



**Crimes Legislation Amendment
(Proceeds of Crime and Other Measures)
Act 2016**

No. 15, 2016

**An Act to amend legislation relating to the criminal
law, law enforcement and background checking,
and for other purposes**

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

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**An Act to amend legislation relating to the criminal
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and for other purposes**

[Assented to 29 February 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Act 2016*.

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
Provisions	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.	29 February 2016
2. Schedules 1 to 4	The day after this Act receives the Royal Assent.	1 March 2016
3. Schedule 5	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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—Proceeds of crime

Proceeds of Crime Act 2002

1 Subsection 266A(2)

Omit all the words after “in that item”, substitute:

if:

- (a) the person believes on reasonable grounds that the disclosure will serve that purpose; and
- (b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

2 Section 315A

Before “A court”, insert “(1)”.

3 At the end of section 315A

Add:

(2) However, if:

- (a) a *proceeds of crime authority applies for a *forfeiture order relating to particular property; and
- (b) a person applies for an order (the *exclusion order*) under section 29 or 29A to exclude a specified *interest in that property from a *restraining order; and
- (c) the application for the exclusion order has not been withdrawn;

the court may only hear the application for the forfeiture order after the application for the exclusion order has been determined.

4 Section 319

Repeal the section, substitute:

319 Stay of proceedings

- (1) A court may stay proceedings (the *POCA proceedings*) under this Act that are not criminal proceedings if the court considers that it is in the interests of justice to do so.

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- (2) The court must not stay the POCA proceedings on any or all of the following grounds:
- (a) on the ground that criminal proceedings have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against the person subject to the POCA proceedings;
 - (b) on the ground that criminal proceedings have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against another person in respect of matters relating to the subject matter of the POCA proceedings;
 - (c) on the ground that:
 - (i) a person may consider it necessary to give evidence, or to call evidence from another person, in the POCA proceedings; and
 - (ii) the evidence is or may be relevant (to whatever extent) to a matter that is, or may be, at issue in criminal proceedings that have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against the person or any other person;
 - (d) on the ground that POCA proceedings in relation to another person have been, are to be or may be stayed.
- (3) Paragraph (2)(a) applies even if the circumstances pertaining to the POCA proceedings are or may be the same as, or substantially similar to, the circumstances pertaining to the criminal proceedings.
- (4) Paragraph (2)(b) applies even if the subject matter of the POCA proceedings is the same as, or substantially similar to, the matter at issue in the criminal proceedings.
- (5) Paragraph (2)(d) applies even if the staying of the POCA proceedings would avoid a multiplicity of POCA proceedings.
- (6) In considering whether a stay of the POCA proceedings is in the interests of justice, the court must have regard to the following matters:
- (a) that the POCA proceedings, and any criminal proceedings of a kind referred to in paragraph (2)(a) or (b), should proceed as expeditiously as possible;
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- (b) the cost and inconvenience to the Commonwealth of retaining property to which the POCA proceeding relates and being unable to expeditiously realise its proceeds;
- (c) the risk of a *proceeds of crime authority suffering any prejudice (whether general or specific) in relation to the conduct of the POCA proceedings if the proceedings were stayed;
- (d) whether any prejudice that a person (other than a proceeds of crime authority) would suffer if the POCA proceedings were not stayed may be addressed by the court by means other than a stay of the proceedings;
- (e) any orders (other than an order for the stay of the POCA proceedings) that the court could make to address any prejudice that a person (other than a proceeds of crime authority) would suffer if the proceedings were not stayed.

Note: Examples of orders the court could make to address any prejudice that a person (other than a proceeds of crime authority) would suffer if the POCA proceedings were not stayed include an order under section 319A (closed court) or an order prohibiting the disclosure of information.

319A Closed court

A court may order that proceedings under this Act (other than criminal proceedings) be heard, in whole or in part, in closed court if the court considers that the order is necessary to prevent interference with the administration of criminal justice.

5 Application provisions

- (1) Subsection 266A(2) of the *Proceeds of Crime Act 2002*, as amended by this Schedule, applies in relation to the disclosure of information after the commencement of this item, whether the information was obtained before or after that commencement.
- (2) Subsection 315A(2) of the *Proceeds of Crime Act 2002*, as inserted by this Schedule, applies in relation to an application made after the commencement of this item:
 - (a) whether the application relates to an interest in property acquired before or after that commencement; and

- (b) whether the application relates to conduct that occurred before or after that commencement.
- (3) Sections 319 and 319A of the *Proceeds of Crime Act 2002*, as inserted by this Schedule, apply in relation to proceedings instituted or commenced before or after the commencement of this item.

Schedule 2—False accounting

Criminal Code Act 1995

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

Add:

Part 10.9—Accounting records

Division 490—False dealing with accounting documents

490.1 Intentional false dealing with accounting documents

- (1) A person commits an offence if:
 - (a) the person:
 - (i) makes, alters, destroys or conceals an accounting document; or
 - (ii) fails to make or alter an accounting document that the person is under a duty, under a law of the Commonwealth, a State or Territory or at common law, to make or alter; and
 - (b) the person intended the making, alteration, destruction or concealment of the document (or the failure to make or alter the document) to facilitate, conceal or disguise the occurrence of one or more of the following:
 - (i) the person receiving a benefit that is not legitimately due to the person;
 - (ii) the person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit;
 - (iii) another person receiving a benefit that is not legitimately due to the other person;
 - (iv) another person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit (who may be the first-mentioned person);
 - (v) loss to another person that is not legitimately incurred by the other person; and

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- (c) one or more of the circumstances referred to in subsection (2) applies.
- (2) For the purposes of paragraph (1)(c) of this section or paragraph 490.2(1)(c), the circumstances are:
- (a) the person is:
 - (i) a constitutional corporation, or a corporation that is incorporated in a Territory; or
 - (ii) an officer or employee of a constitutional corporation acting in the performance of his or her duties or the carrying out of his or her functions; or
 - (iii) a person engaged to provide services to a constitutional corporation and acting in the course of providing those services; or
 - (iv) a Commonwealth public official acting in the performance of his or her duties or the carrying out of his or her functions; or
 - (b) the person's act or omission referred to in paragraph (1)(a):
 - (i) occurs in a Territory; or
 - (ii) occurs outside Australia; or
 - (iii) concerns matters or things outside Australia; or
 - (iv) facilitates or conceals the commission of an offence against a law of the Commonwealth; or
 - (c) the accounting document:
 - (i) is outside Australia; or
 - (ii) is in a Territory; or
 - (iii) is kept under or for the purposes of a law of the Commonwealth; or
 - (iv) is kept to record the receipt or use of Australian currency.
- (3) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Penalty for individual

- (4) An offence against this section committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

- (5) An offence against this section committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:
- (a) 100,000 penalty units;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the *turnover period*) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

490.2 Reckless false dealing with accounting documents

- (1) A person commits an offence if:
- (a) the person:
 - (i) makes, alters, destroys or conceals an accounting document; or
 - (ii) fails to make or alter an accounting document that the person is under a duty, under a law of the Commonwealth, a State or Territory or at common law, to make or alter; and
 - (b) the person is reckless as to whether the making, alteration, destruction or concealment of the document (or the failure to make or alter the document) facilitates, conceals or disguises the occurrence of one or more of the following:
 - (i) the person receiving a benefit that is not legitimately due to the person;
 - (ii) the person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit;
 - (iii) another person receiving a benefit that is not legitimately due to the other person;

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- (iv) another person giving a benefit that is not legitimately due to the recipient, or intended recipient, of the benefit (who may be the first-mentioned person);
 - (v) loss to another person that is not legitimately incurred by the other person; and
- (c) one or more of the circumstances referred to in subsection 490.1(2) applies.
- (2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Penalty for individual

- (3) An offence against this section committed by an individual is punishable on conviction by imprisonment for not more than 5 years, a fine not more than 5,000 penalty units, or both.

Penalty for body corporate

- (4) An offence against this section committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:
- (a) 50,000 penalty units;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—1.5 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—5% of the annual turnover of the body corporate during the period (the *turnover period*) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

490.3 Meaning of *annual turnover*

- (1) For the purposes of this Division, the *annual turnover* of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate

related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate;
 - (b) supplies that are input taxed;
 - (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
 - (d) supplies that are not made in connection with an enterprise that the body corporate carries on.
- (2) Expressions used in this section that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this section as they have in that Act.

490.4 Related bodies corporate

The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this Division in the same way as for the purposes of the *Corporations Act 2001*.

490.5 Proof of certain matters unnecessary

In a prosecution for an offence against this Division, it is not necessary to prove:

- (a) the occurrence of any of the following:
 - (i) the defendant receiving or giving a benefit;
 - (ii) another person receiving or giving a benefit;
 - (iii) loss to another person; or
- (b) that the defendant intended that a particular person receive or give a benefit, or incur a loss.

490.6 Consent to commencement of proceedings

- (1) Proceedings for an offence against this Division must not be commenced without the Attorney-General's written consent if:
 - (a) the conduct constituting the alleged offence occurs wholly in a foreign country; and

- (b) at the time of the alleged offence, the person alleged to have committed the offence is none of the following:
 - (i) an Australian citizen;
 - (ii) a resident of Australia;
 - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.
- (2) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against this Division before the necessary consent has been given.

490.7 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

2 Dictionary of the *Criminal Code*

Insert:

accounting document means:

- (a) any account; or
- (b) any record or document made or required for any accounting purpose; or
- (c) any register under the *Corporations Act 2001*, or any financial report or financial records within the meaning of that Act.

Schedule 3—Serious drugs

Criminal Code Act 1995

1 Paragraph 301.9(1)(b) of the *Criminal Code*

Repeal the paragraph.

2 Subparagraph 301.9(1)(c)(iii) of the *Criminal Code*

Repeal the subparagraph, substitute:

- (iii) by the replacement of one or more of the groups or atoms specified in subsection (2) with one or more of the other groups or atoms specified in that subsection;

3 Subsection 301.9(2) of the *Criminal Code*

Repeal the subsection, substitute:

- (2) The following groups and atoms are specified:
 - (a) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
 - (b) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon;
 - (c) halogen, hydroxy, nitro or amino groups;
 - (d) hydrogen atoms.
- (3) However:
 - (a) a drug analogue of a listed controlled drug does not include a substance that is itself a listed controlled drug; and
 - (b) a drug analogue of a listed border controlled drug does not include a substance that is itself a listed border controlled drug.

- (4) In this section:

addition has its ordinary meaning.

replacement has its ordinary meaning.

4 Subsection 305.1(1) of the *Criminal Code*

Repeal the subsection, substitute:

- (1) For the purposes of this Part, *manufacture* means:
- (a) any process by which a substance is produced (other than the cultivation of a plant), and includes the following:
 - (i) the process of extracting or refining a substance;
 - (ii) the process of transforming a substance into a different substance; or
 - (b) any process by which a substance is converted from one form to another, including the process of extracting or refining a substance.

Schedule 4—Secrecy and access of AUSTRAC information

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5 (after paragraph (u) of the definition of *designated agency*)

Insert:

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

2 Section 5 (definition of *foreign law enforcement agency*)

Repeal the definition, substitute:

foreign law enforcement agency means:

- (a) a government body that has responsibility for law enforcement in a foreign country or a part of a foreign country; or
- (b) the European Police Office (Europol); or
- (c) the International Criminal Police Organization (Interpol); or
- (d) an international body prescribed by the regulations for the purposes of this paragraph.

3 At the end of subsection 22(1)

Add:

- ; and (j) in the case of the Independent Commissioner Against Corruption of South Australia:
- (i) a person appointed as the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012* (SA) or acting in that office; and
 - (ii) a person appointed as the Deputy Commissioner under that Act or acting in that office; and
 - (iii) a person appointed as an examiner or investigator under that Act.

4 After paragraph 122(3)(b)

Insert:

- (c) the disclosure is for the purposes of, or in connection with, the performance of the duties of the entrusted investigating official (other than the Commissioner of Taxation or a taxation officer);

5 Application provision

Paragraph 122(3)(c) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as inserted by this Schedule, applies in relation to the disclosure of information after the commencement of this item, whether the information was obtained before or after that commencement.

Schedule 5—Disclosure etc. of AusCheck scheme personal information

AusCheck Act 2007

1 Subsection 4(1) (definition of *Commonwealth authority*)

Repeal the definition, substitute:

Commonwealth authority means a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth.

2 Subsection 4(1)

Insert:

State or Territory authority means a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

3 Subparagraph 14(2)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) the performance of functions relating to law enforcement or national security by the Commonwealth or a Commonwealth authority;
- (iiia) the performance of functions relating to law enforcement or national security by a State or Territory or a State or Territory authority;

4 Subparagraph 14(2)(b)(iv)

After “subparagraph (iii)”, insert “or (iiia)”.

5 Application provision

The amendments of the *AusCheck Act 2007* made by this Schedule apply in relation to the use or disclosure of information after the commencement of this item, whether the information was collected before or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 26 November 2015
Senate on 2 February 2016]*

(201/15)

No. 15, 2016

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Measures) Act 2016*

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