





# **Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004**

**No. 127, 2004**

**An Act to amend the *Criminal Code Act 1995*, and  
for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to amend the *Criminal Code Act 1995*, and for related purposes**

*[Assented to 31 August 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Crimes Legislation Amendment  
(Telecommunications Offences and Other Measures) Act (No. 2)  
2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	31 August 2004
2. Schedule 1	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	1 March 2005
3. Schedules 2, 3 and 4	The 28th day after the day on which this Act receives the Royal Assent.	28 September 2004
4. Schedule 5, items 1 to 8	The 28th day after the day on which this Act receives the Royal Assent.	28 September 2004
5. Schedule 5, item 9	Immediately after the commencement of item 6 of Schedule 1 to the <i>Cybercrime Act 2001</i> .	
6. Schedule 5, items 10 to 16	The 28th day after the day on which this Act receives the Royal Assent.	28 September 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Telecommunications offences

### Part 1—Main amendments

#### *Criminal Code Act 1995*

#### 1 Part 10.6 of the *Criminal Code*

Repeal the Part, substitute:

### Part 10.6—Telecommunications Services

#### Division 473—Preliminary

##### 473.1 Definitions

In this Part:

**access** in relation to material includes:

- (a) the display of the material by a computer or any other output of the material from a computer; or
- (b) the copying or moving of the material to any place in a computer or to a data storage device; or
- (c) in the case of material that is a program—the execution of the program.

**account identifier** means:

- (a) something that:
  - (i) contains subscription-specific secure data; and
  - (ii) is installed, or capable of being installed, in a mobile telecommunications device; or
- (b) anything else that:
  - (i) allows a particular mobile telecommunications account to be identified; and
  - (ii) is prescribed by the regulations as an account identifier for the purposes of this Part.

Note: Paragraph (a)—This would include a SIM card.

**carriage service provider** has the same meaning as in the *Telecommunications Act 1997*.

Note: See also section 474.3 respecting persons who are taken to be carriage service providers in relation to certain matters.

**carrier** has the same meaning as in the *Telecommunications Act 1997*.

Note: See also section 474.3 respecting persons who are taken to be carriers in relation to certain matters.

**carry** includes transmit, switch and receive.

**child abuse material** means:

- (a) material that depicts a person, or a representation of a person, who:
  - (i) is, or appears to be, under 18 years of age; and
  - (ii) is, or appears to be, a victim of torture, cruelty or physical abuse;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material that describes a person who:
  - (i) is, or is implied to be, under 18 years of age; and
  - (ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

**child pornography material** means:

- (a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
  - (i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
  - (ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:

- (i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or
- (ii) a representation of such a sexual organ or anal region; or
- (iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;  
in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (c) material that describes a person who is, or is implied to be, under 18 years of age and who:
  - (i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
  - (ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (d) material that describes:
  - (i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or
  - (ii) the breasts of a female person who is, or is implied to be, under 18 years of age;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

***communication in the course of telecommunications carriage*** means a communication that is being carried by a carrier or carriage service provider, and includes a communication that has been collected or received by a carrier or carriage service provider for carriage, but has not yet been delivered by the carrier or carriage service provider.

***connected***, in relation to a telecommunications network, includes connection otherwise than by means of physical contact (for example, a connection by means of radiocommunication).

***control*** of data, or material that is in the form of data, has the meaning given by section 473.2.

**depict** includes contain data from which a visual image (whether still or moving) can be generated.

**describe** includes contain data from which text or sounds can be generated.

**emergency call person** has the same meaning as in the *Telecommunications Act 1997*.

**emergency service number** has the same meaning as in the *Telecommunications Act 1997*.

**emergency service organisation** has the same meaning as in section 147 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**facility** has the same meaning as in the *Telecommunications Act 1997*.

**intelligence or security officer** means an officer or employee of:

- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Office of National Assessments; or
- (d) that part of the Department of Defence known as the Defence Signals Directorate; or
- (e) that part of the Department of Defence known as the Defence Intelligence Organisation;

and includes a staff member (within the meaning of the *Intelligence Services Act 2001*) of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service or the Defence Signals Directorate.

**interception device** means an apparatus or device that:

- (a) is of a kind that is capable of being used to enable a person to intercept a communication passing over a telecommunications system; and
- (b) could reasonably be regarded as having been designed:
  - (i) for the purpose of; or
  - (ii) for purposes including the purpose of; using it in connection with the interception of communications passing over a telecommunications system; and

(c) is not designed principally for the reception of communications transmitted by radiocommunications.

Terms used in this definition that are defined in the *Telecommunications (Interception) Act 1979* have the same meaning in this definition as they have in that Act.

**Internet content host** has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

**Internet service provider** has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

**law enforcement officer** means any of the following:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);
- (b) a member, or employee, of the police force of a State or Territory;
- (c) a member of the staff of the Australian Crime Commission (within the meaning of the *Australian Crime Commission Act 2002*);
- (d) a member of a police force, or other law enforcement agency, of a foreign country;
- (e) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;
- (f) a member of the staff of the Office of the Director of Public Prosecutions (within the meaning of the *Director of Public Prosecutions Act 1983*) or of a similar body established under a law of a State or Territory.

**loss** means a loss in property, whether temporary or permanent, and includes not getting what one might get.

**material** includes material in any form, or combination of forms, capable of constituting a communication.

**mobile telecommunications account** means an account with a carriage service provider for the supply of a public mobile telecommunications service to an end-user.

**mobile telecommunications device** means an item of customer equipment (within the meaning of the *Telecommunications Act 1997*) that is used, or is capable of being used, in connection with a public mobile telecommunications service.

**nominated carrier** has the same meaning as in the *Telecommunications Act 1997*.

**NRS provider** has the same meaning as in Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**obtaining** includes:

- (a) obtaining for another person; and
- (b) inducing a third person to do something that results in another person obtaining.

**obtaining** data, or material that is in the form of data, has the meaning given by section 473.3.

**possession** of data, or material that is in the form of data, has the meaning given by section 473.2.

**producing** data, or material that is in the form of data, has the meaning given by section 473.3.

**property** has the same meaning as in Chapter 7.

**public mobile telecommunications service** has the same meaning as in the *Telecommunications Act 1997*.

**radiocommunication** has the same meaning as in the *Radiocommunications Act 1992*.

**serious offence against a foreign law** means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence against a law of the Commonwealth, a State or a Territory.

**serious offence against a law of the Commonwealth, a State or a Territory** means an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment:

- (a) for life; or
- (b) for a period of 5 or more years.

***subscription-specific secure data*** means data that is used, or is capable of being used, to:

- (a) allow a carrier to identify a particular mobile telecommunications account (whether an existing account or an account that may be set up in the future); and
- (b) allow a mobile telecommunications device in which an account identifier that contains the data is installed to access the public mobile telecommunication service to which that account relates.

***supplying*** data, or material that is in the form of data, has the meaning given by section 473.3.

***telecommunications device identifier*** means:

- (a) an electronic identifier of a mobile telecommunications device that is:
  - (i) installed in the device by the manufacturer; and
  - (ii) is capable of being used to distinguish that particular device from other mobile telecommunications devices;or
- (b) any other form of identifier that is prescribed by the regulations as a telecommunications device identifier for the purposes of this Part.

Note: Paragraph (a)—For example, GSM mobile phones use an industry-recognised International Mobile Equipment Identity (IMEI) number. This number identifies the particular phone, as compared to the SIM card number which identifies a particular telecommunications account. Carriers are able to block service to lost and stolen mobile phones based on their IMEI numbers.

***telecommunications network*** has the same meaning as in the *Telecommunications Act 1997*.

## **473.2 Possession or control of data or material in the form of data**

A reference in this Part to a person having possession or control of data, or material that is in the form of data, includes a reference to the person:

- (a) having possession of a computer or data storage device that holds or contains the data; or
- (b) having possession of a document in which the data is recorded; or

- (c) having control of data held in a computer that is in the possession of another person (whether inside or outside Australia).

### **473.3 Producing, supplying or obtaining data or material in the form of data**

A reference in this Part to a person producing, supplying or obtaining data, or material that is in the form of data, includes a reference to the person:

- (a) producing, supplying or obtaining data held or contained in a computer or data storage device; or
- (b) producing, supplying or obtaining a document in which the data is recorded.

### **473.4 Determining whether material is offensive**

The matters to be taken into account in deciding for the purposes of this Part whether reasonable persons would regard particular material, or a particular use of a carriage service, as being, in all the circumstances, offensive, include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the material; and
- (c) the general character of the material (including whether it is of a medical, legal or scientific character).

## **Division 474—Telecommunications offences**

### **Subdivision A—Dishonesty with respect to carriage services**

#### **474.1 Dishonesty**

- (1) For the purposes of this Subdivision, *dishonest* means:
  - (a) dishonest according to the standards of ordinary people; and
  - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (2) In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.

## **474.2 General dishonesty with respect to a carriage service provider**

### *Obtaining a gain*

- (1) A person is guilty of an offence if the person does anything with the intention of dishonestly obtaining a gain from a carriage service provider by way of the supply of a carriage service.

Penalty: Imprisonment for 5 years.

### *Causing a loss*

- (2) A person is guilty of an offence if the person does anything with the intention of dishonestly causing a loss to a carriage service provider in connection with the supply of a carriage service.

Penalty: Imprisonment for 5 years.

- (3) A person is guilty of an offence if:
- (a) the person dishonestly causes a loss, or dishonestly causes a risk of loss, to a carriage service provider in connection with the supply of a carriage service; and
  - (b) the person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty: Imprisonment for 5 years.

## **Subdivision B—Interference with telecommunications**

### **474.3 Person acting for a carrier or carriage service provider**

- (1) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carrier, or on behalf of persons at least one of whom is a carrier, is, in respect of:
- (a) the doing by that person of that thing; or
  - (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
  - (c) the operation by that person of a facility in connection with the doing of that thing; or
  - (d) a facility belonging to that person; or
  - (e) the operation by that person of a satellite;
- taken to be a carrier.

- (2) For the purposes of this Subdivision, a person who does any thing for or on behalf of a carriage service provider, or on behalf of persons at least one of whom is a carriage service provider, is, in respect of:
- (a) the doing by that person of that thing; or
  - (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
  - (c) the operation by that person of a facility in connection with the doing of that thing; or
  - (d) a facility belonging to that person; or
  - (e) the operation by that person of a satellite;
- taken to be a carriage service provider.

#### **474.4 Interception devices**

- (1) A person is guilty of an offence if:
- (a) the person:
    - (i) manufactures; or
    - (ii) advertises, displays or offers for sale; or
    - (iii) sells; or
    - (iv) possesses;an apparatus or device (whether in an assembled or unassembled form); and
  - (b) the apparatus or device is an interception device.

Penalty: Imprisonment for 5 years.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person possesses the interception device in the course of the person's duties relating to the interception of communications that does not constitute a contravention of subsection 7(1) of the *Telecommunications (Interception) Act 1979*.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (3) A person is not criminally responsible for an offence against subsection (1) if the applicable conduct mentioned in subparagraphs (1)(a)(i) to (iv) is in circumstances specified in regulations made for the purposes of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

#### **474.5 Wrongful delivery of communications**

- (1) A person is guilty of an offence if:
- (a) a communication is in the course of telecommunications carriage; and
  - (b) the person causes the communication to be received by a person or carriage service other than the person or service to whom it is directed.

Penalty: Imprisonment for 1 year.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person engages in the conduct referred to in paragraph (1)(b) with the consent or authorisation of the person to whom, or the person operating the carriage service to which, the communication is directed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

#### **474.6 Interference with facilities**

- (1) A person is guilty of an offence if the person tampers with, or interferes with, a facility owned or operated by:
- (a) a carrier; or
  - (b) a carriage service provider; or
  - (c) a nominated carrier.

Penalty: Imprisonment for 1 year.

- (2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier.

- (3) A person is guilty of an offence if:
- (a) the person tampers with, or interferes with, a facility owned or operated by:
    - (i) a carrier; or
    - (ii) a carriage service provider; or

(iii) a nominated carrier; and

(b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.

(4) For the purposes of an offence against subsection (3), absolute liability applies to the following physical elements of circumstance of the offence:

(a) that the facility is owned or operated by a carrier, a carriage service provider or a nominated carrier;

(b) that the carriage service is supplied by a carriage service provider.

(5) A person is guilty of an offence if:

(a) the person uses or operates any apparatus or device (whether or not it is comprised in, connected to or used in connection with a telecommunications network); and

(b) this conduct results in hindering the normal operation of a carriage service supplied by a carriage service provider.

Penalty: Imprisonment for 2 years.

(6) For the purposes of an offence against subsection (5), absolute liability applies to the physical element of circumstance of the offence, that the carriage service is supplied by a carriage service provider.

(7) A person is not criminally responsible for an offence against subsection (5) if:

(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in good faith in the course of his or her duties; and

(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: See also subsection 475.1(2) for the interaction between this defence and the *Radiocommunications Act 1992*.

(8) For the purposes of this section, a facility is taken to be owned or operated by a nominated carrier if the *Telecommunications Act*

1997 applies, under section 81A of that Act, as if that facility were owned or operated by the nominated carrier.

**474.7 Modification etc. of a telecommunications device identifier**

- (1) A person is guilty of an offence if the person:
- (a) modifies a telecommunications device identifier; or
  - (b) interferes with the operation of a telecommunications device identifier.

Penalty: Imprisonment for 2 years.

- (2) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
  - (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
  - (c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (3) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

**474.8 Possession or control of data or a device with intent to modify a telecommunications device identifier**

- (1) A person is guilty of an offence if:
- (a) the person has possession or control of any thing or data; and

- (b) the person has that possession or control with the intention that the thing or data be used:
  - (i) by the person; or
  - (ii) by another person;in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).
- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
  - (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
  - (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
  - (c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (5) A person is not criminally responsible for an offence against subsection (1) if:
  - (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

**474.9 Producing, supplying or obtaining data or a device with intent to modify a telecommunications device identifier**

- (1) A person is guilty of an offence if:
- (a) the person produces, supplies or obtains any thing or data; and
  - (b) the person does so with the intention that the thing or data be used:
    - (i) by the person; or
    - (ii) by another person;
- in committing an offence against subsection 474.7(1) (modification of a telecommunications device identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.7(1) (modification of a telecommunications device identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).
- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the manufacturer of the mobile telecommunications device in which the telecommunications device identifier is installed; or
  - (b) an employee or agent of the manufacturer who is acting on behalf of the manufacturer; or
  - (c) acting with the consent of the manufacturer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

- Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).
- Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

#### **474.10 Copying subscription-specific secure data**

*Copying subscription-specific secure data from an existing account identifier*

- (1) A person is guilty of an offence if the person:
- (a) copies the subscription-specific secure data from an account identifier; and
  - (b) does so with the intention that the data will be copied (whether by the person or by someone else) onto something that:
    - (i) is an account identifier; or
    - (ii) will, once the data is copied onto it, be capable of operating as an account identifier.

Penalty: Imprisonment for 2 years.

*Copying subscription-specific secure data onto a new account identifier*

- (2) A person is guilty of an offence if:
- (a) subscription-specific secure data is copied from an account identifier (whether by the person or by someone else); and
  - (b) the person copies that data onto something that:
    - (i) is an account identifier; or
    - (ii) will, once the data is copied onto it, be capable of operating as an account identifier.

This is so whether or not the person knows which particular account identifier the subscription-specific secure data is copied from.

Penalty: Imprisonment for 2 years.

*Defences*

- (3) A person is not criminally responsible for an offence against subsection (1) or (2) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
  - (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
  - (c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (4) A person is not criminally responsible for an offence against subsection (1) or (2) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) or (2) and does not operate to authorise any conduct that requires a warrant under some other law.

**474.11 Possession or control of data or a device with intent to copy an account identifier**

- (1) A person is guilty of an offence if:
- (a) the person has possession or control of any thing or data; and
  - (b) the person has that possession or control with the intention that the thing or data be used:
    - (i) by the person; or
    - (ii) by another person;in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

*Defences*

- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
  - (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
  - (c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

**474.12 Producing, supplying or obtaining data or a device with intent to copy an account identifier**

- (1) A person is guilty of an offence if:
- (a) the person produces, supplies or obtains any thing or data; and

- (b) the person does so with the intention that the thing or data be used:
- (i) by the person; or
  - (ii) by another person;
- in committing an offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier).

Penalty: Imprisonment for 2 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against subsection 474.10(1) (copying subscription-specific secure data from an account identifier) or 474.10(2) (copying subscription-specific secure data onto an account identifier) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

*Defences*

- (4) A person is not criminally responsible for an offence against subsection (1) if the person is:
- (a) the carrier who operates the facilities used, or to be used, in the supply of the public mobile telecommunications service to which the subscription-specific secure data relates; or
  - (b) an employee or agent of that carrier who is acting on behalf of that carrier; or
  - (c) acting with the consent of that carrier.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (5) A person is not criminally responsible for an offence against subsection (1) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Note 2: This subsection merely creates a defence to an offence against subsection (1) and does not operate to authorise any conduct that requires a warrant under some other law.

## **Subdivision C—Offences related to use of telecommunications**

### **474.13 Use of a carriage service**

For the purposes of this Subdivision, a person is taken not to *use a carriage service* by engaging in particular conduct if:

- (a) the person is a carrier and, in engaging in that conduct, is acting solely in the person's capacity as a carrier; or
- (b) the person is a carriage service provider and, in engaging in that conduct, is acting solely in the person's capacity as a carriage service provider; or
- (c) the person is an Internet service provider and, in engaging in that conduct, is acting solely in the person's capacity as an Internet service provider; or
- (d) the person is an Internet content host and, in engaging in that conduct, is acting solely in the person's capacity as an Internet content host.

### **474.14 Using a telecommunications network with intention to commit a serious offence**

- (1) A person is guilty of an offence if:
  - (a) the person:
    - (i) connects equipment to a telecommunications network; and
    - (ii) intends by this to commit, or to facilitate the commission of, an offence (whether by that person or another person); and
  - (b) the offence is:
    - (i) a serious offence against a law of the Commonwealth, a State or a Territory; or
    - (ii) a serious offence against a foreign law.
- (2) A person is guilty of an offence if:
  - (a) the person uses equipment connected to a telecommunications network in the commission of, or to

facilitate the commission of, an offence (whether by that person or another person); and

- (b) the offence is:
- (i) a serious offence against a law of the Commonwealth, a State or a Territory; or
  - (ii) a serious offence against a foreign law.
- (3) A person who is guilty of an offence against subsection (1) or (2) is punishable, on conviction, by a penalty not exceeding the penalty applicable to the serious offence.
- (4) Absolute liability applies to paragraphs (1)(b) and (2)(b).
- Note: For *absolute liability*, see section 6.2.
- (5) A person may be found guilty of an offence against subsection (1) or (2) even if committing the serious offence is impossible.
- (6) It is not an offence to attempt to commit an offence against subsection (1) or (2).

#### 474.15 Using a carriage service to make a threat

##### *Threat to kill*

- (1) A person (the **first person**) is guilty of an offence if:
- (a) the first person uses a carriage service to make to another person (the **second person**) a threat to kill the second person or a third person; and
  - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 10 years.

##### *Threat to cause serious harm*

- (2) A person (the **first person**) is guilty of an offence if:
- (a) the first person uses a carriage service to make to another person (the **second person**) a threat to cause serious harm to the second person or a third person; and
  - (b) the first person intends the second person to fear that the threat will be carried out.

Penalty: Imprisonment for 7 years.

*Actual fear not necessary*

- (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

*Definitions*

- (4) In this section:

*fear* includes apprehension.

*threat to cause serious harm to a person* includes a threat to substantially contribute to serious harm to the person.

**474.16 Using a carriage service for a hoax threat**

A person is guilty of an offence if:

- (a) the person uses a carriage service to send a communication; and
- (b) the person does so with the intention of inducing a false belief that an explosive, or a dangerous or harmful substance or thing, has been or will be left in any place.

Penalty: Imprisonment for 10 years.

**474.17 Using a carriage service to menace, harass or cause offence**

- (1) A person is guilty of an offence if:

- (a) the person uses a carriage service; and
- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

Penalty: Imprisonment for 3 years.

- (2) Without limiting subsection (1), that subsection applies to menacing, harassing or causing offence to:

- (a) an employee of the NRS provider; or
- (b) an emergency call person; or
- (c) an employee of an emergency service organisation; or

- (d) an APS employee in the Attorney-General's Department acting as a National Security Hotline call taker.

**474.18 Improper use of emergency call service**

- (1) A person is guilty of an offence if the person:
- (a) makes a call to an emergency service number; and
  - (b) does so with the intention of inducing a false belief that an emergency exists.

Penalty: Imprisonment for 3 years.

- (2) A person is guilty of an offence if:
- (a) the person makes a call to an emergency service number; and
  - (b) the person makes the call otherwise than for the purpose of reporting an emergency; and
  - (c) the call is a vexatious one.

Penalty: Imprisonment for 3 years.

- (3) In determining whether a call by a person to an emergency service number is a vexatious one, have regard to:
- (a) the content of the call; and
  - (b) the number, frequency and content of previous calls the person has made to emergency service numbers otherwise than for the purpose of reporting emergencies; and
  - (c) any other relevant matter.

**474.19 Using a carriage service for child pornography material**

- (1) A person is guilty of an offence if:
- (a) the person:
    - (i) uses a carriage service to access material; or
    - (ii) uses a carriage service to cause material to be transmitted to the person; or
    - (iii) uses a carriage service to transmit material; or
    - (iv) uses a carriage service to make material available; or
    - (v) uses a carriage service to publish or otherwise distribute material; and
  - (b) the material is child pornography material.

Penalty: Imprisonment for 10 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
- (a) intention is the fault element for the conduct referred to in paragraph (1)(a);
  - (b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of *intention* and *recklessness* see sections 5.2 and 5.4.

- (3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.21 in relation to this section.

**474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service**

- (1) A person is guilty of an offence if:
- (a) the person:
    - (i) has possession or control of material; or
    - (ii) produces, supplies or obtains material; and
  - (b) the material is child pornography material; and
  - (c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
    - (i) by that person; or
    - (ii) by another person;
- in committing an offence against section 474.19 (using a carriage service for child pornography material).

Penalty: Imprisonment for 10 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.19 (using a carriage service for child pornography material) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

### **474.21 Defences in respect of child pornography material**

- (1) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) because of engaging in particular conduct if the conduct:

- (a) is of public benefit; and
- (b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
- (a) enforcing a law of the Commonwealth, a State or a Territory;  
or
  - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
  - (c) the administration of justice; or
  - (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.

- (3) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if:

- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
- (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (4) A person is not criminally responsible for an offence against section 474.19 (using a carriage service for child pornography
-

material) or 474.20 (possessing etc. child pornography material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:

- (a) assisting the Australian Broadcasting Authority to detect:
  - (i) prohibited content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*); or
  - (ii) potential prohibited content (within the meaning of that Schedule);in the performance of the Authority's functions under that Schedule; or
- (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
  - (i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or
  - (ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

#### **474.22 Using a carriage service for child abuse material**

- (1) A person is guilty of an offence if:
  - (a) the person:
    - (i) uses a carriage service to access material; or
    - (ii) uses a carriage service to cause material to be transmitted to the person; or
    - (iii) uses a carriage service to transmit material; or
    - (iv) uses a carriage service to make material available; or
    - (v) uses a carriage service to publish or otherwise distribute material; and
  - (b) the material is child abuse material.

Penalty: Imprisonment for 10 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
  - (a) intention is the fault element for the conduct referred to in paragraph (1)(a);

(b) recklessness is the fault element for the circumstances referred to in paragraph (1)(b).

Note: For the meaning of *intention* and *recklessness* see sections 5.2 and 5.4.

(3) As well as the general defences provided for in Part 2.3, defences are provided for under section 474.24 in relation to this section.

#### **474.23 Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service**

- (1) A person is guilty of an offence if:
- (a) the person:
    - (i) has possession or control of material; or
    - (ii) produces, supplies or obtains material; and
  - (b) the material is child abuse material; and
  - (c) the person has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used:
    - (i) by that person; or
    - (ii) by another person;in committing an offence against section 474.22 (using a carriage service for child abuse material).

Penalty: Imprisonment for 10 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 474.22 (using a carriage service for child abuse material) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

#### **474.24 Defences in respect of child abuse material**

- (1) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) because of engaging in particular conduct if the conduct:
- (a) is of public benefit; and

(b) does not extend beyond what is of public benefit.

In determining whether the person is, under this subsection, not criminally responsible for the offence, the question whether the conduct is of public benefit is a question of fact and the person's motives in engaging in the conduct are irrelevant.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:
- (a) enforcing a law of the Commonwealth, a State or a Territory; or
  - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or
  - (c) the administration of justice; or
  - (d) conducting scientific, medical or educational research that has been approved by the Minister in writing for the purposes of this section.
- (3) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if:
- (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

- (4) A person is not criminally responsible for an offence against section 474.22 (using a carriage service for child abuse material) or 474.23 (possessing etc. child abuse material for use through a carriage service) if the person engages in the conduct in good faith for the sole purpose of:
- (a) assisting the Australian Broadcasting Authority to detect:
    - (i) prohibited content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*); or
    - (ii) potential prohibited content (within the meaning of that Schedule);

in the performance of the Authority's functions under that Schedule; or

- (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
  - (i) a recognised alternative access-prevention arrangement (within the meaning of clause 40 of Schedule 5 to the *Broadcasting Services Act 1992*); or
  - (ii) a designated alternative access-prevention arrangement (within the meaning of clause 60 of that Schedule).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

#### **474.25 Obligations of Internet service providers and Internet content hosts**

A person commits an offence if the person:

- (a) is an Internet service provider or an Internet content host; and
- (b) is aware that the service provided by the person can be used to access particular material that the person has reasonable grounds to believe is:
  - (i) child pornography material; or
  - (ii) child abuse material; and
- (c) does not refer details of the material to the Australian Federal Police within a reasonable time after becoming aware of the existence of the material.

Penalty: 100 penalty units.

#### **474.26 Using a carriage service to procure persons under 16 years of age**

- (1) A person (the *sender*) commits an offence if:
  - (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with the sender; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
  - (d) the sender is at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (2) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with another person; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
  - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (3) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the sender does this with the intention of procuring the recipient to engage in, or submit to, sexual activity with another person; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
  - (d) the other person referred to in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and
  - (e) the sender intends that the sexual activity referred to in paragraph (b) will take place in the presence of:
    - (i) the sender; or
    - (ii) another person who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

#### **474.27 Using a carriage service to “groom” persons under 16 years of age**

- (1) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the communication includes material that is indecent; and
-

- (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with the sender; and
- (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
- (e) the sender is at least 18 years of age.

Penalty: Imprisonment for 12 years.

- (2) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the communication includes material that is indecent; and
  - (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with another person; and
  - (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
  - (e) the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 12 years.

- (3) A person (the *sender*) commits an offence if:
- (a) the sender uses a carriage service to transmit a communication to another person (the *recipient*); and
  - (b) the communication includes material that is indecent; and
  - (c) the sender does this with the intention of making it easier to procure the recipient to engage in, or submit to, sexual activity with another person; and
  - (d) the recipient is someone who is, or who the sender believes to be, under 16 years of age; and
  - (e) the other person referred to in paragraph (c) is someone who is, or who the sender believes to be, under 18 years of age; and
  - (f) the sender intends that the sexual activity referred to in paragraph (c) will take place in the presence of:
    - (i) the sender; or
    - (ii) another person who is, or who the sender believes to be, at least 18 years of age.

Penalty: Imprisonment for 15 years.

- (4) In a prosecution for an offence against subsection (1), (2) or (3), whether material is indecent is a matter for the trier of fact.
- (5) In this section:

*indecent* means indecent according to the standards of ordinary people.

#### **474.28 Provisions relating to offences against sections 474.26 and 474.27**

##### *Age-related issues*

- (1) For the purposes of an offence against section 474.26 or 474.27, absolute liability applies to the physical element of circumstance of the offence that the recipient is someone who is under 16 years of age.

Note 1: For *absolute liability*, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

- (2) For the purposes of an offence against subsection 474.26(2) or (3) or 474.27(2) or (3), absolute liability applies to the physical elements of circumstance of the offence that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) is at least 18 years of age.

Note 1: For *absolute liability*, see section 6.2.

Note 2: For a defence based on belief about age, see section 474.29.

- (3) For the purposes of sections 474.26 and 474.27, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.
- (4) For the purposes of sections 474.26 and 474.27, evidence that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) was represented to the sender as being:
- (a) at least 18 years of age; or
  - (b) over or of a particular age;

is, in the absence of evidence to the contrary, proof that the sender believed the other person to be at least 18 years of age or over of that age.

- (5) In determining for the purposes of sections 474.26 and 474.27 how old a person is or was at a particular time, a jury or court may treat any of the following as admissible evidence:
- (a) the person's appearance;
  - (b) medical or other scientific opinion;
  - (c) a document that is or appears to be an official or medical record from a country outside Australia;
  - (d) a document that is or appears to be a copy of such a record.
- (6) Subsection (5) does not make any other kind of evidence inadmissible, and does not affect a prosecutor's duty to do all he or she can to adduce the best possible evidence for determining the question.
- (7) If, on a trial for an offence against sections 474.26 and 474.27, evidence may be treated as admissible because of subsection (5), the court must warn the jury that it must be satisfied beyond reasonable doubt in determining the question.

*Impossibility of sexual activity taking place*

- (8) A person may be found guilty of an offence against section 474.26 or 474.27 even if it is impossible for the sexual activity referred to in that section to take place.

*Fictitious recipient*

- (9) For the purposes of sections 474.26 and 474.27, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

*Attempt not offence*

- (10) It is not an offence to attempt to commit an offence against section 474.26 or 474.27.

*Definitions*

- (11) In sections 474.26 and 474.27 and this section:

**procure** a person to engage in sexual activity includes:

- (a) encourage, entice or recruit the person to engage in that activity; or
- (b) induce the person (whether by threats, promises or otherwise) to engage in that activity.

**sexual activity** means:

- (a) sexual intercourse as defined in section 50AC of the *Crimes Act 1914*; or
- (b) an act of indecency as defined in section 50AB of that Act; or
- (c) any other activity of a sexual or indecent nature that involves the human body, or bodily actions or functions.

The activity referred to in paragraph (c) need not involve physical contact between people.

**474.29 Defences to offences against section 474.26 or 474.27**

- (1) It is a defence to a prosecution for an offence against section 474.26 or 474.27 that the defendant believed at the time the communication was transmitted that the recipient was not under 16 years of age.

Note: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

- (2) It is a defence to a prosecution for an offence against subsection 474.26(2) or (3) or 474.27(2) or (3) that the defendant believed at the time the communication was transmitted that the other person referred to in paragraph 474.26(2)(b) or (3)(e) or 474.27(2)(c) or (3)(f) was not at least 18 years of age.

Note: A defendant bears an evidential burden in relation to the matter in this section, see subsection 13.3(3).

- (3) In determining whether the defendant had the belief referred to in subsection (1) or (2), the jury may take into account whether the alleged belief was reasonable in the circumstances.

### **474.30 Defences for NRS employees and emergency call persons**

- (1) A person is not criminally responsible for an offence against a provision of this Subdivision in relation to particular conduct if the person:
  - (a) is an employee of the NRS provider; and
  - (b) engages in the conduct in good faith in the course of the person's duties as such an employee.
- (2) A person is not criminally responsible for an offence against a provision of this Subdivision in relation to particular conduct if the person:
  - (a) is an emergency call person; and
  - (b) engages in the conduct in good faith in the course of the person's duties as such an emergency call person.

## **Division 475—Miscellaneous**

### **475.1 Saving of other laws**

- (1) This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.
- (2) Without limiting subsection (1), a provision in this Part to the effect that a person is not criminally responsible for an offence against a provision of this Part in relation to particular conduct does not make the conduct lawful if it would otherwise be unlawful under the *Radiocommunications Act 1992*.

### **475.2 Geographical jurisdiction**

Section 15.1 (extended geographical jurisdiction—category A) applies to each offence against this Part.

## **Part 2—Consequential amendments**

### ***Broadcasting Services Act 1992***

#### **2 Paragraph 1(3)(b) of Schedule 5**

Repeal the paragraph, substitute:

- (b) Subdivision C (Offences related to use of telecommunications) of Division 474 of Part 10.6 of the *Criminal Code*.

Note: The heading to subclause 1(3) is replaced by the heading “*State/Territory laws and telecommunications offence provisions of the Criminal Code*”.

### ***Crimes Act 1914***

#### **3 At the end of section 15HB**

Add:

- (2) Without limiting subsection (1), an offence against section 474.19, 474.20, 474.22, 474.23, 474.26 or 474.27 of the *Criminal Code* is a *serious Commonwealth offence* for the purposes of this Part.

#### **4 After paragraph 15Y(1)(c)**

Insert:

- (ca) an offence against section 474.26 or 474.27 of the *Criminal Code* (use of carriage service to procure or groom persons under 16 years of age); or

#### **5 Part VIIB**

Repeal the Part.

### ***Criminal Code Act 1995***

#### **6 Subsections 471.11(3), (4) and (5) of the *Criminal Code***

Repeal the subsections, substitute:

*Actual fear not necessary*

- (3) In a prosecution for an offence against this section, it is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

*Definitions*

- (4) In this section:

*fear* includes apprehension.

*threat to cause serious harm to a person* includes a threat to substantially contribute to serious harm to the person.

**7 Paragraph 471.12(b) of the *Criminal Code***

Repeal the paragraph, substitute:

- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

**8 Subsection 476.1(1) of the *Criminal Code* (definition of *data*)**

Repeal the definition.

**9 Subsection 476.1(1) of the *Criminal Code* (definition of *data held in a computer*)**

Repeal the definition.

**10 Subsection 476.1(1) of the *Criminal Code* (definition of *data storage device*)**

Repeal the definition.

**11 Subsection 476.1(1) of the *Criminal Code* (definition of *telecommunications service*)**

Repeal the definition.

**12 Subsection 476.5(2A) of the *Criminal Code***

Omit “telecommunications services”, substitute “carriage services”.

**13 Paragraph 477.1(1)(b) of the *Criminal Code***

Omit “telecommunications service”, substitute “carriage service”.

**14 Subparagraph 477.2(1)(d)(iii) of the *Criminal Code***

Omit “telecommunications service”, substitute “carriage service”.

**15 Subparagraph 477.2(1)(d)(vii) of the *Criminal Code***

Omit “telecommunications service”, substitute “carriage service”.

**16 Subparagraph 477.3(1)(c)(i) of the *Criminal Code***

Omit “telecommunications service”, substitute “carriage service”.

**17 Subparagraph 478.1(1)(d)(iii) of the *Criminal Code***

Omit “telecommunications service”, substitute “carriage service”.

**18 Dictionary in the *Criminal Code***

Insert:

*carriage service* has the same meaning as in the  
*Telecommunications Act 1997*.

**19 Dictionary in the *Criminal Code***

Insert:

*communication* includes any communication:

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether the communication is:
  - (i) in the form of text; or
  - (ii) in the form of speech, music or other sounds; or
  - (iii) in the form of visual images (still or moving); or
  - (iv) in the form of signals; or
  - (v) in the form of data; or
  - (vi) in any other form; or
  - (vii) in any combination of forms.

**20 Dictionary in the *Criminal Code***

Insert:

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*data* includes:

- (a) information in any form; or
- (b) any program (or part of a program).

## **21 Dictionary in the *Criminal Code***

Insert:

*data held in a computer* includes:

- (a) data held in any removable data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part.

## **22 Dictionary in the *Criminal Code***

Insert:

*data storage device* means a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer.

## **23 Dictionary in the *Criminal Code* (definition of *electronic communication*)**

Repeal the definition, substitute:

*electronic communication* means a communication by means of guided or unguided electromagnetic energy or both.

## ***Customs Act 1901***

### **24 Subsections 233BAB(3) and (4)**

Repeal the subsections, substitute:

- (3) For the purposes of subsection (1) an item is taken to be an item of child pornography if it is a document or other goods:
  - (a) that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
    - (i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

- (ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
  - (b) the dominant characteristic of which is the depiction, for a sexual purpose, of:
    - (i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or
    - (ii) a representation of such a sexual organ or anal region; or
    - (iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;  
in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
  - (c) that describes a person who is, or is implied to be, under 18 years of age and who:
    - (i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
    - (ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
  - (d) that describes:
    - (i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or
    - (ii) the breasts of a female person who is, or is implied to be, under 18 years of age;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.
- (4) For the purposes of subsection (1), an item is taken to be an item of child abuse material if it is a document or other goods:
- (a) that depicts a person, or a representation of a person, who:
    - (i) is, or appears to be, under 18 years of age; and

- (ii) is, or appears to be, a victim of torture, cruelty or physical abuse;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
  - (b) that describes a person who:
    - (i) is, or is implied to be, under 18 years of age; and
    - (ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;  
and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.
- (4A) The matters to be taken into account in deciding for the purposes of subsections (3) and (4) whether reasonable persons would regard a particular document or other goods as being, in all the circumstances, offensive, include:
- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
  - (b) the literary, artistic or educational merit (if any) of the material; and
  - (c) the general character of the material (including whether it is of a medical, legal or scientific character).

### ***Telecommunications (Interception) Act 1979***

#### **25 Subsection 5(1) (paragraph (c) of the definition of *prescribed offence*)**

Omit “Part VIIB of the *Crimes Act 1914*”, substitute “Part 10.6 of the *Criminal Code*”.

#### **26 After subsection 5D(2)**

Insert:

- (2A) Without limiting subsection (2), an offence is also a ***class 2 offence*** if it is an offence against section 474.19, 474.20, 474.22, 474.23, 474.26 or 474.27 of the *Criminal Code*.

#### **27 Subparagraph 7(2)(a)(iii)**

Omit “Part VIIB of the *Crimes Act 1914*”, substitute “Part 10.6 of the *Criminal Code*”.

**28 Subsection 11D(4)**

Omit “Part VIIB of the *Crimes Act 1914*”, substitute “Part 10.6 of the *Criminal Code*”.

Note: The heading to subsection 11D(4) is replaced by the heading “*Part 10.6 of the Criminal Code*”.

**29 Subsection 11D(4) (note)**

Omit “Part VIIB of the *Crimes Act 1914*”, substitute “Part 10.6 of the *Criminal Code*”.

## Part 3—Saving provisions

### 30 Saving—existing regulations respecting interception devices

- (1) Regulations made for the purposes of paragraph 85ZKB(2)(c) of the *Crimes Act 1914* and in force immediately before the commencement of item 1 of this Schedule continue in force as if they had been made for the purposes of subsection 474.4(3) of the *Criminal Code* as enacted by that item.
- (2) Subitem (1) does not prevent amendment or repeal of the regulations referred to in that subitem.

### 31 Saving—offences against Part VIIB of the *Crimes Act 1914*

- (1) For the purposes of the *Telecommunications (Interception) Act 1979*, **prescribed offence** includes an offence in relation to conduct (within the meaning of the *Criminal Code*) that:
  - (a) occurred before Part VIIB of the *Crimes Act 1914* was repealed by this Act; and
  - (b) constituted an offence against a provision of that Part.
- (2) Subsection 7(1) of the *Telecommunications (Interception) Act 1979* does not apply to, or in relation to, an act or thing done by an employee of a carrier (within the meaning of that Act) in the course of his or her duties for or in connection with the identifying or tracing of any person who has contravened, or is suspected of having contravened, a provision of Part VIIB of the *Crimes Act 1914* before its repeal by this Act, where it is reasonably necessary for the employee to do that act or thing in order to perform those duties effectively.

## Schedule 2—Contamination offence

### *Criminal Code Act 1995*

#### 1 After Part 9.4 of the *Criminal Code*

Insert:

### Part 9.6—Contamination of goods

#### 380.1 Definitions

(1) In this Part:

*constitutional trade and commerce* means trade and commerce:

- (a) with other countries; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories.

*contaminate* goods includes:

- (a) interfere with the goods; or
- (b) make it appear that the goods have been contaminated or interfered with.

*goods* includes any substance:

- (a) whether or not for human consumption; and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed with other goods.

(2) A reference in this Part to economic loss caused through public awareness of the contamination of goods includes a reference to economic loss caused through:

- (a) members of the public not purchasing or using those goods or similar things; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

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## 380.2 Contaminating goods

### *Offence based on implied nationhood power*

- (1) A person is guilty of an offence if:
- (a) the person contaminates goods; and
  - (b) the person does so with intent:
    - (i) to cause public alarm or anxiety in Australia; or
    - (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
    - (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

### *Offences based on other constitutional powers*

- (2) A person is guilty of an offence if:
- (a) the person contaminates goods; and
  - (b) the person does so with intent to cause:
    - (i) public alarm or anxiety; or
    - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and
  - (c) any of the following subparagraphs applies:
    - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been

- produced, manufactured, assembled or otherwise processed in Australia;
- (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
  - (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
  - (vii) the loss takes the form of detriment to constitutional trade and commerce;
  - (viii) the goods are in the course of, or intended for, constitutional trade and commerce;
  - (ix) the contamination occurs outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
  - (x) the loss is a loss to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

(3) Absolute liability applies to paragraph (2)(c).

### **380.3 Threatening to contaminate goods**

*Offence based on implied nationhood power*

- (1) A person is guilty of an offence if:
- (a) the person makes a threat that goods will be contaminated; and
  - (b) the person does so with intent:
    - (i) to cause public alarm or anxiety in Australia; or
    - (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
    - (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

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*Offences based on other constitutional powers*

- (2) A person is guilty of an offence if:
- (a) the person makes a threat that goods will be contaminated;  
and
  - (b) the person does so with intent to cause:
    - (i) public alarm or anxiety; or
    - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods;  
and
  - (c) any of the following subparagraphs applies:
    - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (vii) the loss takes the form of detriment to constitutional trade and commerce;
    - (viii) the goods are in the course of, or intended for, constitutional trade and commerce;
-

- (ix) the person makes the threat in Australia using a postal or other like service or an electronic communication;
- (x) the person makes the threat outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (xi) the loss is a loss to the Commonwealth or a Commonwealth authority;
- (xii) the threat is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

- (3) Absolute liability applies to paragraph (2)(c).

### **380.4 Making false statements about contamination of goods**

#### *Offence based on implied nationhood power*

- (1) A person is guilty of an offence if:
- (a) the person makes a statement that the person believes to be false; and
  - (b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
  - (c) the person does so with intent:
    - (i) to cause public alarm or anxiety in Australia; or
    - (ii) to cause widespread, or nationally significant, economic loss in Australia through public awareness of the contamination, or possible contamination, of the goods; or
    - (iii) to cause harm to, or create a risk of harm to, public health in Australia.

Penalty: Imprisonment for 10 years.

#### *Offence based on other constitutional powers*

- (2) A person is guilty of an offence if:
- (a) the person makes a statement that the person believes to be false; and

- (b) the person does so with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
  - (c) the person does so with intent to cause:
    - (i) public alarm or anxiety; or
    - (ii) economic loss through public awareness of the contamination, or possible contamination, of the goods; and
  - (d) any of the following subparagraphs applies:
    - (i) the loss is a loss to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (ii) the loss is a loss to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (iii) the goods belong to a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (iv) the goods belong to a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (v) the person is a constitutional corporation (other than a foreign corporation within the meaning of paragraph 51(xx) of the Constitution);
    - (vi) the person is a constitutional corporation that is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
    - (vii) the loss takes the form of detriment to constitutional trade and commerce;
    - (viii) the goods are in the course of, or intended for, constitutional trade and commerce;
    - (ix) the person makes the statement in Australia using a postal or other like service or an electronic communication;
-

- (x) the person makes the statement outside Australia and the goods have been produced, manufactured, assembled or otherwise processed in Australia;
- (xi) the loss is a loss to the Commonwealth or a Commonwealth authority;
- (xii) the statement is made to the Commonwealth or a Commonwealth authority.

Penalty: Imprisonment for 10 years.

- (3) Absolute liability applies to paragraph (2)(d).
- (4) For the purposes of this section, making a statement includes conveying information by any means.

### **380.5 Extended geographical jurisdiction—category D**

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection 380.2(1) or (2), 380.3 (1) or (2) or 380.4(1) or (2).

## **2 Dictionary in the *Criminal Code***

Insert:

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

## Schedule 3—Financial information offences

### *Criminal Code Act 1995*

#### 1 At the end of Chapter 10 of the *Criminal Code*

Add:

### Part 10.8—Financial information offences

#### 480.1 Definitions

(1) In this Part:

*ADI* (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

*dealing* in personal financial information includes supplying or using financial information.

*deception* means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

*dishonest* has the meaning given by section 480.2.

*obtaining* personal financial information includes possessing or making personal financial information.

*personal financial information* means information relating to a person that may be used (whether alone or in conjunction with other information) to access funds, credit or other financial benefits.

(2) For the purposes of this Part, a person is taken to obtain or deal in personal information without the consent of the person to whom

the information relates if the consent of that person is obtained by any deception.

- (3) This Part extends to personal information relating to:
- (a) an individual; or
  - (b) a corporation; or
  - (c) a living or dead person.

#### **480.2 Dishonesty**

- (1) For the purposes of this Part, *dishonest* means:
- (a) dishonest according to the standards of ordinary people; and
  - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (2) In a prosecution for an offence against this Part, the determination of dishonesty is a matter for the trier of fact.

#### **480.3 Constitutional application of this Part**

This Part applies to personal financial information only if:

- (a) the funds concerned represent amounts that have been deposited with or lent to, or are otherwise to be provided or made available by, an ADI or a constitutional corporation; or
- (b) the credit or other financial benefits concerned are provided, or made available, by an ADI or a constitutional corporation.

#### **480.4 Dishonestly obtaining or dealing in personal financial information**

A person is guilty of an offence if the person:

- (a) dishonestly obtains, or deals in, personal financial information; and
- (b) obtains, or deals in, that information without the consent of the person to whom the information relates.

Penalty: Imprisonment for 5 years.

**480.5 Possession or control of thing with intent to dishonestly obtain or deal in personal financial information**

- (1) A person is guilty of an offence if:
- (a) the person has possession or control of any thing; and
  - (b) the person has that possession or control with the intention that the thing be used:
    - (i) by the person; or
    - (ii) by another person;to commit an offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

- (2) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 480.4 (dishonestly obtaining or dealing in personal financial information) is impossible.
- (3) It is not an offence to attempt to commit an offence against subsection (1).

**480.6 Importation of thing with intent to dishonestly obtain or deal in personal financial information**

- A person is guilty of an offence if the person:
- (a) imports a thing into Australia; and
  - (b) does so with the intention that the thing be used:
    - (i) by the person; or
    - (ii) by another person;in committing an offence against section 480.3 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty: Imprisonment for 3 years.

## **Schedule 4—Other amendments of the Criminal Code**

### **Part 1—Alternative verdicts**

#### *Criminal Code Act 1995*

##### **1 At the end of section 11.2 of the *Criminal Code***

Add:

- (7) If the trier of fact is satisfied beyond reasonable doubt that a person either:
- (a) is guilty of a particular offence otherwise than because of the operation of subsection (1); or
  - (b) is guilty of that offence because of the operation of subsection (1);
- but is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.

##### **2 Application of amendment**

The amendment made by item 1 applies to prosecutions brought after the commencement of that item.

## **Part 2—Obtaining financial advantage**

### ***Criminal Code Act 1995***

#### **3 Paragraph 135.2(1)(a) of the *Criminal Code***

Repeal the paragraph, substitute:

- (a) the person engages in conduct; and
- (aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and
- (ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and

#### **4 Paragraph 135.2(2)(a) of the *Criminal Code***

Repeal the paragraph, substitute:

- (a) the person engages in conduct; and
- (aa) as a result of that conduct, the person obtains a financial advantage for another person from a third person; and
- (ab) the person knows or believes that the other person is not eligible to receive that financial advantage; and

## **Part 3—Knowledge of law**

### ***Criminal Code Act 1995***

#### **5 Subsection 9.3(2) of the *Criminal Code***

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act is expressly to the contrary effect.

#### **6 Paragraph 9.4(2)(a) of the *Criminal Code***

Omit “or impliedly”.

#### **7 Paragraph 9.4(2)(b) of the *Criminal Code***

Repeal the paragraph.

#### **8 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Part, that provision continues to apply, after the commencement of this item, in relation to:
  - (a) an offence committed before the commencement of this item;  
or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

## Schedule 5—Amendment of other Acts

### *Crimes (Aviation) Act 1991*

#### **1 Subsection 3(1) (subparagraph (a)(i) of the definition of Division 2 aircraft)**

Repeal the subparagraph, substitute:

- (i) engaged in a flight in the course of trade and commerce with other countries or among the States; or
- (ia) engaged in a flight within a Territory, between 2 Territories or between a State and a Territory; or

#### **2 At the end of paragraph 15(1)(b)**

Add:

- ; or (iii) the *Prostitution Act 1992* of the Australian Capital Territory in its application to the Jervis Bay Territory;

### *Customs Act 1901*

#### **3 Subsection 233B(1)**

Repeal the subsection, substitute:

- (1) A person commits an offence if:
  - (a) the person:
    - (i) possesses goods on board a ship or aircraft; or
    - (ii) brings goods into Australia; or
    - (iii) imports goods into Australia; or
    - (iv) possesses goods that have been imported into Australia in contravention of this Act; or
    - (v) conveys goods that have been imported into Australia in contravention of this Act; or
    - (vi) possesses goods that are reasonably suspected of having been imported into Australia in contravention of this Act; or
    - (vii) fails to disclose to an officer on demand any knowledge in his or her possession or power concerning the

importation or intended importation, or bringing or intended bringing, into Australia of goods; and

(b) the goods are a prohibited import to which this section applies.

(1AAB) Subparagraph (1)(a)(i), (ii), (iv), (v) or (vi) does not apply if the person proves that the person had a reasonable excuse for doing the act referred to in that subparagraph.

(1AAC) A person commits an offence if:

(a) the person:

(i) exports goods from Australia; or

(ii) fails to disclose to an officer on demand any knowledge in his or her possession or power concerning the exportation or intended exportation from Australia of goods; and

(b) the goods are a prohibited export to which this section applies.

#### **4 Subsection 233B(1AA)**

Omit “paragraph (1)(a)”, substitute “subparagraph (1)(a)(i)”.

#### **5 Subsection 233B(1AB)**

Omit “paragraph (1)(c) or (caa)”, substitute “subparagraph (1)(a)(iv) or (v)”.

#### **6 Subsection 233B(1AC)**

Omit “paragraph (1)(ca)”, substitute “subparagraph (1)(a)(vi)”.

#### **7 Subsection 233B(1A)**

Omit “paragraph (c) of that subsection”, substitute “subparagraph (1)(a)(iv)”.

#### **8 Subsection 233B(1B)**

Omit “paragraph (ca) of that subsection”, substitute “subparagraph (1)(a)(vi)”.

### ***Cybercrime Act 2001***

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**9 Schedule 1 (heading relating to the *Telecommunications (Interception) Act 1997*)**

Omit “1997”, substitute “1979”.

***Mutual Assistance in Criminal Matters Act 1987***

**10 Paragraph 15(1)(c)**

Repeal the paragraph, substitute:

- (c) the foreign country requests the Attorney-General to arrange for the evidential material to be obtained;

**11 Subsection 15(1)**

Omit “the search warrant requested by the foreign country”, substitute “a search warrant in respect of the evidential material”.

**12 Subsection 38ZA(1)**

Repeal the subsection, substitute:

- (1) Subject to subsection (2), if a police officer seizes a thing while executing a warrant issued under Division 2, he or she must:
  - (a) inform the Attorney-General that the thing has been so seized; and
  - (b) retain the thing pending the Attorney-General’s direction under subsection (4) about how to deal with the thing; and
  - (c) comply with any such direction that the Attorney-General gives.

**13 Subsection 38ZA(3)**

Repeal the subsection.

**14 Subsection 38ZA(4)**

Omit “Commissioner”, substitute “police officer”.

**15 Subsection 38ZA(5)**

Omit “Commissioner”, substitute “police officer”.

**16 Subsection 38ZA(6)**

Omit “Commissioner”, substitute “police officer”.

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*[Minister's second reading speech made in—  
House of Representatives on 4 August 2004  
Senate on 10 August 2004]*

(149/04)