



Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011

No. 3, 2011

**An Act to amend various Acts relating to law and
justice, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 3, 2011

**An Act to amend various Acts relating to law and
justice, and for related purposes**

[Assented to 2 March 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice Legislation
Amendment (Identity Crimes and Other Measures) Act 2011*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 March 2011
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	3 March 2011
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent. However, if item 21 of Schedule 2 to the <i>National Security Legislation Amendment Act 2010</i> commences on or before that day, the provision(s) do not commence at all.	Did not commence
4. Schedules 2 to 7	The day after this Act receives the Royal Assent.	3 March 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Identity crimes

Part 1—Main amendments

Criminal Code Act 1995

1 After Part 9.4 of the *Criminal Code*

Insert:

Part 9.5—Identity crime

Division 370—Preliminary

370.1 Definitions

In this Code:

deal, in identification information, includes make, supply or use any such information.

identification documentation means any document or other thing that:

- (a) contains or incorporates identification information; and
- (b) is capable of being used by a person for the purpose of pretending to be, or passing the person off as, another person (whether living, dead, real or fictitious).

identification information means information, or a document, relating to a person (whether living, dead, real or fictitious) that is capable of being used (whether alone or in conjunction with other information or documents) to identify or purportedly identify the person, including any of the following:

- (a) a name or address;
- (b) a date or place of birth, whether the person is married or has a de facto partner, relatives' identity or similar information;
- (c) a driver's licence or driver's licence number;
- (d) a passport or passport number;
- (e) biometric data;

- (f) a voice print;
- (g) a credit or debit card, its number, or data stored or encrypted on it;
- (h) a financial account number, user name or password;
- (i) a digital signature;
- (j) a series of numbers or letters (or both) intended for use as a means of personal identification;
- (k) an ABN.

Division 372—Identity fraud offences

372.1 Dealing in identification information

- (1) A person (the *first person*) commits an offence if:
- (a) the first person deals in identification information; and
 - (b) the first person intends that any person (the *user*) (whether or not the first person) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of:
 - (i) committing an offence; or
 - (ii) facilitating the commission of an offence; and
 - (c) the offence referred to in paragraph (b) is an indictable offence against a law of the Commonwealth.

Penalty: Imprisonment for 5 years.

Note: *Deal*, in identification information, includes make, supply or use any such information. See section 370.1.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2.

- (3) This section applies:
- (a) even if:
 - (i) committing the offence referred to in paragraph (1)(b) is impossible; or
 - (ii) the offence referred to in paragraph (1)(b) is to be committed at a later time; and

- (b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.
- (4) This section does not apply to dealing in the first person's own identification information.

372.2 Possession of identification information

- (1) A person (the *first person*) commits an offence if:
 - (a) the first person possesses identification information; and
 - (b) the first person intends that any person (whether or not the first person) will use the identification information to engage in conduct; and
 - (c) the conduct referred to in paragraph (b) constitutes an offence against section 372.1.

Penalty: Imprisonment for 3 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2.

- (3) This section applies whether or not the person to whom the identification information concerned relates consented to the possession of the identification information.
- (4) This section does not apply to the possession of the first person's own identification information.

372.3 Possession of equipment used to make identification documentation

- (1) A person (the *first person*) commits an offence if:
 - (a) the first person possesses equipment; and
 - (b) the first person intends that any person (whether or not the first person) will use the equipment to make identification documentation; and
 - (c) the first person intends that any person (whether or not referred to in paragraph (b)) will use the identification documentation to engage in conduct; and

(d) the conduct referred to in paragraph (c) constitutes an offence against section 372.1.

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2.

372.4 Extended geographical jurisdiction—category A

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

372.5 Alternative verdict

- (1) This section applies if, in a prosecution for an offence against section 372.1, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 372.2.
- (2) The trier of fact may find the defendant not guilty of the offence against section 372.1 but guilty of the offence against section 372.2, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

372.6 Attempt

It is not an offence to attempt to commit an offence against this Division.

Division 375—Victims' certificates

375.1 Certificate may be issued by magistrate in relation to victim of identity crime

- (1) A magistrate may, on application by a person (the *victim*), issue a certificate under this section if the magistrate is satisfied, on the balance of probabilities, that:
 - (a) another person (the *dealer*) has dealt in identification information; and

- (b) the dealer intended that any person (the *user*) (whether or not the dealer) would use the identification information to pretend to be, or to pass the user off as, another person (whether the victim or another person living, dead, real or fictitious) for the purpose of:
 - (i) committing an offence; or
 - (ii) facilitating the commission of an offence; and
- (c) the certificate may assist with any problems the dealing has caused in relation to the victim's personal or business affairs; and
- (d) the offence referred to in paragraph (b) is an indictable offence against a law of the Commonwealth.

Note: *Deal*, in identification information, includes make, supply or use any such information. See section 370.1.

- (2) This section applies:
 - (a) even if:
 - (i) committing the offence referred to in paragraph (1)(b) is impossible; or
 - (ii) the offence referred to in paragraph (1)(b) is to be committed at a later time; and
 - (b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

375.2 Content of certificate

- (1) A certificate issued under section 375.1 must:
 - (a) identify the victim; and
 - (b) describe the dealing in identification information.
- (2) The certificate may contain such other information as the magistrate considers appropriate.
- (3) The certificate must not identify the dealer.

375.3 Relation to civil and criminal proceedings

- (1) The magistrate may issue a certificate under section 375.1 whether or not:
 - (a) the dealer is identifiable; or

- (b) subject to subsection (2)—any proceedings (whether civil or criminal) have been or can be taken against a person for or in relation to the dealing, or are pending.
- (2) The magistrate must not issue a certificate under section 375.1 if doing so would prejudice any proceedings.
- (3) The certificate is not admissible in any proceedings.

375.4 Power conferred on magistrate personally

- (1) Power is conferred by this Division on a magistrate only in a personal capacity and not as a court or a member of a court.
- (2) The magistrate need not accept the power conferred.
- (3) A magistrate exercising a power under this Division has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

2 Dictionary in the *Criminal Code*

Insert:

ABN (short for Australian Business Number) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

3 Dictionary in the *Criminal Code*

Insert:

deal, in identification information, has a meaning affected by section 370.1.

4 Dictionary in the *Criminal Code*

Insert:

identification documentation has the meaning given by section 370.1.

5 Dictionary in the *Criminal Code*

Insert:

identification information has the meaning given by section 370.1.

Part 2—Other amendment

Criminal Code Act 1995

6 Dictionary in the *Criminal Code*

Insert:

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

Schedule 2—Administration of justice offences

Part 1—Amendment of the Crimes Act 1914

1 Subsection 3(1)

Insert:

criminal detention has the meaning given by section 45A.

2 Subsection 3(1)

Insert:

federal criminal detention has the meaning given by section 45A.

3 Subsection 3(1)

Insert:

federal judicial proceeding has the meaning given by section 31.

4 Subsection 3(1)

Insert:

judicial proceeding has the meaning given by section 31 (other than in section 3L).

5 Subsection 3(1)

Insert:

judicial tribunal has the meaning given by section 31.

6 Before section 31

Insert:

Division 1—Preliminary

7 Section 31

Repeal the section, substitute:

31 Judicial proceeding and tribunal definitions

In this Act:

federal judicial proceeding means:

- (a) a judicial proceeding in or before:
 - (i) a federal court; or
 - (ii) a court exercising federal jurisdiction; or
 - (iii) a court of a Territory; or
- (b) a judicial proceeding before a body or person acting under a law of:
 - (i) the Commonwealth; or
 - (ii) a Territory.

judicial proceeding means (other than in section 3L):

- (a) a proceeding in or before a court; or
- (b) a proceeding:
 - (i) before a body, or a person, acting under a law of the Commonwealth, of a State or of a Territory; and
 - (ii) in which evidence may be taken on oath.

judicial tribunal means a body or person (other than a court) before whom a judicial proceeding is conducted.

8 Before section 34

Insert:

Division 2—Judges and magistrates

9 Section 34

Repeal the section, substitute:

34 Judge or magistrate acting oppressively or when interested

Excessive and unreasonable bail

- (1) A person commits an offence if:
 - (a) the person is a judge or magistrate; and
 - (b) the judge or magistrate is required or authorised by law to admit a person accused of an offence to bail; and
-

- (c) the judge or magistrate requires excessive and unreasonable bail; and
- (d) the requirement is an abuse of the judge's or magistrate's office; and
- (e) the offence referred to in paragraph (b) is an offence against a law of the Commonwealth.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the judge or magistrate has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Absolute liability applies to the paragraph (1)(e) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

Acting when interested

- (4) A person commits an offence if:
- (a) the person is a judge or magistrate; and
 - (b) the judge or magistrate perversely exercises jurisdiction in a matter; and
 - (c) the judge or magistrate has a personal interest in the matter; and
 - (d) the jurisdiction is federal jurisdiction.

Penalty: Imprisonment for 2 years.

- (5) Absolute liability applies to the paragraph (4)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

10 Before section 35

Insert:

Division 3—Evidence and witnesses

11 Sections 35 to 40

Repeal the sections, substitute:

35 Giving false testimony

- (1) A person commits an offence if:
- (a) the person gives false testimony touching a matter; and
 - (b) the person does so:
 - (i) in a judicial proceeding; or
 - (ii) with the intention of instituting a judicial proceeding; and
 - (c) the matter is material in the judicial proceeding; and
 - (d) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (2) Strict liability applies to the paragraph (1)(c) element of the offence.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (4) For the purposes of this section, it is immaterial:

- (a) whether the testimony is given:
 - (i) on oath or not on oath; or
 - (ii) orally or in writing; or
- (b) whether the court or judicial tribunal to which the testimony is given:
 - (i) is properly constituted; or
 - (ii) is held in the proper place; or
- (c) whether the person who gave the testimony is a competent witness; or
- (d) whether the testimony is admissible.

36 Fabricating evidence

- (1) A person commits an offence if:
- (a) the person:
 - (i) fabricates evidence; or
 - (ii) makes use of fabricated evidence; and

- (b) the person does so with the intention of misleading a court or judicial tribunal in a judicial proceeding; and
- (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

36A Intimidation of witnesses etc.

- (1) A person (the *first person*) commits an offence if:

- (a) the first person:
 - (i) threatens, intimidates or restrains another person; or
 - (ii) uses violence to, or inflicts an injury on, another person;
or
 - (iii) causes or procures violence, damage, loss or disadvantage to another person; or
 - (iv) causes or procures the punishment of another person;
and
- (b) the first person does so on account of the other person having appeared, or being about to appear, as a witness in a judicial proceeding; and
- (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

37 Corruption of witnesses

Agreements or understandings

- (1) A person (the *first person*) commits an offence if:

- (a) the first person:
 - (i) gives, confers or procures any property, or benefit, of any kind to, upon or for another person; or

- (ii) promises or offers to give, to confer, to procure or to attempt to procure any property, or benefit, of any kind to, upon or for another person; or
 - (iii) asks for, receives or obtains any property, or benefit, of any kind for himself or herself or another person; or
 - (iv) agrees to receive or to obtain any property, or benefit, of any kind for himself or herself or another person; and
- (b) the first person does so upon an agreement or understanding that any person called, or to be called, as a witness in a judicial proceeding will:
- (i) give false testimony; or
 - (ii) withhold true testimony; and
- (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

Inducing false testimony

- (3) A person commits an offence if:
- (a) the person does an act; and
 - (b) the person does so with the intention of inducing a person called, or to be called, as a witness in a judicial proceeding:
 - (i) to give false testimony; or
 - (ii) to withhold true testimony; and
 - (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (4) Absolute liability applies to the paragraph (3)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

38 Deceiving witnesses

- (1) A person (the ***first person***) commits an offence if:
- (a) the first person:

- (i) practises any fraud or deceit to a person called, or to be called, as a witness in a judicial proceeding; or
- (ii) makes or exhibits any false statement, representation, token or writing to a person called, or to be called, as a witness in a judicial proceeding; and
- (b) the first person does so with the intention of affecting the testimony of the other person; and
- (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

39 Destroying evidence

- (1) A person commits an offence if:
 - (a) the person knows that a book, document or thing of any kind is, or may be, required in evidence in a judicial proceeding; and
 - (b) the person:
 - (i) destroys the book, document or thing; or
 - (ii) renders the book, document or thing illegible, undecipherable or incapable of identification; and
 - (c) the person does so with the intention of preventing the book, document or thing from being used in evidence; and
 - (d) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

40 Preventing witnesses from attending Court

- (1) A person (the *first person*) commits an offence if:
 - (a) another person has been subpoenaed or summoned to attend as a witness in a judicial proceeding; and

- (b) the first person prevents the other person from attending as a witness, or from producing anything in evidence, pursuant to the subpoena or summons; and
- (c) the judicial proceeding is a federal judicial proceeding.

Penalty: Imprisonment for 1 year.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

12 Before section 41

Insert:

Division 4—Perverting the course of justice

13 Subsection 41(1)

Repeal the subsection, substitute:

- (1) A person commits an offence if:
 - (a) the person conspires with another person:
 - (i) to charge any person falsely with an offence; or
 - (ii) to cause any person to be falsely charged with an offence; and
 - (b) the offence referred to in paragraph (a) is an offence against a law of:
 - (i) the Commonwealth; or
 - (ii) a Territory.

Penalty: Imprisonment for 10 years.

- (1A) Absolute liability applies to the paragraph (1)(b) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

14 Subsections 42(1) and (2)

Repeal the subsections, substitute:

- (1) A person commits an offence if:

- (a) the person conspires with another person to obstruct, to prevent, to pervert or to defeat the course of justice in relation to a judicial power; and
- (b) the judicial power is the judicial power of the Commonwealth.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

15 Subsections 43(1) and (2)

Repeal the subsections, substitute:

- (1) A person commits an offence if:
 - (a) the person attempts to obstruct, to prevent, to pervert or to defeat the course of justice in relation to a judicial power; and
 - (b) the judicial power is the judicial power of the Commonwealth.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

16 Sections 44 and 45

Repeal the sections, substitute:

44 Compounding offences

- (1) A person (the *first person*) commits an offence if:
 - (a) the first person:
 - (i) asks for, receives or obtains any property, or benefit, of any kind for himself or herself or another person; or
 - (ii) agrees to receive or to obtain any property, or benefit, of any kind for himself or herself or another person; and
 - (b) the first person does so upon an agreement or understanding that the first person will:
 - (i) compound or conceal an offence; or

- (ii) abstain from, discontinue or delay a prosecution for an offence; or
- (iii) withhold evidence of an offence; and
- (c) the offence referred to in paragraph (b) is an indictable offence against a law of:
 - (i) the Commonwealth; or
 - (ii) a Territory.

Penalty: Imprisonment for 3 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

45 Inserting advertisements without authority of court

- (1) A person commits an offence if:
 - (a) the person inserts in the *Gazette*, or in a newspaper, an advertisement purporting to be published under the authority of a court; and
 - (b) the person does so:
 - (i) without authority; or
 - (ii) knowing the advertisement to be false in any material particular; and
 - (c) the advertisement purports to be published under the authority of:
 - (i) a federal court; or
 - (ii) a court exercising federal jurisdiction; or
 - (iii) a court of a Territory.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

17 Before section 46

Insert:

Division 5—Escape from criminal detention

45A Criminal detention definitions

In this Act:

criminal detention: a person is in ***criminal detention*** if the person:

- (a) is arrested in respect of an offence; or
- (b) is in custody in respect of an offence; or
- (c) is detained because:
 - (i) the person is unfit to be tried in respect of an offence; or
 - (ii) the person has been acquitted of an offence because of mental illness at the time of the offence; or
 - (iii) the person has been convicted of an offence and a court has ordered that the person be detained for the purposes of receiving treatment for a mental illness that contributed to the commission of the offence.

Example: Paragraph (c) includes detention under:

- (a) Division 6 of Part IB (unfitness to be tried); or
- (b) Division 7 of Part IB or section 20BS (mental illness).

federal criminal detention means criminal detention in respect of an offence against a law of:

- (a) the Commonwealth; or
- (b) a Territory (other than the Australian Capital Territory).

18 Sections 46 to 48

Repeal the sections, substitute:

46 Aiding prisoner to escape

- (1) A person (the ***first person***) commits an offence if:
 - (a) another person (the ***prisoner***) is in criminal detention; and
 - (b) the first person aids the prisoner:
 - (i) to escape from that detention; or
 - (ii) to attempt to escape from that detention; and
 - (c) the prisoner escapes, or attempts to escape, from that detention; and
 - (d) the detention is lawful federal criminal detention.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (3) Subsection (1) does not apply if, before the escape or attempted escape, the first person:
- (a) terminates his or her aid to the prisoner; and
 - (b) takes all reasonable steps to prevent the escape or attempted escape.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) The first person may be found guilty of the offence even if the prisoner has not been prosecuted for, or has not been found guilty of, an offence in relation to the escape or attempted escape.

46A Aiding prisoner to escape—conveying thing into prison etc.

- (1) A person (the *first person*) commits an offence if:
- (a) another person (the *prisoner*) is in criminal detention; and
 - (b) the first person conveys a thing into a prison, lock-up or other place of criminal detention; and
 - (c) the first person does so with the intention of facilitating the escape of the prisoner from the prison, lock-up or other place; and
 - (d) the detention is lawful federal criminal detention.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

47 Escaping

- (1) A person commits an offence if:
- (a) the person is in criminal detention; and
 - (b) the person escapes from that detention; and
 - (c) the detention is lawful federal criminal detention.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

47A Rescuing a prisoner from criminal detention

- (1) A person (the *first person*) commits an offence if:
- (a) another person (the *prisoner*) is in criminal detention; and
 - (b) the first person rescues the prisoner from that detention by force; and
 - (c) the detention is lawful federal criminal detention.

Penalty: Imprisonment for 14 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

47B Person unlawfully at large

- (1) A person commits an offence if:
- (a) the person was in criminal detention in a prison, lock-up or other place of criminal detention; and
 - (b) the detention was lawful federal criminal detention; and
 - (c) in accordance with a permission given under a law of a State or Territory (other than the Australian Capital Territory), the person leaves the prison, lock-up or other place; and
 - (d) the person refuses, or fails, to return to the prison, lock-up or other place in accordance with that permission.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (3) Paragraph (1)(d) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

47C Permitting escape

- (1) A person (the *first person*) commits an offence if:
- (a) the first person is:
 - (i) an officer of a prison, lock-up or other place of criminal detention; or
 - (ii) a constable; or
 - (iii) a Commonwealth officer; and
 - (b) the first person is charged for the time being with the criminal detention of another person (the *prisoner*); and
 - (c) the first person intentionally or negligently permits the prisoner to escape from the detention; and
 - (d) the detention is lawful federal criminal detention.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(d) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

48 Harboursing etc. an escapee

- (1) A person (the *first person*) commits an offence if:
- (a) the first person knows that another person (the *escapee*) has escaped from a place where the other person was held in criminal detention; and
 - (b) the first person harbours, maintains or employs the escapee; and
 - (c) the detention was lawful federal criminal detention.

Penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

19 Before section 49

Insert:

Division 6—Seized property

20 Section 49

Repeal the section, substitute:

49 Removing property under seizure

- (1) A person commits an offence if:
- (a) property has been attached, or taken, under the process or authority of a court; and
 - (b) the court was:
 - (i) a federal court; or
 - (ii) exercising federal jurisdiction; or
 - (iii) a court of a Territory; and
 - (c) the person receives, removes, retains, conceals or disposes of the property; and
 - (d) the person does so with the intention of hindering or defeating the attachment or process.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

Part 2—Other amendments

Australian Federal Police Act 1979

21 Subsection 4(1) (subparagraph (a)(i) of the definition of protective service offence)

Omit “(other than paragraph (b))”.

Federal Court of Australia Act 1976

22 Subsection 32P(2)

Before “judicial proceeding”, insert “federal”.

International Criminal Court Act 2002

23 Section 183

Repeal the section, substitute:

183 Aiding persons to escape etc.

Sections 46, 46A, 47A, 47C and 48 of the *Crimes Act 1914* have effect as if:

- (a) arrest pursuant to this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia pursuant to this Act were custody in respect of an offence against a law of the Commonwealth.

International Transfer of Prisoners Act 1997

24 After section 56

Insert:

56A Aiding persons to escape etc.

Division 5 of Part III of the *Crimes Act 1914* has effect as if:

- (a) custody or detention in Australia under this Act were custody in respect of an offence against a law of the Commonwealth; and
- (b) arrest under section 56 of this Act were arrest in respect of an offence against a law of the Commonwealth.

International War Crimes Tribunals Act 1995

25 Section 80

Repeal the section, substitute:

80 Aiding persons to escape etc.

Sections 46, 46A, 47A, 47C and 48 of the *Crimes Act 1914* have effect as if:

- (a) arrest pursuant to this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia pursuant to this Act were custody in respect of an offence against a law of the Commonwealth.

Mutual Assistance in Criminal Matters Act 1987

26 Section 25A

Repeal the section, substitute:

25A Aiding persons to escape etc.

Sections 46, 46A, 47A, 47C and 48 of the *Crimes Act 1914* have effect as if:

- (a) arrest under section 25 of this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia under a request under section 16 of this Act were custody in respect of an offence against a law of the Commonwealth.

27 Section 31A

Repeal the section, substitute:

31A Aiding persons to escape etc.

Sections 46, 46A, 47A, 47C and 48 of the *Crimes Act 1914* have effect as if:

- (a) arrest under section 31 of this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia in accordance with a direction under paragraph 29(1)(d) of this Act were custody in respect of an offence against a law of the Commonwealth.

Telecommunications (Interception and Access) Act 1979

28 Paragraph 5D(8)(b)

After “46”, insert “, 46A”.

Transfer of Prisoners Act 1983

29 Subsection 26(1)

Omit “as if a reference in that section”, substitute “of this Act as if a reference in the definition of *federal criminal detention* in section 45A”.

30 Subsection 26(2)

Omit “that section”, substitute “the definition of *federal criminal detention* in section 45A of that Act”.

Schedule 3—Director of Public Prosecutions Act 1983

1 Subsection 31(1)

After “all or any of his or her”, insert “functions or”.

2 Subsection 31(1)

Omit “other than his or her powers”, substitute “other than those”.

3 After subsection 31(1)

Insert:

(1AA) If a function is delegated under subsection (1) to a person referred to in paragraph 29(b), the person need not accept the function delegated.

4 After subsection 31(1A)

Insert:

(1B) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to:

- (a) a person performing a similar role under a law of a State or Territory; or
- (b) a member of the staff of a State or Territory authority (within the meaning of subsection 15(3)) who is a legal practitioner; or
- (c) a person authorised by, or under, a law of a State or Territory to institute or conduct prosecutions for offences against the laws of the State or Territory; or
- (d) a person included in a class of persons prescribed by the regulations for the purposes of this paragraph;

all or any of the Director’s functions and powers under the following provisions:

- (e) paragraphs 6(1)(a), (b), (c), (d) and (e);
- (f) paragraph 6(1)(n) (so far as it relates to the functions covered by paragraph (e) of this subsection);

- (g) subsections 6(2A), (2B) and (2C);
- (h) subsections 9(7), (8A) and (8B);
- (i) other provisions of this Act prescribed by the regulations for the purposes of this paragraph.

(1C) If a function is delegated under subsection (1B) to a person, the person need not accept the function delegated.

5 Subsection 31(2)

After “A”, insert “function or”.

6 Subsection 31(2)

After “when”, insert “performed or”.

7 Subsection 31(2)

After “been”, insert “performed or”.

8 Subsection 31(3)

After “prevent”, insert “the performance of a function or”.

9 After section 32

Insert:

32A Immunity from civil proceedings

- (1) No civil action, suit or proceeding lies against the following persons:
 - (a) the Director;
 - (b) a member of the staff of the Office;
 - (c) a person to whom functions or powers are delegated under section 31;in relation to an act done, or omitted to be done, in good faith by the person in the performance or exercise, or the purported performance or exercise, of any function, duty or power under, or in relation to, this Act.
- (2) No civil action, suit or proceeding lies against a person employed under subsection 27(3) in relation to an act done, or omitted to be done, in good faith by the person for the purposes of the performance of the functions of the Director.

Note: Subsection (1) applies to the extent that the Director's functions or powers are delegated to a person employed under subsection 27(3).

- (3) No civil action, suit or proceeding lies against a person referred to in section 29 whose services are made available to the Director in relation to an act done, or omitted to be done, in good faith by the person for the purpose of assisting the Director.

Note: Subsection (1) applies to the extent that the Director's functions or powers are delegated to a person referred to in section 29 whose services are made available to the Director.

- (4) No civil action, suit or proceeding lies against the AGS in relation to an act done, or omitted to be done, in good faith by the AGS in performing a function or exercising a power under an arrangement made under subsection 32(1).

- (5) No civil action, suit or proceeding lies against:

- (a) the Chief Executive Officer of the AGS; or
- (b) a person employed under subsection 55ZB(1) of the *Judiciary Act 1903*;

in relation to an act done, or omitted to be done, in good faith by the person in assisting the AGS to perform a function or exercise a power under an arrangement made under subsection 32(1) of this Act.

- (6) In subsections (4) and (5):

AGS has the meaning given by subsection 32(4).

Schedule 4—Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Subsection 61(2)

After “affix”, insert “, or arrange for another person to affix,”.

2 Paragraph 62(2)(a)

After “notice”, insert “, or communicate the information contained in the notice in the manner prescribed by the AML/CTF Rules,”.

3 Paragraph 62(2)(b)

After “given”, insert “, or cause to be communicated the information contained in the notice in the manner prescribed by the AML/CTF Rules,”.

4 Subparagraphs 124(1)(a)(iv) and (1)(b)(iv) and (v)

After “subsection 49(1)”, insert “, in so far as that subsection relates to a communication under section 41”.

5 At the end of subsections 128(4) and (9)

Add:

; or (c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

6 After subsection 130(3)

Insert:

(3A) Paragraph (3)(a) does not apply to AUSTRAC information that:

- (a) was obtained under section 41; or
- (b) was obtained under section 49, in so far as that section relates to a communication under section 41; or
- (c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

7 After subsection 131(3)

Insert:

- (3A) Subsection (3) does not apply to AUSTRAC information that:
- (a) was obtained under section 41; or
 - (b) was obtained under section 49, in so far as that section relates to a communication under section 41; or
 - (c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

8 Application

- (1) The amendments of section 62 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule apply in relation to aircraft or ships leaving a place outside Australia on or after the commencement of this item.
- (2) The amendment of section 124 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule applies in relation to court or tribunal proceedings instituted on or after the commencement of this item.
- (3) The amendment of section 128 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule applies in relation to information obtained under section 16 of the *Financial Transaction Reports Act 1988* before, on or after the commencement of this item.
- (4) The amendments of sections 130 and 131 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule apply in relation to AUSTRAC information obtained before, on or after the commencement of this item.

Schedule 5—Australian Federal Police Act 1979

1 Subsection 40LA(3)

Omit “blood”, substitute “breath”.

Note: The heading to section 40LA is replaced by the heading “**Authorised managers may require AFP appointees to undergo alcohol screening tests etc.**”.

2 Paragraph 40LA(4)(a)

Omit “blood”, substitute “breath”.

3 Subsection 40M(1)

After “her”, insert “to do one or more of the following”.

Note: The heading to section 40M is replaced by the heading “**Prescribed persons may require AFP employees or special members to undergo alcohol screening tests, alcohol breath tests or prohibited drug tests etc.**”.

4 Before paragraph 40M(1)(a)

Insert:

(aa) undergo an alcohol screening test;

5 Paragraph 40M(1)(a)

Omit “to”.

6 Paragraph 40M(1)(a)

Omit “or”.

7 Paragraph 40M(1)(b)

Omit “to”.

8 Before paragraphs 40N(1)(c) and (2)(c)

Insert:

(ba) to undergo an alcohol screening test; or

Note: The heading to section 40N is altered by omitting “**Alcohol breath tests**” and substituting “**Alcohol screening tests, alcohol breath tests**”.

9 Paragraph 40R(1)(b)

Omit “section 40LA”, substitute “sections 40LA, 40M and 40N”.

10 Section 40RO

Before “The Commissioner”, insert “(1)”.

11 Subparagraph 40RO(a)(ii)

Omit “and”, substitute “or”.

12 Subparagraph 40RO(b)(ii)

Omit “Act; and”, substitute “Act.”.

13 Paragraph 40RO(c)

Repeal the paragraph.

14 At the end of section 40RO

Add:

- (2) The Commissioner and the Ombudsman must also be satisfied that the conduct does not warrant being treated as category 3 conduct for the purposes of this Act.

15 Subsection 40TN(1)

Before “section 40TO”, insert “subsection (3) and”.

16 Subsection 40TN(1)

Omit “a person who is a member or special member”, substitute “one or more law enforcement officers (within the meaning of the *Crimes Act 1914*)”.

17 Subsection 61(1)

Omit “a Deputy Commissioner, an AFP employee, a special member or a special protective service officer”, substitute “an AFP appointee”.

18 Subsection 61(1)

After “conspicuous conduct”, insert “or by his or her diligent service”.

19 After subsection 61(1)

Insert:

(1A) If the Commissioner is satisfied that a person (other than an AFP appointee) has, by his or her bravery, or other conspicuous conduct, in assisting the Australian Federal Police, merited a prescribed award, the Commissioner may confer the award on that person.

20 Subsection 64A(2)

Omit “worn on, or attached to, the front of his or her uniform”, substitute “clearly visible on his or her uniform”.

21 Application—item 18

The amendment made by item 18 applies in relation to service occurring before, on or after the commencement of that item.

Schedule 6—Judiciary Act 1903

1 Section 55D

Repeal the section.

2 Subsection 55E(1) (paragraph (a) of the definition of *Attorney-General's lawyer*)

Repeal the paragraph, substitute:

- (a) whose name is on:
 - (i) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or
 - (ii) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory; and

3 Section 55I (paragraph (b) of the definition of *AGS lawyer*)

Repeal the paragraph, substitute:

- (b) an employee of the AGS whose name is on:
 - (i) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or
 - (ii) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory.

4 Subsection 55T(2)

Repeal the subsection, substitute:

- (2) The CEO must be a person whose name is on:
 - (a) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or
 - (b) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory.

Schedule 7—Miscellaneous amendments

Australian Federal Police Act 1979

1 Subparagraphs 4AA(1)(d)(i) and (ii)

Omit “a matter relating to a relevant criminal activity that relates to”.

Crimes Act 1914

2 Subparagraphs 3AA(1)(d)(i) and (ii)

Omit “a matter relating to a relevant criminal activity that relates to”.

Criminal Code Act 1995

3 Subsection 477.1(5) of the *Criminal Code*

Omit “(3)”, substitute “(4)”.

Privacy Act 1988

4 Subsection 6(1) (after paragraph (k) of the definition of *enforcement body*)

Insert:

(ka) the Office of Police Integrity of Victoria; or

*[Minister's second reading speech made in—
Senate on 29 September 2010
House of Representatives on 9 February 2011]*

(192/10)

Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011 No.
3, 2011 39