





# **Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015**

**No. 153, 2015**

**An Act to amend various Acts relating to the  
criminal law and law enforcement, and for other  
purposes**

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



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No. 153, 2015

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**An Act to amend various Acts relating to the  
criminal law and law enforcement, and for other  
purposes**

*[Assented to 26 November 2015]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Crimes Legislation Amendment  
(Powers, Offences and Other Measures) Act 2015*.

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No. 153, 2015

*Crimes Legislation Amendment (Powers, Offences and Other  
Measures) Act 2015*

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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>Provisions</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 this Act receives the Royal Assent.	26 November 2015
2. Schedules 1 to 14	The day after this Act receives the Royal Assent.	27 November 2015
3. Schedule 15, Part 1	The day after this Act receives the Royal Assent.	27 November 2015
4. Schedule 15, item 52	The day after this Act receives the Royal Assent.  However, the provision does not commence at all if item 7 of Schedule 2 to the <i>Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015</i> commences on or before the day after this Act receives the Royal Assent.	Never commenced
5. Schedule 15, item 53	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 3 of Schedule 2 to the <i>Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015</i> .  However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.	27 November 2015 (paragraph (a) applies)
6. Schedule 16	The 28th day after this Act receives the	24 December

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	Royal Assent.	2015
7. Schedule 17	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Part 3 of Schedule 3 to the <i>Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014</i> .	27 November 2015 (paragraph (a) applies)

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 Schedules

Legislation 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—Serious drug offences

### *Criminal Code Act 1995*

#### **1 At the end of section 300.5 of the *Criminal Code***

Add:

Note: This section applies to a prosecution of an ancillary offence relating to this Part as well as to prosecution of a primary offence against this Part. This is because of:

- (a) sections 11.2, 11.2A and 11.3 (which treat certain combinations of physical and fault elements relating to this Part as being offences against this Part); and
- (b) section 11.6 (which has the effect that a reference to an offence against this Part includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) that relates to this Part).

#### **2 At the end of Division 300 of the *Criminal Code***

Add:

#### **300.6 Recklessness as to nature of substance or plant sufficient for offence of attempt to commit an offence against this Part**

Despite subsection 11.1(3), for the offence of attempting to commit an offence against this Part, recklessness is the fault element in relation to any of the following physical elements of the offence attempted:

- (a) that a substance is a controlled drug (a physical element of an offence against Division 302 or 305 or section 308.1, 309.2, 309.3, 309.4, 309.7 or 309.8);
- (b) that a plant is a controlled plant (a physical element of an offence against Division 303 or 304);
- (c) that a substance is a controlled precursor (a physical element of an offence against Division 306 or section 308.2, 309.10 or 309.11);
- (d) that a substance is a border controlled drug or border controlled plant (a physical element of an offence against Subdivision A, B or C of Division 307 or section 309.12 or 309.13);

(e) that a substance is a border controlled precursor (a physical element of an offence against Subdivision D of Division 307 or section 309.14 or 309.15).

Note: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness: see subsection 5.4(4).

**3 Paragraphs 307.11(1)(b) and 307.12(1)(b) of the *Criminal Code***

Repeal the paragraphs.

**4 Subsection 307.12(4) of the *Criminal Code***

Repeal the subsection.

**5 Paragraph 307.13(1)(b) of the *Criminal Code***

Repeal the paragraph.

**6 Subsection 307.13(3) of the *Criminal Code***

Repeal the subsection.

**7 Section 307.14 of the *Criminal Code***

Repeal the section.

**8 Application of amendments**

The amendments made by items 2 to 7 apply in relation to offences constituted by conduct engaged in on or after the commencement of this Schedule.

## Schedule 2—Bribing foreign public officials

### *Criminal Code Act 1995*

#### **1 Subsection 70.2(1A) of the *Criminal Code***

Repeal the subsection, substitute:

- (1A) For the purposes of paragraph (1)(c):
- (a) the first-mentioned person does not need to intend to influence a particular foreign public official; and
  - (b) business, or a business advantage, does not need to be actually obtained or retained.

## **Schedule 3—Outrages upon personal dignity**

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

#### **1 Paragraph 268.74(1)(a) of the *Criminal Code***

After “persons”, insert “(whether or not the person or persons are alive)”.

#### **2 Subsections 268.74(2) and (3) of the *Criminal Code***

Repeal the subsections, substitute:

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to a person or persons who:
- (a) are *hors de combat*; or
  - (b) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or
  - (c) are dead.

## Schedule 4—Forced marriage

### *Criminal Code Act 1995*

#### **1 Subsection 270.7A(1) of the *Criminal Code***

Repeal the subsection, substitute:

- (1) A marriage is a *forced marriage* if one party to the marriage (the *victim*) entered into the marriage without freely and fully consenting:
  - (a) because of the use of coercion, threat or deception; or
  - (b) because the party was incapable of understanding the nature and effect of the marriage ceremony.

#### **2 Subsection 270.7A(3) of the *Criminal Code***

Omit “Subsection (1)”, substitute “Paragraph (1)(a)”.

#### **3 At the end of section 270.7A of the *Criminal Code***

Add:

- (4) For the purposes of proving an offence against this Division or Division 271, a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

#### **4 Subsection 270.7B(1) of the *Criminal Code* (paragraph (a) of the penalty)**

Omit “7 years”, substitute “9 years”.

#### **5 Subsection 270.7B(1) of the *Criminal Code* (paragraph (b) of the penalty)**

Omit “4 years”, substitute “7 years”.

**6 Subsection 270.7B(2) of the *Criminal Code* (paragraph (a) of the penalty)**

Omit “7 years”, substitute “9 years”.

**7 Subsection 270.7B(2) of the *Criminal Code* (paragraph (b) of the penalty)**

Omit “4 years”, substitute “7 years”.

**8 Dictionary in the *Criminal Code* (definition of *forced marriage*)**

Omit “same meaning as in Division 270 (see section 270.7A)”, substitute “meaning given by section 270.7A”.

## **Schedule 7—Sentencing and parole**

### **Part 1—General deterrence**

#### *Crimes Act 1914*

##### **1 After paragraph 16A(2)(j)**

Insert:

- (ja) the deterrent effect that any sentence or order under consideration may have on other persons;

##### **2 Application of amendments**

The amendment made by this Part applies in relation to determining, on or after the commencement of this item, a sentence to be passed, or an order to be made, in respect of a person, whether the person is convicted before, at or after that commencement.

## **Part 2—Cooperation with law enforcement agencies**

### ***Commonwealth Places (Application of Laws) Act 1970***

#### **3 Clause 1 of the Schedule**

Omit “sections 20C, 21B and 21E”, substitute “sections 20C and 21B”.

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

#### **4 Subsection 3(1)**

Insert:

*confiscation proceedings* has a meaning affected by subsection 16AC(5).

#### **5 After section 16AB**

Insert:

### **16AC Reduction for cooperation with law enforcement agencies**

- (1) This section applies if a court imposing a sentence, or making an order, for a federal offence:
  - (a) reduces the severity of the sentence or order; or
  - (b) reduces the non-parole period in relation to the sentence (if applicable);because the offender has undertaken to cooperate with law enforcement agencies in proceedings (including confiscation proceedings) relating to any offence.
- (2) The court must:
  - (a) state that the sentence, order or non-parole period is being reduced for that reason; and
  - (b) specify the sentence that would have been imposed, the order that would have been made or the non-parole period that would have been fixed but for that reduction.

Example: The court imposes a fine of \$1,000 and specifies that, but for the offender undertaking to cooperate with law enforcement agencies, the court would have imposed a fine of \$10,000.

*Promised cooperation refused*

- (3) The Director of Public Prosecutions may appeal against the inadequacy of the reduced sentence, reduced order or reduced non-parole period if:
- (a) after the imposing of the sentence or the making of the order, the offender, without reasonable excuse, does not cooperate in accordance with the undertaking; and
  - (b) the Director of Public Prosecutions is of the opinion that appealing is in the interests of the administration of justice.
- (4) The court hearing the appeal:
- (a) if it is satisfied that the person has failed entirely to cooperate in accordance with the undertaking—must substitute for the reduced sentence, reduced order or reduced non-parole period the sentence, order or non-parole period that would have been imposed, made or fixed but for that reduction; and
  - (b) if it is satisfied that the person has failed in part to cooperate in accordance with the undertaking—may substitute:
    - (i) for the reduced sentence or reduced order such a sentence or order, not exceeding in severity the sentence or order that could be imposed or made under paragraph (a), as the court thinks appropriate; or
    - (ii) for the reduced non-parole period such a non-parole period, not exceeding the parole period that could be fixed under paragraph (a), as the court thinks appropriate.

*Meaning of confiscation proceedings*

- (5) In this Act:

**confiscation proceedings** includes:

- (a) proceedings for freezing orders, forfeiture orders, pecuniary penalty orders, literary proceeds orders and restraining orders under the *Proceeds of Crime Act 2002*; and

- (b) proceedings for forfeiture orders, pecuniary penalty orders and restraining orders under the *Proceeds of Crime Act 1987*; and
- (c) proceedings for restraining orders and pecuniary penalty orders under Part XIII of the *Customs Act 1901*.

## **6 After subsection 19AP(4)**

Insert:

- (4A) Without limiting the matters to which the Attorney-General may have regard for the purposes of subsection (4), the Attorney-General may have regard to:
  - (a) any extensive cooperation by the person with law enforcement agencies before sentencing that the sentencing court did not take into account; or
  - (b) any extensive cooperation by the person with law enforcement agencies after sentencing; or
  - (c) any serious medical condition the person has that cannot adequately be treated or managed within the prison system.

## **7 Section 21E**

Repeal the section.

## **Part 3—Remissions and reductions of sentences**

### *Crimes Act 1914*

#### **8 Subsection 19AA(1)**

Repeal the subsection, substitute:

- (1) A law of a State or Territory that provides for the remission or reduction of State or Territory sentences applies in the same way to the remission or reduction of a federal sentence in a prison of that State or Territory.
- (1A) However, the law does not remit or reduce the non-parole period or pre-release period in respect of the federal sentence (except as provided for by subsection (4)).

#### **9 Application of amendments**

The amendment made by this Part applies in relation to a federal sentence imposed on or after the commencement of this item.

## **Part 4—Non-parole periods and recognizance release orders**

### *Crimes Act 1914*

#### **10 Section 19AB**

Repeal the section, substitute:

#### **19AB When court must fix non-parole period**

- (1) Subject to subsection (3), a court must fix a single non-parole period in respect of a federal sentence or federal sentences if:
  - (a) a person is convicted of a federal offence, or of 2 or more federal offences at the same sitting; and
  - (b) the court imposes the sentence or sentences on the person; and
  - (c) either or both of the following subparagraphs apply:
    - (i) any of the sentences is a federal life sentence;
    - (ii) the sentences, in the aggregate, exceed 3 years; and
  - (d) when the court imposes the sentence or sentences, the person is not already serving or subject to a federal sentence.
- (2) Subject to subsection (3), a court must fix a single non-parole period in respect of all federal sentences a person is to serve or complete if:
  - (a) while the person is in prison and is serving or subject to a federal sentence, the court imposes a further federal sentence on the person; and
  - (b) the result is that the person is to serve or to complete:
    - (i) a federal life sentence; or
    - (ii) federal sentences the unserved portions of which, in the aggregate, exceed 3 years; and
  - (c) when the court imposes the further federal sentence, the person is not already subject to a non-parole period or recognizance release order in respect of a federal sentence.

*Non-parole period not appropriate*

- (3) A court may decline to fix a non-parole period under this section if:
- (a) the court is satisfied that a non-parole period is not appropriate, having regard to:
    - (i) the nature and circumstances of the offence or offences; and
    - (ii) the antecedents of the person; or
  - (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences, as reduced by any remissions or reductions under section 19AA.
- (4) If the court declines to fix a non-parole period, the court must:
- (a) state its reasons for so declining; and
  - (b) cause the reasons to be entered in the records of the court.

**11 Subsections 19AC(1) and (2)**

After “must make a”, insert “single”.

**12 Subsections 19AC(4) and (5)**

Repeal the subsections, substitute:

- (4) A court may decline to make a recognizance release order in respect of a person if:
- (a) the court is satisfied that such an order is not appropriate, having regard to:
    - (i) the nature and circumstances of the offence or offences concerned; and
    - (ii) the antecedents of the person; or
  - (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences, as reduced by any remissions or reductions under section 19AA.
- (5) If the court declines to make a recognizance release order, the court must:
- (a) state its reasons for so declining; and
  - (b) cause the reasons to be entered in the records of the court.

**13 Subsection 19AG(5) (paragraph (a) of the note)**

Repeal the paragraph.

**14 Subsection 19AG(5) (after paragraph (c) of the note)**

Insert:

(ca) making a recognizance release order under paragraph 19AE(2)(e)  
or 19AR(2)(e); or

**15 Subsection 20(6)**

Omit “19AB,”.

**16 Application of amendments**

The amendments made by this Part apply in relation to a federal sentence imposed on or after the commencement of this item.

## **Part 5—Rectification of errors in sentences, non-parole periods and recognizance release orders**

### *Crimes Act 1914*

#### **17 After section 19AH**

Insert:

#### **19AHA Rectification of errors etc. in sentences, non-parole periods and recognizance release orders**

- (1) This section applies if a sentencing order made by a court under this Part in relation to a person:
  - (a) reflects an error of a technical nature made by the court; or
  - (b) has a defect of form; or
  - (c) contains an ambiguity.

Note: For paragraph (a), the following are examples of errors of a technical nature: a clerical mistake, an accidental slip or omission, a material miscalculation of figures or a material mistake in the description of a person, thing or matter.

- (2) An error, defect or ambiguity mentioned in subsection (1) does not affect the validity of any sentence imposed on the person.
- (3) The court may, on its own initiative, at any time, by order, amend the sentencing order to rectify the error, defect or ambiguity.
- (4) The court must, at any time, on application by the Attorney-General, the Director of Public Prosecutions or the person, by order, amend the sentencing order to rectify the error, defect or ambiguity.
- (5) The court may amend the sentencing order whether or not the court is constituted in the way in which it was constituted when the person was sentenced.
- (6) An amendment of a sentencing order under this section does not affect any right of appeal against a sentence.

(7) Unless the court orders otherwise, an amendment of a sentencing order under this section is taken to have had effect from the date of effect of the sentencing order.

(8) In this section:

*sentencing order* means any of the following:

- (a) an order imposing, or purporting to impose, a sentence;
- (b) an order fixing a non-parole period;
- (c) a recognizance release order.

## **18 Application of amendments**

The amendment made by this Part applies to a sentencing order made before, on or after the commencement of this item.

## **Part 6—Parole—general**

### *Crimes Act 1914*

#### **19 Before section 19AL**

Insert:

#### **Subdivision A—Release on parole or licence**

##### **19AKA Purposes of parole**

The purposes of parole are the following:

- (a) the protection of the community;
- (b) the rehabilitation of the offender;
- (c) the reintegration of the offender into the community.

#### **20 After section 19AL**

Insert:

##### **19ALA Matters that may be considered in decisions about parole orders**

- (1) In making a decision under section 19AL in relation to a person, the Attorney-General may have regard to any of the following matters that are known to the Attorney-General and relevant to the decision:
  - (a) the risk to the community of releasing the person on parole;
  - (b) the person's conduct while serving his or her sentence;
  - (c) whether the person has satisfactorily completed programs ordered by a court or recommended by the relevant State or Territory corrective services or parole agency;
  - (d) the likely effect on the victim, or victim's family, of releasing the person on parole;
  - (e) the nature and circumstances of the offence to which the person's sentence relates;
  - (f) any comments made by the sentencing court;
  - (g) the person's criminal history;

- (h) any report or information in relation to the granting of parole that has been provided by the relevant State or Territory corrective services or parole agency;
  - (i) the behaviour of the person when subject to any previous parole order or licence;
  - (j) the likelihood that the person will comply with the conditions of the parole order;
  - (k) whether releasing the person on parole is likely to assist the person to adjust to lawful community life;
  - (l) whether the length of the parole period is sufficient to achieve the purposes of parole;
  - (m) any special circumstances, including the likelihood that the person will be subject to removal or deportation upon release.
- (2) Subsection (1) does not limit the matters that the Attorney-General may consider in making a decision under section 19AL.

## **21 Before section 19AQ**

Insert:

### **19APB Effect of parole order and licence on sentence**

- (1) If a parole order is made, or a licence is granted, in relation to a person:
- (a) the person is taken to be still under sentence and not to have served the part of any sentence that remained to be served at the beginning of the parole period or licence period, until:
    - (i) the parole period or licence period ends without the parole order or licence being revoked; or
    - (ii) the person is otherwise discharged from imprisonment; and
  - (b) the person is taken:
    - (i) to have served the part of any sentence that remained to be served at the beginning of the parole period or licence period; and
    - (ii) to have been discharged from imprisonment; if the parole period or licence period ends without the parole order or licence being revoked.

- (2) Subsection (1) has effect as if the parole period or the licence period had not ended without the parole order or the licence being revoked, if the parole order or licence is, under subsection 19AQ(2) or (4), taken to have been revoked as from the time just before the end of the parole period or licence period.

### **Subdivision B—Revocation of parole order or license**

#### **22 Section 19AZC**

Repeal the section.

#### **23 Before section 19AZD**

Insert:

### **Subdivision C—State and Territory laws providing for leave of absence, pre-release etc.**

#### **24 Before section 19B**

Insert:

### **Subdivision D—Discharge without conviction, conditional release and sentencing alternatives**

#### **25 Application of amendments**

The amendments made by this Part apply to a decision under section 19AL made on or after the commencement of this item.

## **Part 7—Effect of State and Territory sentences on making of parole orders**

### *Crimes Act 1914*

#### **26 Subsection 19AL(1) (notes 1, 2 and 3)**

Repeal the notes, substitute:

Note: See subsection (5) if the person is subject to a State or Territory sentence.

#### **27 At the end of paragraph 19AL(2)(b)**

Add:

Note: See subsection (5) if the person is subject to a State or Territory sentence.

#### **28 At the end of subsection 19AL(3)**

Add:

Note 1: For when a person is released on parole in accordance with a parole order, see section 19AM.

Note 2: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AMA, 19AN and 19AU).

#### **29 Subsection 19AL(4)**

Repeal the subsection, substitute:

*Person subject to State or Territory sentence*

- (4) Subsections (5) and (6) apply if the person is subject to a State or Territory sentence.
- (5) The Attorney-General is not required to make, or to refuse to make, a parole order under subsection (1) or paragraph (2)(b) if:
- (a) the State or Territory sentence is a life sentence for which a non-parole period has not been fixed; or
  - (b) the State or Territory sentence ends after the end of the last of the federal sentences to end; or

- (c) the non-parole period for the State or Territory sentence ends after the end of the federal non-parole period; or
  - (d) the State or Territory sentence ends after the end of the federal non-parole period.
- (6) However, the Attorney-General must either make, or refuse to make, a parole order before:
- (a) if paragraph (5)(c) applies (and paragraphs (5)(a) and (b) do not)—the end of the non-parole period for the State or Territory sentence; or
  - (b) if paragraph (5)(d) applies (and paragraphs (5)(a), (b) and (c) do not)—the person's expected release from prison for the State or Territory offence.

Note: The effect of subsections (4) to (6) and subsection 19AM(2) is that a parole order may sometimes still be made for a person while the person is serving a State or Territory sentence, but the person will not be released in accordance with the parole order until the person is released from prison for the State or Territory sentence.

### **30 Application of amendments**

The amendments made by this Part apply in relation to a federal sentence if the non-parole period for the sentence ends on or after the commencement of this item, whether the sentence was passed before, on or after that commencement.

### **31 Savings provision**

- (1) A parole order:
- (a) made under section 19AL of the *Crimes Act 1914*; and
  - (b) in force just before the commencement of this item;
- has effect, from that commencement, as if it had been made under that section as amended by this Part.
- (2) A decision:
- (a) made by the Attorney-General under section 19AL of the *Crimes Act 1914* before the commencement of this item; and
  - (b) not revoked before that commencement;
- has effect, from that commencement, as if it had been made under that section as amended by this Part.

## **Part 8—Early release on parole**

### *Crimes Act 1914*

#### **32 After subsection 19AL(3)**

Insert:

- (3A) If the Attorney-General considers that in all the circumstances it is appropriate to do so, the Attorney-General may specify in a parole order that a person is to be released from prison on a day that is before the end of the non-parole period, but is not earlier than 30 days before the end of the non-parole period.

#### **33 Subparagraph 19AM(1)(a)(ii)**

Omit “for the purposes of this subparagraph (not being earlier than 30 days before the end of the non-parole period)”, substitute “under subsection 19AL(3A)”.

#### **34 Application of amendments**

The amendments made by this Part apply to a parole order made on or after the commencement of this item.

## Part 9—Amendments of parole orders and licences

### *Crimes Act 1914*

#### **35 Subsection 19AN(1)**

Omit “(1) A parole order under section 19AL:”, substitute “A parole order:”.

#### **36 Subsections 19AN(2) and (3)**

Repeal the subsections.

#### **37 Subsections 19AP(8) and (9)**

Repeal the subsections.

#### **38 After section 19AP**

Insert:

#### **19APA Amendment of parole orders and licences**

##### *Amendment of conditions*

- (1) The Attorney-General may, at any time before the end of:
- (a) a parole period for a person for whom a parole order has been made; or
  - (b) a licence period for a person who is released on licence for a federal sentence;
- by order in writing, amend the parole order or licence by doing any or all of the following:
- (c) imposing additional conditions on the parole order or licence;
  - (d) varying or revoking a condition of the parole order or licence specified under paragraph 19AN(1)(c) or 19AP(7)(c) or imposed under paragraph (a);
  - (e) if the supervision period has not ended—changing the day on which the supervision period ends.

*Amendments to rectify errors etc.*

- (2) If a parole order or licence:
- (a) contains an error of a technical nature; or
  - (b) has a defect of form; or
  - (c) contains an ambiguity;
- the Attorney-General may, at any time, by order in writing, amend the parole order or licence to rectify the error, defect or ambiguity.

Note: For paragraph (a), the following are examples of errors of a technical nature: a clerical mistake, an accidental slip or omission, a material miscalculation of figures or a material mistake in the description of a person, thing or matter.

*When amendments take effect*

- (3) An amendment of a parole order or licence under subsection (1) takes effect when notice in writing of the amendment is given to the offender.
- (4) An amendment of a parole order or licence under subsection (2) is taken to have had effect from the date of effect of the parole order or licence.

### **39 Application of amendments**

The amendments made by this Part apply to a parole order or licence made or granted before, on or after the commencement of this item.

## Part 10—Conditional release

### *Crimes Act 1914*

#### **40 Subparagraph 20(1)(a)(iii)**

Omit “and”.

#### **41 Subparagraph 20(1)(a)(iv)**

Omit “, which conditions may include the condition that the person will, during the period so specified, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed”.

#### **42 At the end of paragraph 20(1)(a)**

Add:

Example: A condition under subparagraph (iv) could be that the person will undertake a specified counselling, education or treatment program during a specified part of, or throughout, the specified period.

#### **43 After subsection 20(1)**

Insert:

- (1A) If the court specifies under paragraph (1)(a) or (b), as mentioned in subparagraph (1)(a)(iv), the condition that the person will, during the specified period:
- (a) be subject to the supervision of a probation officer appointed in accordance with the order; and
  - (b) obey all reasonable directions of the probation officer;
- the court must also specify the condition that the person will not travel interstate or overseas without the written permission of the probation officer.

## **Part 11—Alternative sentencing options**

### *Crimes Act 1914*

#### **44 Subsection 3(1)**

Insert:

*participating State* has the meaning given by subsection 3B(2).

*participating Territory* has the meaning given by subsection 3B(2).

#### **45 Subsection 3B(2)**

Omit “section 20AB”, substitute “this Act”.

#### **46 Subsection 20AB(1)**

Repeal the subsection, substitute:

- (1) A court may pass a sentence, or make an order, in respect of a person convicted before the court in a participating State or participating Territory of a federal offence, if:
  - (a) subsection (1AA) applies to the sentence or order; and
  - (b) under the law of the State or Territory, a court is empowered to pass such a sentence, or make such an order, in respect of a State or Territory offender in corresponding cases; and
  - (c) the first-mentioned court is:
    - (i) empowered as mentioned in paragraph (b); or
    - (ii) a federal court.

(1AA) This subsection applies to a sentence or order that is:

- (a) known as any of the following:
  - (i) an attendance centre order or attendance order;
  - (ii) a community based order;
  - (iii) a community correction order;
  - (iv) a community custody order;
  - (v) a community service order;
  - (vi) a community work order;
  - (vii) a drug or alcohol treatment order or rehabilitation order;

- (viii) a good behaviour order;
- (ix) an intensive correction order;
- (x) an intensive supervision order;
- (xi) a sentence of periodic detention or a periodic detention order;
- (xii) a sentence of weekend detention or a weekend detention order;
- (xiii) a work order; or
- (b) similar to a sentence or order to which paragraph (a) applies; or
- (c) prescribed for the purposes of this subsection.

#### **47 Subsection 20AB(1A)**

Omit “subsection (1)”, substitute “paragraph (1)(b)”.

#### **48 Application of amendments**

The amendments made by this Part apply in relation to determining, on or after the commencement of this item, a sentence to be passed, or an order to be made, in respect of a person, whether the person is convicted before, at or after that commencement.

#### **49 Savings provision—regulation**

A regulation:

- (a) made for the purposes of section 20AB of the *Crimes Act 1914*; and
- (b) in force just before the commencement of this item;

has effect, from that commencement, as if it had been made for the purposes of subsection 20AB(1AA) of that Act, as amended by this Part.

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## **Schedule 8—Transfer of prisoners**

### ***Transfer of Prisoners Act 1983***

#### **1 Subsection 3(1)**

Insert:

***local prisons authority:***

- (a) in relation to a State—has the meaning given by the State transfer law of that State; or
- (b) in relation to a Territory—has the meaning prescribed by the regulations.

***State transfer law***, of a State, means a law declared under section 5 to be the State transfer law of that State.

#### **2 Subsections 17(1), (2) and (3)**

After “prisoner” (first occurring), insert “or remand prisoner”.

#### **3 After subsection 17(3)**

Insert:

- (3A) Without limiting subsection (1) or (3), it is sufficient compliance with a transfer order if the prisoner or remand prisoner:
- (a) is delivered into the custody of an escort of the State or Territory to which the prisoner is being transferred, being an escort who is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner; and
  - (b) is so delivered into custody at a place at which the escort mentioned in paragraph (a) is authorised by the local prisons authority for that State or Territory to receive custody of the prisoner.

#### **4 Subsection 17(4)**

After “prisoner”, insert “or remand prisoner”.

#### **5 Subsection 26(2)**

After “prisoner”, insert “or remand prisoner”.

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## Schedule 9—Sharing information relevant to federal offenders

### *Crimes Act 1914*

#### 1 After Division 9 of Part IB

Insert:

### Division 9A—Sharing information relevant to federal offenders

#### 20BZ Definitions

In this Division:

**authorised officer** means:

- (a) the Attorney-General; or
- (b) the Secretary of the Department.

Note: The Attorney-General's powers and functions under this Division may be delegated under section 17 of the *Law Officers Act 1964*. The Secretary's powers and functions under this Division may be delegated under section 20BZC of this Act.

**relevant person** 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 of the police force or police service of a State or Territory;
- (c) a person who exercises powers under, or performs functions or duties in connection with, any of the following:
  - (i) the *Australian Crime Commission Act 2002*;
  - (ii) the *Crime Commission Act 2012* (NSW);
  - (iii) the *Independent Commission Against Corruption Act 1988* (NSW);

- (iv) the *Police Integrity Commission Act 1996* (NSW);
  - (v) the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic.);
  - (vi) the *Crime and Corruption Act 2001* (Qld);
  - (vii) the *Corruption and Crime Commission Act 2003* (WA);
  - (viii) the *Independent Commissioner Against Corruption Act 2012* (SA);
  - (ix) the *Integrity Commission Act 2009* (Tas.);
  - (d) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;
  - (e) 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;
  - (f) an officer or employee of a State or Territory, or of an authority of a State or Territory, whose duties relate to corrective services (including prison medical services), justice or parole;
  - (g) a person who provides services for, or on behalf of, a State or Territory, or an authority of a State or Territory, in relation to corrective services (including prison medical services), justice or parole;
  - (h) an officer of Customs;
  - (i) an officer or employee of a Department responsible for administering:
    - (i) the *Australian Passports Act 2005*; or
    - (ii) the *Defence Force Discipline Act 1982*; or
    - (iii) the *Migration Act 1958*;
  - (j) a member of the Defence Force;
  - (k) a staff member (within the meaning of the *Australian Securities and Investments Commission Act 2001*);
  - (l) a taxation officer (within the meaning of Schedule 1 to the *Taxation Administration Act 1953*);
  - (m) an officer or employee of the State Debt Recovery Office of New South Wales, or of a similar body established under a law of a State or Territory;
  - (n) the Registrar or another appropriate officer of a court;
-

- (o) a person who performs functions or duties in connection with a superannuation scheme (within the meaning of the *Crimes (Superannuation Benefits) Act 1989*) of a person who is or was an employee (within the meaning of that Act);
- (p) a practitioner (within the meaning of Part VAA of the *Health Insurance Act 1973*) who has provided services (within the meaning of that Part) to a federal offender.

**20BZA Authorised officers may request or require information relevant to federal offenders**

*Requesting information to be given*

- (1) An authorised officer may request a relevant person, or a person prescribed by regulation for the purposes of this subsection, to give the officer information that the officer reasonably believes to be relevant to:
  - (a) the administration or execution of:
    - (i) this Part; or
    - (ii) section 15A (enforcement of fines); or
    - (iii) Division 5 (escape from criminal detention) of Part III; or
    - (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
    - (v) the *Transfer of Prisoners Act 1983*; or
  - (b) the exercise of a power under, or the performance of a function or duty in connection with, a law of a State or Territory applied by paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure for hearing and determining appeals arising out of trials, convictions and connected proceedings); or
  - (c) the exercise of the Royal prerogative of mercy by the Crown in right of the Commonwealth.
- (2) The request need not be in writing.

*Requiring information to be given*

- (3) An authorised officer may, by written notice, require a relevant person, or a person prescribed by regulation for the purposes of this subsection, to give the officer information of a kind mentioned in subsection (1).

- (4) A person given a notice under subsection (3) must, as soon as practicable after the notice is given, comply with it to the extent that he or she has, or can reasonably acquire, the information.
- (5) Subsection (4) applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).
- (6) Despite subsection (4), the Registrar or another officer of a court is not required to comply with a notice given under subsection (3) to the extent that the information relates to proceedings that have not been finally determined by the court.

**20BZB Authorised officers may disclose federal offender information**

- (1) An authorised officer may disclose federal offender information to a relevant person if the officer reasonably believes that the disclosure is necessary to enable the relevant person to exercise the person's powers, or to perform the person's functions or duties.
- (2) An authorised officer may disclose federal offender information to a person prescribed by regulation for the purposes of this subsection in a circumstance prescribed by regulation in relation to the person.
- (3) Subsections (1) and (2) apply despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).
- (4) In this section:

***federal offender information*** means:

- (a) information acquired by an authorised officer, or an APS employee in the Department, in the exercise of a power under, or the performance of a function or duty in connection with:
  - (i) this Part; or
  - (ii) section 15A (enforcement of fines); or
  - (iii) Division 5 (escape from criminal detention) of Part III;or

- (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
  - (v) the *Transfer of Prisoners Act 1983*; or
  - (vi) a law of a State or Territory applied by paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure for hearing and determining appeals arising out of trials, convictions and connected proceedings); or
- (b) information acquired by an authorised officer in the performance of a function or duty in connection with the exercise of the Royal prerogative of mercy by the Crown in right of the Commonwealth.

### **20BZC Delegation**

The Secretary of the Department may, in writing, delegate any of his or her powers or functions under this Division to an APS employee in the Department who performs duties in connection with:

- (a) the administration or execution of:
  - (i) this Part; or
  - (ii) section 15A (enforcement of fines); or
  - (iii) Division 5 (escape from criminal detention) of Part III; or
  - (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
  - (v) the *Transfer of Prisoners Act 1983*; or
- (b) a law of a State or Territory applied by paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure for hearing and determining appeals arising out of trials, convictions and connected proceedings); or
- (c) the exercise of the Royal prerogative of mercy by the Crown in right of the Commonwealth.

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## Schedule 10—AUSTRAC

### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

#### 1 Subsection 75B(6)

After “beginning”, insert “on the latest of the following days”.

#### 2 Paragraphs 75B(6)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the day the application is made;
- (b) if the AUSTRAC CEO requests information under subsection 75N(1) in relation to the application—the last day such information is provided;
- (c) if the person makes a submission under section 75Q in relation to the application—the day the person makes the submission.

#### 3 Paragraphs 169(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) in civil proceedings other than:
  - (i) proceedings under this Act; or
  - (ii) proceedings under the *Proceeds of Crime Act 2002* that relate to this Act; or
- (d) in criminal proceedings other than:
  - (i) proceedings for an offence against this Act; or
  - (ii) proceedings for an offence against the *Criminal Code* that relates to this Act.

#### 4 Application of amendments

The amendment made by item 3 applies in relation to information given, or documents produced, on or after the commencement of this item.

#### 5 Paragraph 203(e)

Repeal the paragraph, substitute:

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(e) specify the period within which the information or documents must be given or produced; and

## **Schedule 11—Australian Commission for Law Enforcement Integrity**

### ***Law Enforcement Integrity Commissioner Act 2006***

#### **1 Subsection 5(1) (paragraph (a) of the definition of *significant corruption issue*)**

Repeal the paragraph, substitute:

- (a) a corruption issue relating to serious corruption or systemic corruption, unless the corruption issue relates to a law enforcement agency for which an agreement under subsection 17(1) is in force; or

#### **2 Subsection 5(1) (subparagraph (b)(ii) of the definition of *significant corruption issue*)**

Omit “that the Integrity Commissioner and the head of the agency have agreed under paragraph 17(1)(a)”, substitute “agreed under subsection 17(1)”.

#### **3 Subsection 10(1)**

Repeal the subsection, substitute:

*AFP staff members*

- (1) The following are ***staff members*** of the AFP for the purposes of this Act:
  - (a) the Commissioner (within the meaning of the *Australian Federal Police Act 1979*);
  - (b) an AFP appointee (within the meaning of that Act).

#### **4 Paragraphs 10(5)(a) and (aa)**

Repeal the paragraphs, substitute:

- (a) a person is a ***seconded*** to the AFP if the person is referred to in paragraph (g) of the definition of ***AFP appointee*** in section 4 of the *Australian Federal Police Act 1979*; and
- (aa) a person is a ***seconded*** to the AFP if the person:

- (i) is referred to in paragraph (c) or (d) of the definition of *AFP appointee* in section 4 of the *Australian Federal Police Act 1979*; and
- (ii) is also an employee of another government agency; and

**5 Subsection 17(1)**

Omit “an agreement”, substitute “a written agreement”.

**6 Subsections 17(2) and (3)**

Repeal the subsections, substitute:

- (2) The Integrity Commissioner may revoke the agreement by written notice given to the head of the agency. The revocation takes effect on a day specified in the notice, which must be at least 14 days after the day it is given.
- (3) Without limiting subsection (1), the agreement may set out how it may be varied and other ways how it may be revoked.

**7 Section 25**

Repeal the section.

**8 Before subsection 31(2)**

Insert:

*Integrity Commissioner must make a decision*

**9 After subsection 31(3)**

Insert:

*Requesting information to assist in making the decision*

- (3A) For the purposes of making a decision under subsection (2), the Integrity Commissioner may request the head of a law enforcement agency to give the Integrity Commissioner the information specified in the request.
- (3B) The head of the law enforcement agency must comply with the request.

- (3C) Subsection (3A) does not limit the information to which the Integrity Commissioner may have regard in making a decision under subsection (2).

*Deciding to take no further action*

#### **10 Subsection 32(2)**

Repeal the subsection, substitute:

*Integrity Commissioner must make a decision*

- (2) The Integrity Commissioner must decide:
- (a) to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6); or
  - (b) to take no further action in relation to the corruption issue.

*Requesting information to assist in making the decision*

#### **11 Subsections 32(3) and (5)**

Omit “about how to deal with the corruption issue”, substitute “under subsection (2)”.

#### **12 At the end of section 32**

Add:

*Deciding to take no further action*

- (8) The Integrity Commissioner may decide under subsection (2) to take no further action in relation to the corruption issue only if he or she is satisfied that:
- (a) the corruption issue is already being, or will be, investigated by:
    - (i) a law enforcement agency; or
    - (ii) a government agency; or
    - (iii) an integrity agency for a State or Territory; or
  - (b) the corrupt conduct to which the corruption issue relates has been, is or will be, the subject of proceedings before a court; or

- (c) an investigation of the corruption issue is not warranted having regard to all the circumstances.
- (9) The Integrity Commissioner must advise the head of the law enforcement agency of a decision under subsection (2) to take no further action in relation to the corruption issue. That advice must be given:
  - (a) in writing; and
  - (b) as soon as reasonably practicable after the decision is made.
- (10) This Act continues to apply to the head of the law enforcement agency, and that agency, in relation to the corruption issue unless the Integrity Commissioner advises otherwise:
  - (a) in the advice given under subsection (9); or
  - (b) in a later written advice given to the head of that agency.

### **13 Section 34**

Repeal the section, substitute:

### **34 Person who refers corruption issue**

The Integrity Commissioner may advise a person (or a representative nominated by the person) of:

- (a) the Integrity Commissioner's decision under section 31 in relation to a corruption issue raised by the person in a referral under section 23; and
- (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

### **14 Before subsection 38(1)**

Insert:

*Integrity Commissioner may decide to deal with a corruption issue*

### **15 After subsection 38(2)**

Insert:

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*Requesting information to assist in making the decision*

- (2A) For the purposes of making a decision under subsection (1), the Integrity Commissioner may request the head of a law enforcement agency to give the Integrity Commissioner the information specified in the request.
- (2B) The head of the law enforcement agency must comply with the request.
- (2C) Subsection (2A) does not limit the information to which the Integrity Commissioner may have regard in making a decision under subsection (1).

*Directing law enforcement agency not to investigate*

**16 Before subsection 38(5)**

Insert:

*Becoming aware of another corruption issue*

**17 Subsection 52(3)**

Repeal the subsection, substitute:

*Person who refers issue under section 23*

- (3) The Integrity Commissioner may keep a person (or a representative nominated by the person) informed of the progress of an investigation of a corruption issue if the person raised the corruption issue in a referral under section 23.

**18 Subsections 58(1), (2) and (3)**

Repeal the subsections, substitute:

*Advice to person who referred issue under section 23*

- (1) The Integrity Commissioner may advise a person (or a representative nominated by the person) of the outcome of an investigation of a corruption issue raised by the person in a referral under section 23.

*Manner of giving advice*

- (2) One way of advising the person (or the representative) is to give a copy of all or part of any report prepared under subsection 54(1) in relation to the investigation.

**19 Subsection 58(6)**

Repeal the subsection.

**20 Subsection 65(2)**

Repeal the subsection, substitute:

*Person who referred issue under section 23*

- (2) The head of a law enforcement agency may keep a person (or a representative nominated by the person) informed of the progress of the agency's investigation of a corruption issue:
- (a) referred to the agency under paragraph 26(1)(b) or (c); and
  - (b) raised by the person in a referral under section 23.

**21 Section 68**

Repeal the section, substitute:

**68 Advising person who referred corruption issue of outcome of the investigation**

- (1) The head of a law enforcement agency or Commonwealth government agency may advise a person (or a representative nominated by the person) of the outcome of the agency's investigation of a corruption issue:
- (a) raised by the person in a referral under section 23; and
  - (b) referred to the agency under paragraph 26(1)(b) or (c) or 29(6)(a).
- (2) One way of advising the person (or the representative) is to give a copy of all or part of any report prepared under section 66 in relation to the investigation.

**22 Paragraph 89(1)(b)**

Repeal the paragraph, substitute:

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(b) would breach a secrecy provision; or

**23 Paragraph 117(1)(b)**

Omit “use the”, substitute “use”.

**24 Subsection 199(3)**

Repeal the subsection.

**25 Subsection 208(6)**

Omit “the person’s”, substitute “that or another person’s”.

**26 At the end of paragraph 219(4)(b)**

Add “(other than section 97)”.

**27 Application of amendments**

- (1) Subsection 17(2) of the *Law Enforcement Integrity Commissioner Act 2006* (as inserted by this Schedule) applies to agreements made on or after the day that subsection commences.
- (2) Subsection 17(3) of the *Law Enforcement Integrity Commissioner Act 2006* (as inserted by this Schedule) applies to agreements made before, on or after the day that subsection commences.
- (3) The amendments made by items 7, 13, 17, 18, 19, 20 and 21 apply in relation to referrals under section 23 of the *Law Enforcement Integrity Commissioner Act 2006* given on or after the day those items commence.
- (4) The amendments made by items 8 and 9 apply in relation to notifications, or referrals, referred to in subsection 31(1) of the *Law Enforcement Integrity Commissioner Act 2006* that are given on or after the day those items commence.
- (5) The amendments made by items 10 to 12 apply in relation to notifications referred to in subsection 32(1) of the *Law Enforcement Integrity Commissioner Act 2006* that are given on or after the day those items commence.
- (6) The amendment made by item 24 applies in relation to persons engaged before, on or after the day that item commences.

- (7) The amendment made by item 25 applies to disclosures of information on or after the day that item commences (whenever the information was obtained).

## **Schedule 12—Australian Crime Commission**

### *Australian Crime Commission Act 2002*

#### **1 Subsection 4(1) (paragraph (b) of the definition of *eligible person*)**

Repeal the paragraph, substitute:

- (b) a member of the staff of the ACC who is also a constable.

#### **2 Subsection 20(4) (note)**

Repeal the note.

#### **3 At the end of subsection 20(4)**

Add:

Penalty: Imprisonment for 6 months or 10 penalty units.

#### **4 Subsection 20(6) (penalty)**

Repeal the penalty.

#### **5 Section 24AB (heading)**

Repeal the heading, substitute:

#### **24AB When returnable items must be returned—general**

#### **6 After section 24AB**

Insert:

#### **24ABA Examiner may direct that returnable items be returned**

- (1) If an examiner conducting an examination is satisfied that a returnable item produced by a person during the examination:
  - (a) is not required (or is no longer required) for the purposes of the ACC operation/investigation to which the examination relates; or
  - (b) will no longer be so required once certain conditions (the *return conditions*) have been met;

the examiner may, at or before the time the person is excused or released from further attendance at the examination, direct that the item be returned to:

- (c) the person; or
  - (d) the owner, if the person is not entitled to possess it.
- (2) The direction may specify that the return of the item is subject to any return conditions being met.
- (3) Members of the staff of the ACC, or any person who has been present at the examination and is in possession of the item, must comply with the direction.
- (4) The examiner or the CEO may vary or revoke the direction.

### 7 Schedule 1

After:

*Air Navigation Act 1920*, section 27A

insert:

*Australian Human Rights Commission Act 1986*, section 49.

### 8 Schedule 1

After “*Census and Statistics Act 1905*, section 19”, insert “, 19A or 19B”.

### 9 Schedule 1

Omit:

*Human Rights Commission Act 1981*, section 34

### 10 Schedule 1

Omit:

*Social Security Act 1991*, sections 1312 to 1321

substitute:

*Reserve Bank Act 1959*, section 79B

*Social Security (Administration) Act 1999*, Division 3 of Part 5

### 11 Schedule 1

Omit:

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*Reserve Bank Act 1959*, section 79B

Sub-regulation 283(1) of the Air Navigation Regulations

Sections 60 and 61 of the *Adoption of Children Ordinance 1965* of the Australian Capital Territory

substitute:

*Transport Safety Investigation Act 2003*, section 53 or 60

## **12 Application of amendments**

The amendment made by item 6 applies in relation to items produced before, at or after the commencement of that item.

## **Schedule 13—Proceeds of crime—penalties**

### *Proceeds of Crime Act 2002*

#### **1 Subsection 211(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

#### **2 Subsection 218(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

## **Schedule 14—Proceeds of crime—other matters**

### **Part 1—Proceeds and instruments of offences**

#### *Proceeds of Crime Act 2002*

##### **1 Paragraph 330(4)(e)**

Repeal the paragraph, substitute:

- (e) if the property is forfeited, confiscated or otherwise disposed of under a \*corresponding law (whether or not because of an order made under that law); or

##### **2 Application**

Paragraph 330(4)(e) of the *Proceeds of Crime Act 2002*, as amended by this Part, applies whether the forfeiture, confiscation or other disposal occurred before, on or after the commencement of this Part.

## Part 2—Related offences

### Division 1—Main amendments

#### *Proceeds of Crime Act 2002*

##### 3 Section 338 (definition of *related offence*)

Repeal the definition, substitute:

*related offence*: an offence is a *related offence* in relation to another offence if the physical elements of the 2 offences are:

- (a) substantially the same acts or omissions; or
- (b) acts or omissions in a single series.

##### 4 Application of new definition of *related offence*

The definition of *related offence* in section 338 of the *Proceeds of Crime Act 2002*, as amended by this Division, applies in relation to:

- (a) restraining orders applied for on or after the commencement of this Division; and
- (b) interstate pecuniary penalty orders made on or after that commencement;

whether the physical elements of either or both of the offences concerned occurred before, on or after that commencement.

### Division 2—Corresponding amendments

#### *Australian Federal Police Act 1979*

##### 5 Section 42

Repeal the section, substitute:

##### 42 Related offences

For the purposes of this Act, 2 offences are related to each other if the physical elements of the 2 offences are:

- (a) substantially the same acts or omissions; or

(b) acts or omissions in a single series.

## **6 Application of new section 42**

Section 42 of the *Australian Federal Police Act 1979*, as amended by this Division, applies in relation to a restraining order applied for on or after the commencement of this Division, whether the physical elements of either or both of the offences concerned occurred before, on or after that commencement.

## ***Crimes (Superannuation Benefits) Act 1989***

### **7 Section 3**

Repeal the section, substitute:

### **3 Related offences**

For the purposes of this Act, 2 offences are related to each other if the physical elements of the 2 offences are:

- (a) substantially the same acts or omissions; or
- (b) acts or omissions in a single series.

### **8 Application of new section 3**

Section 3 of the *Crimes (Superannuation Benefits) Act 1989*, as amended by this Division, applies in relation to a restraining order applied for on or after the commencement of this Division, whether the physical elements of either or both of the offences concerned occurred before, on or after that commencement.

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

### **9 Subsection 3(1) (definition of *related foreign serious offence*)**

Repeal the definition, substitute:

***related foreign serious offence***: a foreign serious offence is a ***related foreign serious offence*** in relation to another foreign serious offence if the physical elements of the 2 offences are:

- (a) substantially the same acts or omissions; or

(b) acts or omissions in a single series.

**10 Application of new definition of *related foreign serious offence***

The definition of *related foreign serious offence* in subsection 3(1) of the *Mutual Assistance in Criminal Matters Act 1987*, as amended by this Division, applies in relation to a foreign pecuniary penalty order made on or after the commencement of this Division, whether the physical elements of either or both of the offences concerned occurred before, on or after that commencement.

## **Part 3—Approved examiners**

### *Proceeds of Crime Act 2002*

#### **11 Subsection 183(4)**

Repeal the subsection, substitute:

*Approved examiners*

- (4) An **approved examiner** is a person who holds an appointment under this section.
- (5) The Minister may appoint as an \*approved examiner:
  - (a) a person who holds an office, or is included in a class of people, specified in the regulations; or
  - (b) a person who:
    - (i) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and
    - (ii) has been so enrolled for at least 5 years; and
    - (iii) has indicated to the Minister that the person is willing to be appointed.
- (6) An \*approved examiner may resign his or her appointment by giving the Minister a written resignation. The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.
- (7) The Minister may revoke an appointment of an \*approved examiner.

#### **12 Transitional provision for approved examiners**

A person who was an approved examiner for the purposes of the *Proceeds of Crime Act 2002* immediately before the commencement of this Part is taken to have been appointed under subsection 183(5) of that Act on the commencement of this Part. This does not prevent later resignation or revocation of the appointment.

## **Part 4—Official Trustee’s role**

### *Proceeds of Crime Act 2002*

#### **13 After section 315B**

Insert:

#### **315C Official Trustee may bring proceedings on behalf of the Commonwealth**

The \*Official Trustee may bring proceedings on behalf of the Commonwealth if, in the Official Trustee’s opinion, doing so will facilitate the performance of a function or duty, or the exercise of a power, of the Official Trustee under this Act.

## **Schedule 15—State law enforcement agencies**

### **Part 1—Main amendments**

#### *Australian Postal Corporation Act 1989*

##### **1 After paragraph 90J(6)(c)**

Insert:

- (ca) the *Independent Commissioner Against Corruption Act 2012* (SA); or

##### **2 After paragraph 90LC(5)(c)**

Insert:

- (ca) the *Independent Commissioner Against Corruption Act 2012* (SA); or

#### *Crimes Act 1914*

##### **3 Subsection 3ZQU(7) (paragraphs (b) to (g) of the definition of *State or Territory law enforcement agency*)**

Repeal the paragraphs, substitute:

- (b) the New South Wales Crime Commission; or
- (c) the Independent Commission Against Corruption of New South Wales; or
- (d) the Police Integrity Commission of New South Wales; or
- (e) the Independent Broad-based Anti-corruption Commission of Victoria; or
- (f) the Crime and Corruption Commission of Queensland; or
- (g) the Corruption and Crime Commission of Western Australia; or
- (h) the Independent Commissioner Against Corruption of South Australia.

##### **4 Section 85ZL (at the end of paragraphs (a) to (e) of the definition of *law enforcement agency*)**

Add “or”.

**5 Section 85ZL (paragraphs (f) and (g) of the definition of *law enforcement agency*)**

Repeal the paragraphs, substitute:

- (f) the Independent Commission Against Corruption of New South Wales, or a similar body established under a law of another State; or
- (fa) the Independent Commissioner Against Corruption of South Australia, or a similar officer appointed under a law of another State, other than an officer belonging to a body to which paragraph (f) applies; or
- (g) the New South Wales Crime Commission, or a similar body established under a law of another State; or

**6 Section 85ZL (at the end of paragraphs (h) and (j) of the definition of *law enforcement agency*)**

Add “or”.

***Criminal Code Act 1995***

**7 Section 473.1 of the *Criminal Code* (paragraph (k) of the definition of *law enforcement officer*)**

Repeal the paragraph, substitute:

- (k) an authorised commission officer of the Crime and Corruption Commission of Queensland within the meaning of the *Crime and Corruption Act 2001* (Qld);
- (l) the Independent Commissioner Against Corruption of South Australia, the Deputy Commissioner, a member of the staff of the Commissioner, or an examiner or investigator, within the meaning of the *Independent Commissioner Against Corruption Act 2012* (SA).

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

**8 Subsection 13A(6) (definition of *authorised officer*)**

Omit “section 6 of”.

**9 Subsection 13A(6) (definition of *enforcement agency*)**

Omit “section 6 of”.

**10 Subsection 15CA(2) (definition of *eligible law enforcement officer*)**

Omit “referred to in paragraph (a) or (c) of the definition of *law enforcement officer* set out in subsection 6(1)”, substitute “mentioned in column 3 of item 5 of the table in subsection 6A(6), or in column 3 of item 5 of the table in subsection 6A(7),”.

***Privacy Act 1988***

**11 Subsection 6(1) (paragraph (l) of the definition of *enforcement body*)**

Omit “Misconduct”, substitute “Corruption”.

**12 Subsection 6(1) (after paragraph (la) of the definition of *enforcement body*)**

Insert:

- (lb) the Independent Commissioner Against Corruption of South Australia; or

***Radiocommunications Act 1992***

**13 Paragraphs 27(1)(ba) to (bd)**

Repeal the paragraphs, substitute:

- (ba) one of the following bodies or offices:
  - (i) the Independent Commission Against Corruption of New South Wales;
  - (ii) the Corruption and Crime Commission of Western Australia;
  - (iii) the Independent Commissioner Against Corruption of South Australia; or
- (bb) one of the following bodies:
  - (i) the New South Wales Crime Commission;
  - (ii) the Crime and Corruption Commission of Queensland;or

- (bc) the Australian Crime Commission; or
- (bd) the New South Wales Police Integrity Commission; or

### ***Surveillance Devices Act 2004***

#### **14 Subsection 6(1) (definition of *AFP employee*)**

Repeal the definition.

#### **15 Subsection 6(1) (definition of *appropriate authorising officer*)**

Repeal the definition, substitute:

***appropriate authorising officer:***

- (a) of a law enforcement agency—has the meaning given by subsection 6A(4); or
- (b) in relation to a law enforcement officer belonging to or seconded to a law enforcement agency—means an appropriate authorising officer of the law enforcement agency.

Note: See also subsection (4) of this section (persons who belong or are seconded to the Australian Crime Commission or the Australian Commission for Law Enforcement Integrity).

#### **16 Subsection 6(1) (definition of *Assistant Integrity Commissioner*)**

Repeal the definition.

#### **17 Subsection 6(1) (definition of *Australian Crime Commission*)**

Repeal the definition.

#### **18 Subsection 6(1) (definition of *chief officer*)**

Repeal the definition, substitute:

***chief officer*** has the meaning given by subsection 6A(2).

**19 Subsection 6(1) (definition of *Corruption and Crime Commission*)**

Repeal the definition.

**20 Subsection 6(1) (definition of *Crime and Misconduct Commission*)**

Repeal the definition.

**21 Subsection 6(1)**

Insert:

*executive level* has the meaning given by subsection 6A(8).

**22 Subsection 6(1) (definition of *federal law enforcement officer*)**

Omit “referred to in paragraph (a), (aa) or (b) of the definition of *law enforcement officer*”, substitute “mentioned in column 3 of the table in subsection 6A(6)”.

**23 Subsection 6(1) (definition of *Integrity Commissioner*)**

Repeal the definition.

**24 Subsection 6(1) (definition of *law enforcement agency*)**

Repeal the definition, substitute:

*law enforcement agency* has the meaning given by subsection 6A(1).

**25 Subsection 6(1) (definition of *law enforcement officer*)**

Repeal the definition, substitute:

*law enforcement officer* has the meaning given by subsection 6A(3).

**26 Subsection 6(1) (definition of *New South Wales Crime Commission*)**

Repeal the definition.

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**27 Subsection 6(1) (definition of *Police Integrity Commission*)**

Repeal the definition.

**28 Subsection 6(1) (definition of *State or Territory law enforcement officer*)**

Omit “referred to in paragraph (c), (d), (e), (f), (g) or (h) of the definition of *law enforcement officer*”, substitute “mentioned in column 3 of the table in subsection 6A(7)”.

**29 Section 6A**

Repeal the section, substitute:

**6A Law enforcement agencies**

- (1) A body or officer mentioned in an item of column 1 of the table in subsection (6) or (7) is a *law enforcement agency*.
- (2) The *chief officer*, of the law enforcement agency, is the person mentioned in column 2 of the item.
- (3) A *law enforcement officer*, in relation to the law enforcement agency, is a person mentioned in column 3 of the item.
- (4) An *appropriate authorising officer*, of the law enforcement agency, is a person mentioned in column 4 of the item.
- (5) The chief officer of the law enforcement agency may authorise, in writing, a person to be an appropriate authorising officer of the agency if column 4 of the item so provides.
- (6) This table deals with federal law enforcement agencies:

<b>Federal law enforcement agencies</b>				
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>	
5	Australian Federal Police	the Commissioner of Police	(a) the Commissioner of Police; or (b) a Deputy Commissioner of Police; or (c) an AFP employee (within the meaning of the <i>Australian Federal Police Act 1979</i> ); or (d) a special member; or (e) a person seconded to the Australian Federal Police	(a) the Commissioner of Police; or (b) a Deputy Commissioner of Police; or (c) a senior executive AFP employee the chief officer authorises under subsection (5)
10	Australian Commission for Law Enforcement Integrity	the Integrity Commissioner	(a) the Integrity Commissioner; or (b) an Assistant Integrity Commissioner; or (c) a staff member of ACLEI (within the meaning of the <i>Law Enforcement Integrity Commissioner Act 2006</i> ) authorised under	(a) the Integrity Commissioner; or (b) an Assistant Integrity Commissioner; or (c) a staff member of ACLEI who is an SES employee the chief officer authorises under subsection (5)

**Schedule 15** State law enforcement agencies

**Part 1** Main amendments

<b>Federal law enforcement agencies</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>
section 6B			
15 Australian Crime Commission	the Chief Executive Officer of the Commission	(a) the Chief Executive Officer; or (b) a person covered by a paragraph of the definition of <i>member of the staff of the ACC</i> in section 4 of the <i>Australian Crime Commission Act 2002</i>	(a) the Chief Executive Officer; or (b) an executive level member of the staff of the ACC the chief officer authorises under subsection (5)

(7) This table deals with State and Territory law enforcement agencies:

<b>State and Territory law enforcement agencies</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>
5 police force of a State or Territory	the Commissioner of Police in the police force, or the person holding equivalent rank	(a) an officer (however described) of the police force; or (b) a person seconded to the police force	(a) the Commissioner or the person holding equivalent rank; or (b) an Assistant Commissioner or a person holding equivalent rank; or

<b>State and Territory law enforcement agencies</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>
			(c) a Superintendent or a person holding equivalent rank
10 Independent Commission Against Corruption of New South Wales	the Commissioner for the Commission	an officer of the Commission (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> (NSW))	(a) the Commissioner; or (b) an Assistant Commissioner; or (c) an executive level officer of the Commission who the chief officer authorises under subsection (5)
15 New South Wales Crime Commission	the Commissioner for the Commission	(a) a member of the Commission; or (b) a member of the staff of the Commission; (within the meaning of the <i>New South Wales Crime Commission Act 1985</i> (NSW))	(a) a member of the Commission; or (b) an executive level member of the Staff of the Commission the chief officer authorises under subsection (5)
20 Police Integrity Commission of New South Wales	the Commissioner for the Commission	an officer of the Commission (within the meaning of the <i>Police Integrity Commission Act 1996</i> (NSW))	(a) the Commissioner; or (b) an Assistant Commissioner; or (c) an executive level member of

**Schedule 15** State law enforcement agencies

**Part 1** Main amendments

<b>State and Territory law enforcement agencies</b>				
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>	
			the Staff of the Commission (within the meaning of that Act) the chief officer authorises under subsection (5)	
25	Crime and Corruption Commission of Queensland	the chairman of the Commission	an authorised commission officer (within the meaning of the <i>Crime and Corruption Act 2001</i> (Qld))	(a) the chairman; or (b) a senior executive officer (within the meaning of that Act)
30	Corruption and Crime Commission of Western Australia	the Commissioner of the Commission	an officer of the Commission (within the meaning of the <i>Corruption and Crime Commission Act 2003</i> (WA))	the Commissioner
35	Independent Commissioner Against Corruption of South Australia	the Commissioner	(a) the Commissioner; or (b) the Deputy Commissioner; or (c) a member of the staff of the Commissioner (within the meaning of the <i>Independent Commissioner Against Corruption Act</i>	(a) the Commissioner; or (b) the Deputy Commissioner; or (c) an executive level member of the staff of the Commissioner the chief officer authorises under subsection (5)

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<b>State and Territory law enforcement agencies</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Law enforcement agency</b>	<b>Chief officer</b>	<b>Law enforcement officer</b>	<b>Appropriate authorising officer</b>
		2012 (SA)); or	
		(d) an examiner or investigator (within the meaning of that Act)	

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- (8) A person is *executive level*, in relation to a law enforcement agency of a State, if the person occupies an office or position at an equivalent level to that of:
- (a) if the State is New South Wales—a senior executive officer (within the meaning of the *Public Sector Employment and Management Act 2002* (NSW)); or
  - (b) if the State is South Australia—an executive employee (within the meaning of the *Public Sector Act 2009* (SA)).

### **30 Savings provision—authorisations**

An authorisation:

- (a) made under section 6A of the *Surveillance Devices Act 2004*; and
  - (b) in force just before the commencement of this item;
- is taken, from that commencement, to have been made under subsection 6A(5) of that Act, as amended by this Part.

### **31 Paragraph 45(5)(h)**

Omit “*Misconduct*”, substitute “*Corruption*”.

### ***Taxation Administration Act 1953***

### **32 After paragraph 355-70(4)(k) in Schedule 1**

Insert:

- (ka) the Independent Commissioner Against Corruption of South Australia; or

**33 Application of amendments—*Taxation Administration Act 1953***

The amendment made by item 32 applies in relation to records and disclosures of information made on or after the commencement of this item (regardless of when the information was acquired).

***Telecommunications (Interception and Access) Act 1979***

**34 Subsection 5(1) (paragraph (f) of the definition of *certifying officer*)**

Repeal the paragraph, substitute:

- (f) in the case of the Crime and Corruption Commission:
  - (i) the chairman (as defined by the Crime and Corruption Act); or
  - (ii) a senior executive officer (as defined by the Crime and Corruption Act); or

**35 Subsection 5(1) (paragraph (f) of the definition of *chief officer*)**

Repeal the paragraph, substitute:

- (f) in the case of the Crime and Corruption Commission—the chairman of the Commission; or

**36 Subsection 5(1) (paragraph (b) of the definition of *Commissioner*)**

Repeal the paragraph, substitute:

- (b) in relation to the Crime and Corruption Commission—a member of the Commission, including the chairman.

**37 Subsection 5(1)**

Insert:

***Crime and Corruption Act*** means the *Crime and Corruption Act 2001* (Qld).

***Crime and Corruption Commission*** means the Crime and Corruption Commission (Qld).

**38 Subsection 5(1) (definition of *Crime and Misconduct Act*)**

Repeal the definition.

**39 Subsection 5(1) (definition of *Crime and Misconduct Commission*)**

Repeal the definition.

**40 Subsection 5(1) (paragraph (a) of the definition of *deputy PIM*)**

Omit “*Misconduct*”, substitute “*Corruption*”.

**41 Subsection 5(1) (paragraph (c) of the definition of *eligible authority*)**

Omit “*Misconduct*”, substitute “*Corruption*”.

**42 Subsection 5(1) (paragraph (f) of the definition of *officer*)**

Omit “*Misconduct*” (wherever occurring), substitute “*Corruption*”.

**43 Subsection 5(1) (paragraph (ga) of the definition of *permitted purpose*)**

Repeal the paragraph, substitute:

(ga) in the case of the Crime and Corruption Commission:

- (i) an investigation under the Crime and Corruption Act into whether corruption (within the meaning of that Act) may have occurred, may be occurring or may be about to occur; or
- (ii) a report on such an investigation; or

**44 Subsection 5(1) (subparagraph (b)(i) of the definition of *PIM*)**

Omit “*Misconduct*”, substitute “*Corruption*”.

**45 Subsection 5(1) (paragraph (d) of the definition of *prescribed investigation*)**

Omit “*Misconduct*” (wherever occurring), substitute “*Corruption*”.

**46 Subsection 5(1) (paragraph (f) of the definition of *relevant offence*)**

Omit “Misconduct”, substitute “Corruption”.

**47 Paragraph 5B(1)(kb)**

Omit “Misconduct”, substitute “Corruption”.

**48 Subparagraph 6A(1)(c)(iii)**

Omit “Misconduct”, substitute “Corruption”.

**49 Paragraph 6L(2)(c)**

Omit “Misconduct”, substitute “Corruption”.

**50 Paragraph 39(2)(f)**

Omit “Misconduct” (wherever occurring), substitute “Corruption”.

**51 Paragraph 68(h)**

Omit “Misconduct” (wherever occurring), substitute “Corruption”.

**Part 2—Amendments contingent on the  
Telecommunications (Interception and  
Access) Amendment (Data Retention) Act  
2015**

*Telecommunications (Interception and Access) Act 1979*

**52 Subsection 5(1) (paragraph (i) of the definition of  
enforcement agency)**

Omit “Misconduct”, substitute “Corruption”.

**53 Paragraph 110A(1)(j)**

Omit “of Queensland”.

## Schedule 16—Controlled operations

### *Crimes Act 1914*

#### **1 Section 15GC (before paragraph (a) of the definition of *appropriate authorising officer*)**

Insert:

- (aa) if the controlled operation is a major controlled operation conducted by the Australian Federal Police—the Commissioner or a Deputy Commissioner;

#### **2 Section 15GC (paragraph (a) of the definition of *appropriate authorising officer*)**

Omit “if the authority to conduct the controlled operation was granted by an AFP authorising officer”, substitute “if the controlled operation is not a major controlled operation conducted by the Australian Federal Police”.

#### **3 At the end of subsection 15GO(5)**

Add “, including an alteration that would change the nature of the criminal offences to which the controlled operation relates”.

#### **4 After subsection 15GQ(1)**

Insert:

- (1A) Despite subsection (1), an appropriate authorising officer must refer an application for a variation of an authority to the Commissioner or a Deputy Commissioner if varying the authority would have the effect that the controlled operation would be a major controlled operation by virtue of paragraph 15GD(2)(a).

#### **5 At the end of section 15GQ**

Add:

- (3) Despite subsection (2), an appropriate authorising officer (other than the Commissioner or a Deputy Commissioner) must not vary an authority on the authorising officer’s own initiative if doing so

would have the effect that the controlled operation would be a major controlled operation by virtue of paragraph 15GD(2)(a).

## **6 Application**

The amendments made by this Schedule apply, in relation to an authority, to a variation that is granted on or after the day this item commences:

- (a) whether the authority was granted before that day; and
- (b) if the variation is the result of an application, whether the application was made before that day.

## **7 Savings provision**

To avoid doubt, the amendments made by this Schedule do not affect:

- (a) a controlled operation varied before the day this item commences; or
- (b) any conduct engaged in in the course of, and for the purposes of, such a controlled operation.

## Schedule 17—Technical corrections

### *Classification (Publications, Films and Computer Games) Act 1995*

#### **1 At the end of paragraphs 23(1)(b) and 23A(1)(b)**

Add “and”.

Note: This item adds conjunctions at the end of paragraphs, for consistency with current drafting practice.

#### **2 Paragraph 24(1)(c)**

Repeal the paragraph.

#### **3 After paragraph 24(1A)(b)**

Insert:

; and (c) if the computer game is being published in the Australian Capital Territory—the computer game is not subject to a conditional cultural exemption in relation to the publication;

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[*Minister’s second reading speech made in—  
House of Representatives on 19 March 2015  
Senate on 12 August 2015*]

(37/15)

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