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Bills Digest
No. 84 2002–03

Crimes Legislation Amendment (People
Smuggling, Firearms Trafficking and Other
Measures) Bill 2002

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Crimes Legislation Amendment (People Smuggling,
Firearms Trafficking and Other Measures) Bill 2002

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20 January 2003

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Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002

Date Introduced: 4 December 2002

House: House of Representatives

Portfolio: Justice and Customs

Commencement: Most of the substantive provisions commence 28 days after the date of Royal Assent. Further details can be found in the Main Provisions section of this Digest.

Note: The Bill was passed by Parliament on 12 December 2002 and received Royal Assent on 19 December 2002 (Act No. 141, 2002).

Purpose

Among other things, to insert people smuggling and cross-border firearms offences into the Criminal Code.

Background

People smuggling offences

The Bill contains new people smuggling offences which will be inserted into the Criminal Code. A number of offences relating to the carriage of non-citizens into Australia are found in the *Migration Act 1958*. For instance, it is an offence:

- for the master, owner, agent, charterer and operator of a vessel to bring a non-citizen into Australia, except in certain circumstances (eg the non-citizen holds a valid visa). The maximum penalty is a fine of \$10,000.¹
- for the master, owner, agent, charterer and operator of a vessel to have a concealed non-citizen on the vessel when it enters the migration zone, except in certain circumstances. The maximum penalty is a fine of \$10,000.²

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- for a master, owner, agent and charterer of a vessel to carry a person on that vessel who becomes an unlawful non-citizen on entry into Australia because he or she does not hold a valid visa. The maximum penalty is a fine of 100 penalty units.³
- for a person to take part in bringing a non-citizen into Australia unlawfully, concealing a non-citizen with intent to enter Australia unlawfully or preventing their discovery by an official. The maximum penalty for this offence is imprisonment for 10 years or a fine of 1,000 penalty units, or both.⁴

In 1999, the Migration Act was amended⁵ to insert two additional offences:

- organising the entry into Australia of a group of 5 or more unlawful non-citizens. The maximum penalty is imprisonment for 20 years or a fine of 2,000 penalty units, or both.⁶
- using forged documents, making false statements or using documents containing false information, in connection with the entry of a group of 5 or more non-citizens into Australia or in connection with their visa applications. The maximum penalty is imprisonment for 20 years or a fine of 2,000 penalty units, or both.⁷

The *Border Protection (Validation and Enforcement Powers) Act 2001* is also relevant. Thus, in relation to the two offences inserted in 1999, it provides that:

- where the charge is proved against a person, a court cannot dismiss the charge, or discharge the person without recording a conviction, unless the person was under 18 years of age at the time the offence was committed. (This provision expressly overrides section 19B of the *Crimes Act 1914* which ordinarily allows a court a discretion to use these options, after taking into account things like character, health or extenuating circumstances.⁸)
- in relation to an adult convicted of a people smuggling offence, mandatory minimum penalties apply. For instance, a court must impose a penalty of at least 8 years imprisonment for a repeat offence and set a non-parole period of at least 5 years.⁹

The new offences proposed in the Bill apply to what might be called ‘international offences’ ie to the smuggling of people into a foreign country (whether or not via Australia), whereas existing offences in the Migration Act apply to the smuggling of people into Australia. The new offences are, in general, based on the Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention Against Transnational Organized Crime (Smuggling Protocol).

Protocol Against The Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention Against Transnational Organized Crime

Australia signed the Smuggling Protocol in December 2001 but has not yet ratified it.

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The Smuggling Protocol is not yet in force. It will come into operation on the 90th day after the date of deposit of the 40th instrument of ratification, acceptance, approval or accession, but not before the entry into force of the UN Convention Against Transnational Organized Crime.¹⁰ Its purpose is to prevent and combat the smuggling of migrants and facilitate international cooperation against human trafficking, while protecting the rights of the victims of this trade.¹¹ Some of the Protocol's provisions are summarised below.

Article 5 of the Smuggling Protocol provides that migrants shall not become liable to criminal prosecution because they are the victims of people smugglers.

Article 6 provides that each State Party is to criminalise the following conduct, when that conduct is 'committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit':

- smuggling of migrants
- producing a fraudulent travel or identity document—for the purpose of people smuggling
- procuring, providing or possessing a fraudulent travel or identity document—for the purpose of people smuggling
- enabling a person who is not a national or permanent resident to remain in the State concerned without complying with the requisite legal requirements.

The Protocol applies to the prevention, investigation and prosecution of these offences where they are transnational in nature and involve organised criminal groups.¹²

Article 6 of the Protocol also anticipates that State Parties will adopt measures to establish:

- ancillary offences, such as attempts
- aggravated offences—for example, where conduct endangers lives or safety or involves inhuman or degrading treatment.

Article 16 provides that in implementing the Protocol, each State Party:

... shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 ... as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment.

Article 16 also provides that State Parties are to take appropriate measures that:

- protect smuggled migrants from violence

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- provide appropriate assistance to migrants whose lives are endangered by the activities of people smugglers
- take into account the special needs of women and children
- comply with consular obligations under the Vienna Convention on Consular Relations, where a person who has been the victim of a people smuggler is detained.

Article 18 requires State Parties to accept the return of victims of people smuggling activity.

It appears that the Smuggling Protocol has not yet been referred to the Joint Standing Committee on Treaties for examination. It is generally the practice of the Government to refer international instruments to the Committee before action is taken to bind Australia.¹³

However, the fact that Australia is not yet a party to the Protocol should not create constitutional problems for the proposed legislation. The external affairs power found in section 51(xxix) of the Constitution enables the Commonwealth Parliament to legislate not only to implement international treaties but in relation to matters physically external to Australia and on matters of international concern.

Firearms laws

The Bill also inserts cross-border firearms trafficking offences into the Criminal Code.

Firearms laws are predominantly a State and Territory matter. This does not mean, however, that the Commonwealth has not played any role in shaping or making firearms laws.

Following the Port Arthur killings in April 1996, the Commonwealth, the States and the Territories came to a Nationwide Agreement on Firearms. The Agreement included a ban on self-loading rifles and self-loading and pump-action shotguns, and the formulation of a licensing and registration scheme for firearms in accordance with national standards. It also included a 12 month firearms amnesty and compensation scheme for gun owners and gun dealers. It was further agreed that the Commonwealth would meet the costs of compensation and fund the States and mainland Territories for establishing and administering the buyback scheme and implementing licensing and registration systems.

In the period following the May 1996 Police Ministers Meeting, the Commonwealth, the States and the Territories introduced legislation responding to the firearms agreement. Commonwealth statutes included the *Medicare Levy Amendment Act 1996* and the *National Firearms Program Implementation Act 1996*. The former increased the rate of the Medicare levy for the 1996-97 financial year in order to fund the firearms buy-back scheme. The latter appropriated money from Consolidated Revenue and empowered the Attorney-General to authorise payments to the States for the purpose of providing

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compensation to firearms owners and dealers under schemes established to implement the national firearms program.

The *National Firearms Program Implementation Act 1997* (Cwlth) extended compensation to certain automatic weapons not covered by the May 1996 Police Ministers Agreement.¹⁴ The *National Firearms Program Implementation Act 1998* (Cwlth) extended the scheme to Norfolk Island, Cocos (Keeling) Islands and Christmas Island.

Historically, the Commonwealth has also used its overseas trade and commerce power to make regulations about the importation of firearms into Australia and to legislate for firearms importation offences.

Thus, a number of Commonwealth regulations have been made in response to the Nationwide Agreement on Firearms and because of concerns about handguns in the Australian community. In 1996, Commonwealth regulations were made to increase controls on the importation of rimfire self-loading rifles and self-loading or pump action shotguns.¹⁵ Later that year, regulations were made establishing a new structure for the control of firearms importation¹⁶, tightening controls on the importation of handguns with a fully automatic firing capacity, and introducing controls on the importation of all parts, some firearm accessories and all magazines and ammunition.¹⁷

The *Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000* (Cwlth) made it an offence to import prohibited firearms into Australia and made an offender liable to a maximum penalty of 10 years imprisonment or a fine of \$250,000, or both.

In 2000 regulations designed to impose stricter controls on the importation of handguns were introduced. For example, they attempted to ensure that imported handguns would only be 'released into the community on an "as needs basis" and once a legitimate end user had been established' and they allowed only small numbers of handguns to be imported 'for dealer stock for the purposes of testing and demonstration', subject to police permission.¹⁸ These regulations also enabled firearms dealers to hold a limited number of self-loading rifles and shotguns as stock for testing and demonstration. In 2001 regulations were made extending 'the provisions for importation of handguns by firearms dealers' to 'allow dealers to hold a limited number of newly imported handguns for sale to authorised end-users or certified firearms dealers.'¹⁹ These regulations enabled dealers to apply to the Australian Customs Service for a certificate authorising them to hold 'a specified number of handguns as stock for a specified period.'²⁰

The Nationwide Agreement on Firearms dealt primarily with long arms. For some time there has been concern about the use of handguns in criminal activity in Australia.²¹ These concerns were heightened following an incident on 21 October 2002 in which a man used two pistols to kill two students and wound several others at Monash University.²²

On 28 November 2002, the Australasian Police Ministers' Council (APMC) agreed on 28 resolutions designed to tighten controls on handguns. These resolutions were endorsed by

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the Council of Australian Governments (COAG) on 6 December 2002 so that there would be a 'national approach to restrict the availability and use of handguns, particularly concealable weapons.'²³ COAG agreed that the legislative and administrative measures required should be in place by 30 June 2003. Among the matters agreed was that there would be a ban on handguns used for sports shooting purposes if they exceed specified calibres and barrel lengths and have a shot capacity of more than 10 rounds.²⁴ The Customs (Prohibited Imports) Amendment Regulations 2002 (No. 4) 2002 (No. 331), which prohibits the import of such weapons, was the Commonwealth's response to this particular part of the agreement.²⁵

The new firearms offences contained in the Bill are designed to enable the Commonwealth to prosecute those involved in the illegal interstate trade of firearms.²⁶

Main Provisions

Schedule 1—People smuggling

Schedule 1 commences on the 28th day after Royal Assent (**clause 2**).

People smuggling offences

New section 73.1 of the Criminal Code creates an offence of people smuggling. This offence will be committed when a person organises the illegal entry of another person into a foreign country ('whether or not via Australia') for a 'benefit.'²⁷ The maximum penalty is 10 years imprisonment or 1,000 penalty units, or both.

With one exception, fault elements apply to all the physical elements of this offence.²⁸ Absolute liability applies to the physical element of circumstance in the offence, that the 'other' person is not a citizen or permanent resident of the country into which he or she is being smuggled. Absolute liability means that the prosecution does not have to show that the defendant put his or her mind to this matter. Further, a defence of mistake of fact is not available to the defendant.

New section 73.2 is an aggravated offence of people smuggling. An aggravated offence will be committed where a person commits an offence of people smuggling which:

- involves an intention that the victim of the people smuggling operation will be exploited after entry to the foreign country,
- subjects the victim to cruel, inhuman or degrading treatment, or
- results in a danger of death or serious harm to the victim.

The maximum penalty for this aggravated offence is 20 years imprisonment or a fine of 2,000 penalty units, or both.

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Fault elements apply to all the physical elements in the offence created by **new section 73.2**, either expressly or by application of the default fault provisions in section 5.6 of the Criminal Code.

New section 73.3 establishes an aggravated offence of people smuggling where a person organises the illegal entry of at least 5 people into a foreign country (whether or not via Australia). Fault elements apply to all but one of the physical elements of this offence. The exception is the physical element of circumstance that the persons are not citizens or permanent residents of the foreign country. The maximum penalty is imprisonment for 20 years or a fine of 2,000 penalty units, or both.

New section 73.4 is a jurisdictional provision. It provides that the people smuggling offences created by **new sections 73.1-73.3** can only be committed if:

- the offender is an Australian citizen or resident and the proscribed conduct occurs wholly outside Australia, or
- the proscribed conduct occurs partly or wholly in Australia but the result of that conduct occurs, or is intended to occur, outside Australia.

The Attorney-General's consent is required for the prosecution of any of these people smuggling offences (**new section 73.5**).

Document offences

New sections 73.6 and 73.7 define terms such as 'identity document', 'travel document' and 'false travel or identity document.'

Document offences are created in the case of a person who:

- makes, provides or possesses a false travel or identity document (**new section 73.8**)
- provides or possesses a travel or identity document which is issued or altered dishonestly or as a result of threats (**new section 73.9**)
- provides or possesses a travel or identity document for use by a person who is not the rightful user of that document (**new section 73.10**)

In each case, the offender must have intended that the document be used to facilitate unlawful entry into a foreign country and the offender must have obtained a benefit or intended to obtain a benefit. The maximum penalty for all these offences is 10 years imprisonment or a fine of 1,000 penalty units, or both.

It will also be an offence to take or destroy another person's travel or identity document in order to conceal that person's identity, with the intention of organising their illegal entry into a foreign country for a benefit or with the intention of receiving a benefit (**new**

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section 73.11). Unlike the other document offences, this proposed offence is not based on the Smuggling Protocol.

All the document offences require fault elements to be proved for each physical element in the offences, either by the express use of a fault element (such as intention) or as a result of the application of the default fault provisions found in section 5.6 of the Criminal Code.

As a result of **new section 73.12**, the document offences to apply to conduct that occurs wholly or partly in Australia, to conduct occurring outside Australia if the result of the conduct occurs wholly or partly inside Australia, and to conduct occurring wholly outside Australia which is engaged in by an Australian citizen, resident or corporation.

Schedule 2—Cross-border firearms trafficking

Schedule 2 commences 28 days after Royal Assent (**clause 2**).

Item 1 of Schedule 2 inserts a new chapter, ‘Dangers to the community’, into the Criminal Code. The proposed cross-border trafficking offences will be part of the new chapter.

New section 360.1 defines the words ‘disposes’ and ‘acquires’ for the purposes of the new firearms offences.

New section 360.2 creates an offence of disposing or acquiring a firearm across Australian jurisdictional borders. To be guilty of the offence, a person must engage in conduct that is an offence against a prescribed State or Territory firearms law in the course of trade or commerce among the States, among the Territories or between a State and a Territory (ie the conduct must occur in the course of constitutional trade or commerce within Australia). Further, the primary element of the offence against a prescribed firearms law must involve the disposal or acquisition of a firearm.

Absolute liability applies to the elements of the offence. The Explanatory Memorandum states that ‘... the physical and fault elements of the particular State or Territory offence will be imported into the Commonwealth offence ... Absolute liability has been applied ... [to prevent a situation in which the application of the default fault elements of the Commonwealth Criminal Code would result in] a superfluous fault element to be proved on top of those already existing in the State or Territory offence.’²⁹ Absolute liability also applies to the jurisdictional element of the offence ie the prosecution need not show that the accused was aware that his or her conduct was occurring in the course of trade or commerce among the States or Territories or between a State and a Territory. Nor can the accused rely on a defence of mistake of fact.

A person will also commit an offence if he or she takes or sends a firearm across borders in the course of certain trade or commerce within Australia intending that the firearm will be disposed of and reckless about whether this will constitute an offence against a

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prescribed State or Territory firearms law (**new section 360.3**). Unlike the offence in **new section 360.2**, absolute liability is not applied to the jurisdictional element of the offence in **new section 360.3** ie the circumstance that it occurred ‘in the course of course of trade or commerce among the States, between the Territories or between a Territory and a State.’ The default fault provisions found in section 5.6 of the Criminal Code will thus apply and the prosecution will need to show that the accused was reckless about this element of the offence.

The maximum penalty for these new offences is imprisonment for 10 years or a fine of \$2,500, or both.

New section 360.4 preserves concurrent operation State and Territory laws.

Schedule 3—Other measures

With the exception of **item 23** (see below), **Schedule 3** commences 28 days after Royal Assent (**clause 2**).

Amendments to the *Crimes Act 1914*

Commonwealth offenders are sentenced in State or Territory courts and incarcerated in State or Territory prisons. However, the sentencing powers exercised by judicial officers in respect of Commonwealth offenders are found in the *Crimes Act 1914* (Cwlth).

Amendments made by **items 1-3 of Schedule 3** relate to remissions. Remissions of a person’s custodial sentence are designed to encourage good behaviour in custody.³⁰ However, since the late 1980s the idea of ‘truth in sentencing’ has resulted in the abolition of remissions in most States and Territories.

At present, the Crimes Act preserves the remission of a Commonwealth offender’s head sentence³¹ in a number of ways. It provides that where a Commonwealth offender is sentenced for a Commonwealth offence in a jurisdiction where remissions of custodial sentences are allowed, then the Commonwealth offender’s head sentence can also be remitted (section 19AA). It also provides that if a federal sentence is to be served in a jurisdiction where sentences are not subject to remission, then the court imposing the sentence must take that into account and adjust (ie reduce) the sentence accordingly (section 16G).

Section 16G was inserted into the Crimes Act by the *Crimes Legislation Amendment Act (No.2) 1989*. The 1989 Act was designed to promote ‘interstate parity of treatment for Federal offenders’ in view of increasing divergences in and changes to State and Territory laws.³² At the time the 1989 Act was passed remissions had been abolished in NSW but remained in all other jurisdictions. The situation has now changed so that remissions only exist in Western Australia and Tasmania. According to the Explanatory Memorandum, laws abolishing remissions in Western Australia will commence during 2003³³ and

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Tasmania has also indicated it will abolish remissions.³⁴ As the authors of the Explanatory Memorandum and other commentators have remarked, section 16G has been the subject of much criticism. According to the standard Victorian text on sentencing:

Judicial reaction to this provision has been unfavourable. First, it has been noted that, if uniformity in sentencing of federal offenders was the aim of this provision, it would fail because there were variations in lengths of sentences imposed on federal offenders between states. Second, it was argued that if courts sentencing federal offenders were required to take into account the abolition of remissions, but courts sentencing state offenders were not, the disparity between the two would, if anything, be exacerbated.³⁵

Section 19AG of the Crimes Act deals with remissions of non-parole periods. Its effect is that a court sentencing a Commonwealth offender will have to reduce the non-parole it imposes because, as a result of section 19AA, remissions of non-parole periods are not permitted and the court must take this into account.

Items 1 and 2 of Schedule 3 repeal sections 16G and 19AG. **Item 3** makes a consequential amendment. Sentences imposed before the commencement of these amendments are not affected (**clause 4**).

Amendments to the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*

The Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act gives effect to the United Nations Convention Against Traffic in Narcotic Drugs and Psychotropic Substances and creates offences of dealing in drugs on board Australian ships, Australian aircraft or outside Australia. Other offences created by the Act include intentionally acquiring property obtained from the commission of a serious State drug offence.

The narcotic drugs and psychotropic substances to which the Act applies are scheduled to it, together with the quantities that apply to relevant trafficking offences. **Item 4** adds the drug gamma-hydroxybutyric acid (GHB) to the list of psychotropic substances scheduled to the Act and provides that 2 grams is the minimum trafficable quantity and that 1 kilogram is the minimum commercial quantity.

GHB, also known as Liquid Ecstasy, Fantasy, Scoop, Easy Lay, Georgia Home Boy, Grievous Bodily Harm, Liquid X, and Goop is usually consumed orally, often with alcohol.³⁶ It was originally used as an anaesthetic and can cause euphoria, dizziness, relaxation, and adverse consequences such as vomiting and coma.³⁷ It is sometimes used in sexual assaults.³⁸ In 2000-2001 the Australian Customs Service intercepted three shipments of GHB coming into the country.³⁹

Amendments to the *Criminal Code Act 1995*

Section 131.1 of the Criminal Code creates an offence of theft. Theft may occur in a number of circumstances. For instance, as a result of section 131.7, a person:

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- who obtains property as a result of another person's fundamental mistake, and
- who is under a legal obligation to restore the property or its proceeds

will commit the offence of theft if he or she does not restore it to the other person.

Item 5 amends section 131.7 so that such a person will also commit the offence of theft if he or is under a legal obligation to restore the value of the property but does not do so. The Explanatory Memorandum remarks that this amendment is necessary because:

... currently the section does not apply where the person is only under a legal obligation to make restoration of the value of the property. As property may not always be tangible... this gap is problematic.⁴⁰

Items 6-10 of Schedule 3 amend offences relating to obtaining a financial advantage, making false or misleading statements, and producing false or misleading documents. The amendments remove some existing requirements for proof of fault elements in those offences. For instance, existing subsection 135.2(1) of the Criminal Code reads:

A person is guilty of an offence if the person obtains a financial advantage for himself or herself from a Commonwealth entity knowing or believing that he or she is not eligible to receive that financial advantage.

The principles of criminal responsibility applied to Commonwealth offences by Chapter 2 of the Criminal Code mean that fault (mental) elements are applied to each of the physical elements of this offence. **Item 6** re-structures subsection 135.2(1) so that absolute liability applies to the circumstance that the advantage was obtained from a 'Commonwealth entity.' Absolute liability means that the prosecution does not have to show that the accused person put his or her mind to this element of the offence. Further, the defence of mistake of fact will not be available to the defendant. A requirement to prove a fault element in relation to this physical element would make the offence very difficult to prove and does not go to the offender's culpability.

Item 11 corrects a drafting error in subparagraph 145.2(3)(a)(i) of the Criminal Code.

Item 12 enables a person charged with causing harm to a Commonwealth judicial or law enforcement officer to be tried summarily. At present, such a person can only be tried on indictment.

Items 13-20 amend offences in the Criminal Code dealing the impersonation of Commonwealth public officials. As presently worded those offences require the prosecution to establish that:

- the accused falsely represented himself or herself as acting in another person's capacity as a Commonwealth public official, and
- that the accused falsely represented that he or she was another person.

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The amendments mean that a person need only falsely represent themselves as being a Commonwealth public official acting in a particular capacity. It will not be necessary, for the purposes of the offence, that they also falsely represent themselves as another person.

Amendments to the *Financial Transaction Reports Act 1988*

The Financial Transaction Reports Act (FTR Act) provides a legislative framework for the detection of major tax evasion, money laundering, drug trafficking, terrorist activity and other serious crime by AUSTRAC (the Australian Transaction Reports and Analysis Centre).

The FTR Act requires ‘cash dealers’ to report certain cash transfers, suspect transactions and International Funds Transfer Instructions to AUSTRAC and to verify the identity of new account holders. ‘Cash dealers’ are defined to include financial institutions, insurers, securities dealers, bookmakers and persons operating gambling houses or casinos.

Items 21 and 22 amend the definition of ‘cash dealer’ in the Act. The Explanatory Memorandum states that the object of the amendments is to ensure that the definition of ‘cash dealer’ includes ‘a person who carries on a business of transmission of money or value including through informal money or value transfer systems or networks.’⁴¹

Section 17 of the FTR Act protects cash dealers who communicate information under the statutory obligations imposed by the Act from being caught by money laundering offences found in the *Proceeds of Crime Act 1987*. In doing so, it refers to sections 81 and 82 of the *Proceeds of Crime Act*. These sections have been repealed and replaced by Division 400 of the Commonwealth Criminal Code. As a result, **item 23** replaces references in section 17 of the FTR Act to sections 81 and 82 and refers instead to Division 400 of the Criminal Code. **Item 23** will commence on 1 January 2003, the commencement date of Division 400 of the Criminal Code.

Amendments to the *International Transfer of Prisoners Act 1997*

The *International Transfer of Prisoners Act 1997* (ITP Act) establishes a framework for the exchange of prisoners between Australia and other countries.⁴² The purpose of the scheme is to enable prisoners sentenced in one country to serve the balance of their sentence in their home country or another country where they have personal ties.⁴³ Prisoner transfers can occur between Australia and 50 other countries who are parties to the Council of Europe Convention on the Transfer of Sentenced Persons.⁴⁴ It is expected that transfers will be able to commence shortly under a bilateral treaty concluded between Australia and Thailand.

Section 13 of the ITP Act deals with the transfer of prisoners to Australia from foreign countries. As presently worded, the section provides that a prisoner is eligible for transfer back to Australia if he or she is an Australian citizen or if he or she ‘is permitted to travel to, enter and remain in Australia indefinitely pursuant to the *Migration Act 1958* and has community ties with a State or a Territory.’

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The amendment proposed by **item 25** will mean that that the Attorney-General will be able to consult with the Immigration Minister to see if the Immigration Minister proposes to revoke the citizenship or visa of a person who would otherwise be eligible for a transfer to Australia to serve the balance of their sentence.

Endnotes

- 1 Section 229, Migration Act.
- 2 Section 230, Migration Act.
- 3 Section 232, Migration Act. A penalty unit is \$110 (section 4AA, *Crimes Act 1914*).
- 4 Section 233, Migration Act.
- 5 By the *Migration Legislation Amendment Act (No. 1) 1999*.
- 6 Section 232A, Migration Act.
- 7 Subsection 233A(1), Migration Act.
- 8 Section 233B, Migration Act.
- 9 Section 233C, Migration Act.
- 10 Article 22.
- 11 Article 2.
- 12 Article 4.
- 13 Department of Foreign Affairs and Trade, [Australia and International Treaty Making Kit](#), July 2000.
- 14 These weapons included sub-machine guns and heavy machine guns. The buyback scheme had revealed the existence of such weapons in the community.
- 15 Customs (Prohibited Imports) Regulations (Amendment) 1996 (No. 59).
- 16 This structure was later amended by the Customs (Prohibited Imports) Regulations (Amendment) 1998 (No. 228).
- 17 Customs (Prohibited Imports) Regulations (Amendment) 1996 (No. 91) and Explanatory Statement.
- 18 Customs (Prohibited Imports) Amendment Regulations 2000 (No. 7) 2000 (No. 234) and Explanatory Statement.
- 19 Explanatory Statement, Customs (Prohibited Imports) Amendment Regulations 2001 (No. 1) 2001 (No. 60).
- 20 *ibid.*
- 21 See, for example, Jenny Mouzos, 'The licensing and registration status of firearms used in homicide', *Trends & Issues in Crime and Criminal Justice*, No. 151, May 2000.

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- 22 See, for example, 'Man held over uni killings', *The Age*, 22 October 2002; 'Students die in campus shooting spree', *The Australian*, 22 October 2002.
- 23 Council of Australian Governments' Meeting, [Communique](#), 6 December 2002.
- 24 COAG decided that handguns permitted to be imported for sports shooting purposes would be limited to a maximum of .38" calibre, except for specially accredited sporting events where handguns up to .45" would be permitted.
- 25 There will also be a compensation scheme for licensees required to surrender their handguns and an amnesty period for the surrender of illegal handguns. Funds for the compensation scheme will come from moneys left over from the original firearms buyback and, once these funds are exhausted, the costs will be shared on a two-thirds:one-third basis between the Commonwealth and the States and Territories. Council of Australian Governments' Meeting, 6 December 2002, *Communique*.
- 26 Second Reading Speech, House of Representatives, *Hansard*, 4 December 2002, p. 9536.
- 27 The word, 'benefit', is defined in Criminal Code to include any advantage and is not limited to property.
- 28 Fault elements in the offence are either express or apply via the operation of section 5.6 of the Criminal Code.
- 29 Explanatory Memorandum, p. 16.
- 30 Richard Fox & Arie Freiberg, *Sentencing. State and Federal Law in Victoria*, 2nd ed, Oxford University Press, 1999.
- 31 The total sentence including the minimum term and the parole period. *Butterworths Encyclopaedic Legal Dictionary*.
- 32 Crimes Legislation Amendment Bill (No. 2) 1989, Second Reading Speech, House of Representatives, *Hansard*, 5 October 1989, p. 1602.
- 33 Note that the Sentencing Legislation Amendment and Repeal Bill 2002 is still before the WA Parliament, having been referred to the Standing Committee on Legislation on 19 December 2002.
- 34 Explanatory Memorandum, p. 17.
- 35 Fox & Freiberg, *op.cit.*, p. 794.
- 36 Australian Bureau of Criminal Intelligence, *Australian Illicit Drug Report 2000-01*; see also US Drug Enforcement Administration, '[GHB](#)' (accessed 16 January 2003); European Monitoring Centre for Drugs and Drug Addiction, [Report on the Risk Assessment of GHB in the Framework of the Joint Action on New Synthetic Drugs](#), September 2000 (accessed 16 January 2003).
- 37 ABCI, *op.cit.*
- 38 *ibid.*
- 39 *ibid.*
- 40 Explanatory Memorandum, p. 19.

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- 41 Explanatory Memorandum, p. 27.
- 42 More information about the scheme is available from Attorney-General's Department, [Australia's International Transfer of Prisoners Scheme. Frequently Asked Questions](#) (accessed 16 January 2003).
- 43 *ibid.*
- 44 Australia is a party to the Convention, which entered into force for Australia on 1 January 2003.

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