76 are still being investigated by State and Territory authorities'.²⁶ Public alarm about anthrax was not confined to postal articles. In late-October 2001, white powder was found in the University of Canberra, the Australian National Gallery, and the Qantas baggage handling area at Canberra Airport resulting in evacuations, decontaminations, quarantining and other disruptions.²⁷ Between 11 September 2001 and February 2002, it is reported that Australian police investigated more than 1000 anthrax hoaxes.²⁸

Government and Opposition responses to anthrax scares

Public alarm about bioterrorism saw the Commonwealth Attorney-General issuing a media release in October 2001, advising Australians to remain 'calm but cautious'. He also published a fact sheet about handling mail and packages and directing the community to information about the anthrax bacteria and the preparedness of Australia's health and emergency services.²⁹

On 16 October 2001, the Prime Minister said:

The Coalition is deeply concerned about the escalating number of security incidents around the country involving packages or letters that have been suspected of containing hazardous material. Most of the incidents have proven to be false alarms. This has caused great fear among those who handled and received the material. It has also cost emergency services a great deal of time and money and diverted these important resources from dealing with real threats to people and property. ...

I announced on 2 October that the Coalition will introduce a package of new anti-terrorism laws to deal with the new security and intelligence environment in the wake of the September 11 attacks on the United States. This new legislation will specifically cover situations where a chemical, biological or radiological substance (such as anthrax) is sent and includes stiff new maximum penalties of life imprisonment.

In response to the growing number of hoaxes around Australia, we will also introduce new anti-hoax legislation designed to specifically target those who seek to terrorise others by exploiting their fear of terrorism.

The new criminal hoax offence will make it a federal criminal offence to cause an article to be carried by post, courier service, or prescribed method of delivery with the intention of inducing a false belief or fear that the article consists of, encloses or contains an explosive or a dangerous or chemical, biological or radiological substance; or that an explosive, or a dangerous or chemical, biological or radiological substance, is or will be left in any place.

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.

The maximum penalty will be 10 years jail and the offence will operate from the time of this announcement.³⁰

On the same day, Shadow Attorney-General, Robert McClelland, stated that 'Labor welcomes the Coalition Government's announcement today that it will support new laws to penalise people who send hoax material through the post'.³¹ In February 2002, Senator John Faulkner was reported as saying that 'the Opposition would examine the bill closely before agreeing to pass it through the Senate'.³²

New State and Territory laws

In October 2001, Victorian Premier Steve Bracks promised new legislation to make those responsible for bioterrorism scares and hoaxes pay for the costs of any emergency services response. Tougher measures were also flagged by the ACT, New South Wales and Western Australia.³³

The *Sentencing (Emergency Services) Act 2001* (Vic) amends a number of offence provisions in Victorian law—such as contaminated goods offences, bomb hoax offences and making false reports to the police—so that a court can order people convicted of those offences to pay the reasonable costs of emergency services responses. New legislation in New South Wales—the *Criminal Legislation Amendment Act 2001*—criminalises conveying false information that people or property are in danger. The penalty is 5 years imprisonment.³⁴ In Western Australia, the *Criminal Code Amendment Act 2001* created offences of making statements or doing things which create a false apprehension of threats or danger. Where the threat is to kill a person, the maximum penalty is 10 years imprisonment. The Act also enables the cost of investigating a hoax to be recovered from the offender.³⁵ On 11 December 2001, a Bill was introduced into the ACT Legislative Assembly to insert new provisions into the *Crimes Act 1900* (ACT) relating to serious hoaxes designed to create public alarm or anxiety.³⁶ The Bill passed the Legislative Assembly on 5 March 2002.

Main Provisions

Commonwealth constitutional power

Offences in the Bill are generally expressed to relate to 'postal or similar services'. This expression is defined in terms of both the type of service (eg postal or courier services) and Commonwealth constitutional power.

Items 1 and 2 of Schedule 1 are designed to ground the offences contained in the Bill in heads of Commonwealth Constitutional power—particularly, sections 51(v) which deals with posts and telecommunications; section 51(xx) which deals with corporations; section 51(i) which deals with interstate and overseas trade and commerce; and section 122 which

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.

is the Territories power. Offences relating to certain postal, courier, packet and parcel carrying services will be caught by the Bill. For example, a postal, courier, packet or parcel service provided by a 'constitutional corporation'³⁷ or in the course of interstate trade or commerce is defined as a 'postal or similar service' for the purposes of the Bill. It is important to note that the definition of 'postal and similar services' is relevant only to the offences created by the Bill and not to existing Part 10.5 offences in the Criminal Code. Existing Part 10.5 offences will continue to be limited to services provided by Australia Post.

Hoaxes—explosives and dangerous substances

Item 4 of Schedule 1 inserts **new section 471.10** into the Criminal Code. **New section 471.10** replaces existing section 85Y which is repealed from the date of Royal Assent (**clause 2 and item 3 of Schedule 2**).³⁸ **New section 471.10** is an offence of using a 'postal or similar service' to carry an article with the intention of inducing a false belief that:

- it contains an explosive or a dangerous or harmful substance, or
- an explosive or a dangerous or harmful substance has been left somewhere.

The maximum penalty is imprisonment for 10 years.³⁹

There are a number of differences between existing section 85Y and **new section 471.10**:

- the existing offence is limited to articles carried by Australia Post whereas the new offence extends to commercial 'postal and similar services'
- the penalty for the offence is increased from a maximum of 5 years imprisonment to a maximum of 10 years imprisonment
- the new offence refers to 'an explosive or a dangerous or harmful substance or thing' instead of, as at present, 'an explosive or a dangerous or deleterious substance'.

New section 471.10 is deemed to have commenced at 2pm on 16 October 2001 (**clause 2**). This is the date of a statement in which the Prime Minister said that, if re-elected, his Government would introduce legislation for such an offence.

Using a postal or similar service to make a threat

New section 471.11 is inserted by **item 4 of Schedule 2** and criminalises two things. First, it will be an offence to use a 'postal or similar service' to threaten to kill another person or persons with the intention of making that person or those persons fear that the threat will be carried out [**new subsection 471.11(1)**]. The maximum penalty is 10 years imprisonment. **New subsection 471.11(2)** criminalises the use of a 'postal or similar service' to threaten serious harm to another person or persons with the intention of making

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.

the victim fear that the threat will be carried out. The maximum penalty is 7 years imprisonment. These are new offences ie they do not replace existing Crimes Act offences. **New section 471.11** commences on Royal Assent (**clause 2**).

Using a postal or similar service to menace, harass or cause offence

New section 471.12 is an offence of using a 'postal or similar service' to menace, harass or cause offence. It replaces existing section 85S of the Crimes Act which is repealed from the date of Royal Assent as a result of **clause 2** and **item 1 of Schedule 2**. The differences between the old and new offences are that the maximum penalty is increased from 1 year to 2 years imprisonment and the offence is not limited to services provided by Australia Post. Further, the proscribed action must be regarded by 'reasonable persons' as being menacing, harassing or offensive—in other words, the victim need not be menaced, harassed or offended. In contrast, under existing section 85S a person will be guilty of an offence if either:

- another person is actually menaced or harassed, or
- they use a postal service in a way that would be regarded by 'reasonable persons' as offensive.

Existing section 85S contains the word 'intentionally'. No reference is made in **new section 471.12** to a person 'intentionally' using a 'postal service or similar service' for proscribed purposes. This is because Chapter 2 of the Criminal Code supplies a default fault element of intention for physical elements of conduct in the offence.⁴⁰ Another difference between existing section 85S and **new section 471.12** is that section 85S states that absolute liability⁴¹ applies to the physical circumstance in the offence—that the service is supplied by Australia Post. This is no longer necessary because the new offence simply refers to 'postal or similar services' and is not limited to services provided by Australia Post. Finally, existing section 85S extends to 'carriage services' supplied by Australia Post. The expression 'carriage service' is defined as a service 'carrying communications by means of guided and/or unguided electromagnetic energy'.⁴² There is no reference to 'carriage services' in the new offence. However, the definition of 'carrier' found in section 85ZB⁴³ of the Crimes Act means that use of any carriage services provided by Australia Post to menace, harass or offend should be an offence against section 85ZE⁴⁴ of the Crimes Act. The maximum penalty for an offence against section 85ZE is imprisonment for one year.

New section 471.12 commences on Royal Assent (**clause 2**).

Causing dangerous articles or explosives to be carried by post

Existing section 85X identifies three categories of dangerous or deleterious substances for the purposes of the offences it contains. These are:

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.

- 'totally prohibited substances', such as explosives or prescribed substances
- 'standard regulated substances or things' which can be carried in accordance with conditions set down by Australia Post, and
- 'specially regulated substances or things'—a category of 'other dangerous or deleterious substances or things' which can be carried in accordance with Australia Post permissions and conditions.

Section 85X prohibits:

- intentionally causing something containing or consisting of a totally prohibited substance to be carried by Australia Post. Maximum penalty: imprisonment for 10 years.
- intentionally causing something containing or consisting of a 'standard regulated substance or thing' to be carried by post—except in accordance with the conditions set down by Australia Post. Maximum penalty: imprisonment for 5 years.
- intentionally causing something containing or consisting of a 'specially regulated substance or thing' to be carried by post—except in accordance with Australia Post permissions and conditions. Maximum penalty: imprisonment for 2 years.

Section 85X is repealed from the date of Royal Assent as a result of **clause 2** and **item 2 of Schedule 2**. The Bill creates two new offences in its place. The first relates to 'postal and similar services'. The second is limited to postal services supplied by Australia Post.

New section 471.13 is an offence of causing a dangerous article to be carried by a 'postal or similar service'. It provides that it is an offence to use a 'postal or similar service' in a way that results in a danger of death or serious harm to another person. The person must be reckless about such death or danger. The section then goes on to indicate when conduct will expose another person to 'a danger of death or serious harm'. Examples are conduct exposing another person to the risk of catching a disease that 'may give rise' to a danger of death or serious harm, and conduct that is ordinarily capable of creating a real rather than a theoretical danger of death or serious harm. **New subsection 471.13(5)** provides that the prosecution need not prove that a particular person was actually placed in danger of death or serious harm for the offence to occur.

New section 471.15 creates an offence of causing an explosive, a dangerous or harmful substance or a substance prescribed by regulation to be 'carried by post' ie by Australia Post. The wording of the offence provision means that certain authorised and appropriately packaged dangerous or harmful substances will continue to be able to be carried according to Australia Post conditions. The maximum penalty is 10 years imprisonment.

New sections 471.13 and 471.15 commence on Royal Assent (**clause 2**).

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.

Geographical jurisdiction and the new offences

Under the common law territoriality⁴⁵ is generally, although not always, the basis of criminal jurisdiction. Other bases for jurisdiction include the status of the offender.⁴⁶ The Criminal Code⁴⁷ preserves the principle of territoriality as the default jurisdiction for federal criminal offences⁴⁸, but also contains four categories of extended geographical jurisdiction.⁴⁹ These categories are:

- category A—applying to Australian citizens or corporations anywhere in the world, subject to a foreign law defence⁵⁰
- category B—applying to Australian citizens, corporations or residents anywhere in the world, subject to a foreign law defence⁵¹
- category C—applying to any person, anywhere in the world, subject to a foreign law defence⁵²
- category D—applying to any person, anywhere in the world, regardless of citizenship or residence, not subject to a foreign law defence.⁵³

The Bill applies category A jurisdiction—relating to Australian citizens or corporations anywhere in the world—to all the new offences except offences against **new section 471.15**.⁵⁴ The effect of **item 3 of Schedule 1** is to retain category C jurisdiction as the relevant geographical jurisdiction for existing Part 10.5 postal services offences. Category C will also apply to **new section 471.15**.⁵⁵ The reason for this is that **new section 471.15** (like existing Part 10.5 offences) is confined to offences involving postal services supplied by Australia Post—in other words one of the physical elements of each of these offences will always have an 'Australian connection'.

Concluding Comments

Retrospective criminal laws

New section 471.10, dealing with hoax explosives and dangerous substances, reformulates and extends the ambit of an existing offence and also doubles its maximum penalty. It commences retrospectively. Among the questions sometimes asked about retrospective criminal laws is whether the Commonwealth has the power to pass them and, if so, whether they can be justified.

There is a presumption against retrospective laws, including criminal laws. 'This presumption is most strictly applied in relation to Acts creating an offence because of the manifest injustice that the alternative approach would bring about...However, it, like any other presumption is rebuttable.'⁵⁶ And, subject to certain exceptions—for example, laws

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.

which usurp federal judicial power—the High Court has held that the Commonwealth Parliament has the power to pass a retrospective criminal law.⁵⁷ The *War Crimes Amendment Act 1988* is an example of such a law.⁵⁸

The Senate Standing Committee for the Scrutiny of Bills commented on a number of aspects of **new section 471.10**. One is its retrospective operation. Another is the issue of 'legislation by press release'. The Senate Committee remarked:

[New section 471.10 is] ... expressed to commence at 2pm on 16 October 2001, thus retrospectively creating a criminal offence. The justification given for this retrospectivity (as set out in the Explanatory Memorandum) is that this is the time and date at which the Prime Minister publicly announced that he would introduce such provisions.

Notwithstanding the seriousness of the conduct at which this bill is directed, the retrospective creation of a criminal offence is similarly a serious matter. The bill itself is a very clear example of "legislation by press release" – a practice which the Committee has consistently brought to the attention of Senators. As the Committee has previously noted, "the fact that a proposal to legislate has been announced is no justification for treating that proposal as if it were enacted legislation".⁵⁹

The Government's view is that the Prime Minister's announcement that new legislation would be backdated to commence on 16 October 2001 was designed to act as a deterrent in a climate where hoaxes were generating considerable public anxiety, received widespread publicity and cannot be seen as criminalising conduct that could ever have been regarded as legitimate.⁶⁰

The definition of 'postal and similar services'

The definition of 'postal and similar services' inserted by **item 2 of Schedule 1** is an exhaustive one. It lists the types of services and the constitutional heads of power that are encompassed by the definition. However, not all potential heads of constitutional power are utilised. An example is section 52(i)—places acquired by the Commonwealth for public purposes. Such places might include defence establishments and other Commonwealth places. A question which might be asked here is whether the definition of 'postal and similar services' includes all items that might be delivered between or within relevant Commonwealth places—for example, in an internal mail system of a Commonwealth department or hand-delivered by a departmental officer?⁶¹ If the answer to this question is 'no', then is it appropriate and desirable for such items to be caught by the Bill?

An ambiguity?

The definition of 'carry by post' in section 470.1 of the Criminal Code does not apply to **new sections 471.10 and 471.13**. Section 470.1 defines 'carry by post' with reference to

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.

section 4 of the *Australian Postal Corporation Act 1989*. Section 4 reads, 'an article is carried by post if it is carried by or through Australia Post'. The offences against **new sections 471.10 and 471.13** are meant to apply to services provided by Australia Post as well as to commercial postal and similar services.⁶² However, does the exclusion of the definition of 'carry by post' create an ambiguity—ie could it be read as excluding Australia Post services from the ambit of the offences? Would a more certain approach be to provide that, to avoid doubt, the words 'carried by a postal or similar service' are not limited in their meaning to the definition of 'carry by post' in section 470.1 of the Criminal Code?

Endnotes

- 1 The Explanatory Memorandum states that this was the time and date of the Prime Minister's announcement, p.2.
- 2 Part VIIA was added to the Crimes Act by the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*.
- 3 *Australian Postal Corporation Act 1989* offences deal primarily with conduct by current and former Australia Post employees.
- 4 While there is no express criminal law power in the Commonwealth Constitution, there are a number of sources of constitutional power which enable the Commonwealth to make criminal laws. These include the implied incidental power found in each head of constitutional power, the express incidental power [section 51(xxxix)] and the executive power (section 61).
- 5 See for example, 'Man faces Adelaide court over anthrax hoax', *Canberra Times*, 15 November 2001, 'Anthrax fears grip Perth. Hoax penalty', *The West Australian*, 17 October 2001.
- 6 Model Criminal Code Officers Committee, *Public Order Offences. Contamination of Goods. Report*, March 1998.
- 7 See sections 287D & 287E, Criminal Code (Tas). These offences relate to contaminating and threatening to contaminate goods with the intention of causing public alarm or economic loss. The Tasmanian Criminal Code also criminalises making false threats of danger to persons or property—section 276AA; maximum penalty—21 years imprisonment.
- 8 See section 260, *Criminal Law Consolidation Act 1935* (SA). These offences relate to activities that prejudice or cause an apprehended risk of prejudice to public health or safety. There are also offences (see section 261) of goods contamination unrelated to issues of public health and safety. These offences carry a maximum penalty of 5 years imprisonment.
- 9 See sections 148B (contaminating goods with intent to cause public alarm or economic loss) & 148C (threatening to contaminate goods with intent to cause public alarm or economic loss), Criminal Code (NT).
- 10 Sections 137 & 138, *Crimes Act 1900* (ACT).

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.

- 11 Sections 93IB & 93IC, *Crimes Act 1900* (NSW). These offences relate to contaminating and threatening to contaminate goods with intent to cause public alarm or economic loss.
- 12 See sections 249 & 250, *Crimes Act 1958* (Vic). These offences relate to contaminating and threatening to contaminate goods with intent to cause public alarm or economic loss. At the time of writing, a penalty unit was worth \$100 in Victoria.
- 13 Making false statements about contamination of goods with intent to cause public alarm or economic loss—section 287F, Tasmanian Criminal Code.
- 14 See section 148D (making false statements about the contamination of goods with intent to cause public alarm or economic loss), Criminal Code (NT).
- 15 Section 139, *Crimes Act 1900* (ACT).
- 16 See section 260 *Criminal Law Consolidation Act 1935* (SA). In the case of a hoax about the contamination of goods that is unrelated to issues of public health and safety, the maximum penalty is 5 years imprisonment (section 261, *Criminal Law Consolidation Act 1935*).
- 17 Section 93ID, *Crimes Act 1900* (NSW).
- 18 Section 251, *Crimes Act 1958* (Vic) as amended in 2001.
- 19 Section 317A, *Crimes Act 1958* (Vic).
- 20 Section 134, *Crimes Act 1900* (ACT).
- 21 Subsection 321A(2) and section 239, Criminal Code (Qld). Penalties range from 5 years to 7 years imprisonment.
- 22 Attorney-General, *News Release*, 'Cracking down on hoaxers', 13 February 2002.
- 23 *ibid.*
- 24 As at 23 November 2001, there had been 17 confirmed anthrax infections in the United States—5 victims had died and over 10,000 people were potentially exposed to the bacteria. 'Anthrax: full list of cases', *The Guardian Unlimited*, 23 November 2001.
- 25 *ibid.*
- 26 Attorney-General, *News Release*, 'Suspicious mail incidents increase due to false alarms', 16 October 2001.
- 27 'Powder scares hit airport, uni and gallery', *Canberra Times*, 23 October 2001.
- 28 'On the scent of something explosive', *The Australian*, 14 February 2002; Attorney-General, 'Cracking down on hoaxers', *News Release*, 13 February 2002. It is not clear whether these were all anthrax hoaxes or whether the numbers include reports by citizens mistakenly concerned about 'suspicious' mail items.
- 29 See Attorney-General, 'Australians urged to remain calm but cautious', *News Release*, 15 October 2001, Attorney-General, 'Fact sheet. Handling of mail and packages', 15 October 2001, Attorney-General, 'Suspicious mail incidents increase due to false alarms', *News Release*, 16 October 2001.
- 30 Prime Minister, 'New anti-hoax legislation', *Press Release*, 16 October 2001.

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.

- 31 'Labor will introduce new anti-hoax laws', *ALP News Statements*, 16 October 2001.
- 32 'On the scent of something explosive', *The Australian*, 14 February 2002.
- 33 'MPs to act on terror hoaxes', *The Age*, 17 October 2001. 'States join to combat fear by mail', *The Australian*, 17 October 2001, 'PM gets tough on hoaxers', *Canberra Times*, 17 October 2001, 'PM promises to backdate tough laws on hoaxes', *Canberra Times*, 17 October 2001.
- 34 Section 93IH, *Crimes Act 1900* (NSW)—inserted by the *Criminal Legislation Amendment Act 2001* (NSW).
- 35 Section 338C, Criminal Code (WA).
- 36 Crimes Amendment Bill 2001 (No.2).
- 37 A corporation to which section 51(xx) of the Constitution applies—see **item 1 of Schedule 1**.
- 38 The Explanatory Memorandum states that the preservation of existing section 85Y until the date of Royal Assent is to ensure that prosecutions already instituted under the existing provision are not affected. See page 6.
- 39 Section 4B of the *Crimes Act 1914* contains provisions enabling custodial sentences to be converted by a court to a fine or a fine and imprisonment.
- 40 Section 5.6, Criminal Code.
- 41 Where absolute liability attaches to a particular physical element of an offence, the prosecution need not prove fault and no defence of mistake of fact applies. Section 6.2(2), Criminal Code.
- 42 See subsection 85S(2) of the *Crimes Act 1914* and section 7 of the *Telecommunications Act 1997*.
- 43 The definition in section 85ZB includes a 'carriage service provider' within the meaning of the *Telecommunications Act 1997* and not merely licensed carriers under that Act (Australia Post is not a licensed carrier). It is thought that Australia Post falls within the definition of 'carriage service provider'.
- 44 Section 85ZE is an offence of improper use of carriage services in order to menace, harass or offend.
- 45 That is, criminal laws apply only to conduct in the territory of the particular country.
- 46 Some criminal jurisdiction is based on the status of the offender (for example, where the defendant is a member of the defence service personnel or where the victim is the Commonwealth or the offender is a Commonwealth officer). Universal jurisdiction is recognised in relation to some crimes eg war crimes. See S Bronitt & B McSherry, *Principles of Criminal Law*, LBC Information Services, 2001.
- 47 The relevant provisions were inserted by *Criminal Code (Theft, Fraud, Bribery and Related Offences) Act 2000*.
- 48 Section 14.1, Criminal Code. The default jurisdiction is called 'standard geographical jurisdiction'.

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.

- 49 Reasons for extended criminal jurisdiction were discussed in a report of the Model Criminal Code Officers Committee. The Committee said, 'Many kinds of personal or business conduct take place across national boundaries, and an intended course of conduct or a particular transaction may occur in more than one country. Sometimes extended jurisdiction needs to be asserted in the interests of effectively dealing with serious transnational crimes. Many international treaties recognise this, and in relation to particular offences call for countries to exercise jurisdiction even though the conduct in question has occurred beyond their boundaries.' *Damage and Computer Offences and Amendment to Chapter 2: Jurisdiction*, January 2001, p. 241.
- 50 It is a defence if there is no crime in the foreign jurisdiction corresponding to the Commonwealth offence. Section 15.1, Criminal Code. This is called 'Extended geographical jurisdiction—category A'.
- 51 It is a defence if the defendant is not an Australian citizen or corporation and there is no crime in the foreign jurisdiction that corresponds to the Commonwealth offence. Section 15.2, Criminal Code. This is called 'Extended geographical jurisdiction—category B'.
- 52 It is a defence if the defendant is not an Australian citizen or corporation and there is no crime in the foreign jurisdiction that corresponds to the Commonwealth offence. Section 15.3, Criminal Code. This is called 'Extended geographical jurisdiction—category C'.
- 53 Section 15.4, Criminal Code. This is called 'Extended geographical jurisdiction—category D'.
- 54 See **new section 471.14** and **item 5 of Schedule 2**.
- 55 See **new subsection 471.15(2)**.
- 56 DC Pearce & RS Geddes, *Statutory Interpretation in Australia*, 5th ed, Butterworths, 2001, p.238.
- 57 See *R v. Kidman* (1915) 20 CLR 425; *Polyukovich v. Commonwealth* (1991) 172 CLR 501.
- 58 This Act withstood constitutional challenge in *Polyukovich v. Commonwealth* (1991) 172 CLR 501, a case in which a majority of the High Court held that the Act was supported by the external affairs power and validly extended extra-territorially and retrospectively.
- 59 *Alert Digest*, No.1 of 2002, 20 February 2002.
- 60 Explanatory Memorandum, Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002, p.2.
- 61 Where conduct occurs in a place that is a place acquired by the Commonwealth for public purposes under section 52(i).
- 62 See, too, the definition of 'postal or similar service' inserted by **item 2 of Schedule 1**—especially references to section 51(v) of the Constitution.

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.