



Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2018

No. 75, 2018

**An Act to amend legislation relating to the criminal
law and law enforcement, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 75, 2018

**An Act to amend legislation relating to the criminal
law and law enforcement, and for related purposes**

[Assented to 24 August 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Crimes Legislation Amendment (Powers, Offences
and Other Measures) Act 2018*.

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. The whole of this Act | The day after this Act receives the Royal Assent. | 25 August 2018 |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Australian Federal Police Act 1979

Australian Federal Police Act 1979

1 Subsection 4(1)

Insert:

international organisation includes:

- (a) a public international organisation within the meaning of section 70.1 of the *Criminal Code*; and
- (b) a body (including an international judicial body):
 - (i) established by or under an international agreement or international arrangement or otherwise under international law; or
 - (ii) established by a body described in subparagraph (i); or
 - (iii) on which functions are conferred by or under an international agreement.

2 After paragraph 8(1)(bg)

Insert:

- (bh) to assist or cooperate with:
 - (i) an international organisation; or
 - (ii) a non-governmental organisation, in relation to acts, omissions, matters or things outside Australia; in relation to the provision of police services or police support services; and

Schedule 2—Obligations of investigating officials

Crimes Act 1914

1 Subsection 23B(1) (definition of *Aboriginal legal aid organisation*)

Repeal the definition.

2 Subsection 23B(1)

Insert:

Aboriginal legal assistance organisation means an organisation that is funded by the Commonwealth, a State or a Territory to provide legal assistance to Aboriginal persons and Torres Strait Islanders.

3 Subsection 23H(1)

After “must”, insert “, before starting to question the person”.

4 Paragraphs 23H(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) inform the person that a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located will be notified that the person is under arrest or is a protected suspect (as the case requires); and
- (b) notify such a representative that the person is under arrest or is a protected suspect (as the case requires).

5 After subsection 23H(1)

Add:

- (1A) To avoid doubt, the obligations imposed by subsection (1) do not limit and are not limited by any other obligations imposed, or rights conferred, by this section.
- (1AB) If a representative of an Aboriginal legal assistance organisation is notified under subsection (1), the investigating official must not question the person until the earlier of the following times:

- (a) the representative has communicated with the person;
- (b) 2 hours have elapsed since the representative was notified.

6 Subsection 23H(2B)

Repeal the subsection, substitute:

- (2B) If an interview friend is not chosen under subsection (2A), the investigating official must choose a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located to be the person's interview friend.

7 Subsection 23H(9) (paragraph (c) of the definition of *interview friend*)

Repeal the paragraph, substitute:

- (c) a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located.

8 Subsection 23H(9) (paragraph (d) of the definition of *interview friend*)

Repeal the paragraph.

9 Section 23J

Repeal the section.

10 Subsection 23K(3) (paragraph (c) of the definition of *interview friend*)

Omit "whose name is included in the relevant list maintained under subsection 23J(1)", substitute "who is a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located".

11 Subsection 23WA(1) (definition of *Aboriginal legal aid organisation*)

Repeal the definition.

12 Subsection 23WA(1)

Insert:

Aboriginal legal assistance organisation has the same meaning as in Part IC.

13 Paragraph 23WB(2)(c)

Omit “Aboriginal legal aid organisation or a person whose name is on the relevant list maintained under subsection 23J(1)”, substitute “Aboriginal legal assistance organisation in the State or Territory in which the person is located”.

14 Paragraph 23WB(3)(c)

Omit “Aboriginal legal aid organisation, or a person whose name is included in the relevant list maintained under subsection 23J(1)”, substitute “Aboriginal legal assistance organisation in the State or Territory in which the person is located”.

15 Paragraphs 23WG(4)(a) and (b)

Repeal the paragraphs, substitute:

- (a) inform the suspect that a representative of an Aboriginal legal assistance organisation will be notified that the suspect is to be asked to consent to a forensic procedure; and
- (b) notify such a representative that the suspect is to be asked to consent to a forensic procedure.

Schedule 3—Controlled operation disclosure offence

Crimes Act 1914

1 Section 15GC

Insert:

entrusted person means:

- (a) a participant in a controlled operation; or
- (b) any of the following:
 - (i) the Commissioner or an AFP appointee (within the meaning of the *Australian Federal Police Act 1979*);
 - (ii) a member of the police force of a State or Territory;
 - (iii) a staff member (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) of the Immigration and Border Protection Department;
 - (iv) the Chief Executive Officer of the ACC, a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*) or a person appointed under subsection 46B(1) of that Act;
 - (v) a staff member (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) of the Australian Commission for Law Enforcement Integrity;or
- (c) an officer or staff member of a government agency, or an integrity agency for a State or Territory, with which the Integrity Commissioner is jointly investigating a corruption issue under subsection 26(2) of the *Law Enforcement Integrity Commissioner Act 2006*, if a controlled operation relates to the investigation; or
- (d) an officer (within the meaning of section 35 of the *Ombudsman Act 1976*); or
- (e) a person who has entered into a contract, agreement or arrangement with:
 - (i) a law enforcement agency; or

- (ii) a government agency, or an integrity agency, mentioned in paragraph (c); or
- (iii) the Commonwealth Ombudsman;
(other than as a person mentioned in paragraphs (b) to (d)).

2 Subsection 15HK(1)

Repeal the subsection, substitute:

Disclosures by entrusted persons

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
 - (c) the person discloses the information; and
 - (d) the information relates to a controlled operation.

Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 2 years.

- (1A) Strict liability applies to paragraph (1)(a).

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

- (1B) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
 - (c) the person discloses the information; and
 - (d) the information relates to a controlled operation; and
 - (e) either or both of the following subparagraphs apply:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation;
 - (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 10 years.

(1C) Strict liability applies to paragraph (1B)(a).

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

Other disclosures

(1D) A person commits an offence if:

- (a) the person discloses information; and
- (b) the information relates to a controlled operation; and
- (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Note: Recklessness is the fault element for paragraphs (1D)(b) and (c)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 2 years.

(1E) A person commits an offence if:

- (a) the person discloses information; and
- (b) the information relates to a controlled operation; and
- (c) either or both of the following subparagraphs apply:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation;
 - (ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Note: Recklessness is the fault element for paragraph (1E)(b)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 10 years.

3 Subsections 15HK(2), (2A) and (3)

Omit “Subsection (1) does”, substitute “Subsections (1) to (1E) do”.

4 At the end of section 15HK

Add:

Exception—previously published information

- (4) Subsections (1D) and (1E) do not apply to a person disclosing information if:
- (a) the information has already been communicated, or made available, to the public (the prior publication); and
 - (b) the person was not involved in the prior publication (whether directly or indirectly); and
 - (c) at the time of the disclosure, the person believes that the disclosure:
 - (i) will not endanger the health or safety of any person; and
 - (ii) will not prejudice the effective conduct of a controlled operation; and
 - (d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4)—see subsection 13.3(3) of the *Criminal Code*.

5 Section 15HL

Repeal the section.

6 Subsections 15HV(2), (3) and (4)

Omit “or 15HL”.

Schedule 4—Increasing maximum penalties for general dishonesty offences

Criminal Code Act 1995

1 Subsections 135.1(1), (3), (5) and (7) of the *Criminal Code* (penalty)

Omit “5 years”, substitute “10 years”.

2 Application of amendments

The amendments made by this Schedule apply in relation to conduct engaged in on or after the commencement of this Schedule.

Schedule 5—Removing obsolete reference to death penalty

Crimes Act 1914

1 Subsection 20C(1)

Omit “(1)”.

2 Subsection 20C(2)

Repeal the subsection.

3 Paragraph 23WA(8)(e)

Omit “subsection 20C(1)”, substitute “section 20C”.

Schedule 6—Protecting vulnerable persons

Crimes Act 1914

1 Subsection 15YR(6)

Repeal the subsection, substitute:

- (6) An application for leave under this section must be in writing.
- (7) A person who makes an application for leave under this section must take reasonable steps to give written notice of the application to each of the following:
 - (a) the prosecutor in the proceeding;
 - (b) each defendant in the proceeding;
 - (c) each other party to the proceeding to whom subsection (1A) applies.
- (8) If a party referred to in paragraph (7)(c) is a child at the time the application is made, the notice must be given to a parent, guardian or legal representative of the party.
- (9) A notice under subsection (7) must:
 - (a) be given no later than 3 business days before the day the application is to be heard; and
 - (b) be accompanied by a copy of the application.
- (10) An application for leave under this section must not be determined unless the court:
 - (a) is satisfied the applicant has taken reasonable steps to give notice of the application in accordance with subsections (7), (8) and (9); and
 - (b) has considered such submissions and other evidence as it thinks necessary for determining the application.

2 Application of amendment

The amendment of section 15YR of the *Crimes Act 1914* made by this Schedule applies in relation to applications made on or after the commencement of this Schedule.

Schedule 7—Personal information that may be relevant for integrity purposes

Crimes Act 1914

1 Subsection 3(1)

Insert:

Commonwealth entity has the meaning given by section 10 of the *Public Governance, Performance and Accountability Act 2013*.

integrity purpose means the purpose of preventing, detecting, investigating or dealing with any of the following:

- (a) misconduct (within the meaning of the *Privacy Act 1988*) of a serious nature by any of the following:
 - (i) an official (as defined in section 13 of the *Public Governance, Performance and Accountability Act 2013*) of a Commonwealth entity;
 - (ii) a person employed by, or in the service of, a Privacy Act agency or a wholly-owned Commonwealth company;
 - (iii) a person acting on behalf of, or for the purposes of activities of, a Privacy Act agency;
 - (iv) an officer of a wholly-owned Commonwealth company;
- (b) conduct that may have the purpose or effect of inducing misconduct described in paragraph (a);
- (c) fraud that has or may have a substantial adverse effect on the Commonwealth or a target entity;
- (d) an offence against Chapter 7 of the *Criminal Code* (which is about the proper administration of Government).

Note 1: An example of dealing with the matters described in paragraphs (a), (b), (c) and (d) is taking legal proceedings, disciplinary proceedings or other administrative action.

Note 2: An integrity purpose relating to misconduct of a person covered by a subparagraph of paragraph (a) does not cease to exist merely because the person ceases to be covered by that subparagraph after the misconduct occurs.

personal information has the meaning given by section 6 of the *Privacy Act 1988*.

Privacy Act agency has the same meaning as agency has in the *Privacy Act 1988*.

sensitive information has the meaning given by section 6 of the *Privacy Act 1988*.

substantial adverse effect means an effect that is adverse and not insubstantial, insignificant or trivial.

target entity means:

- (a) a Privacy Act agency; or
- (b) a wholly-owned Commonwealth company.

Note: A target entity is an APP entity as defined in section 6 of the *Privacy Act 1988*, because it is either an agency or an organisation for the purposes of that Act (as a wholly-owned Commonwealth company is an organisation as defined in section 6C of that Act).

wholly-owned Commonwealth company has the meaning given by section 90 of the *Public Governance, Performance and Accountability Act 2013*.

2 Subsection 15YV(3)

Repeal the subsection.

3 After Part VIIC

Insert:

Part VIID—Collecting, using and disclosing personal information that may be relevant for integrity purposes

86B Simplified outline of this Part

| |
|--|
| <p>This Part authorises collection, use and disclosure of personal information for preventing, detecting, investigating or dealing with:</p> |
|--|

- (a) serious misconduct by persons working for Commonwealth bodies; or
- (b) fraud affecting Commonwealth bodies; or
- (c) offences against Chapter 7 of the *Criminal Code* (which is about the proper administration of Government).

The authorisation is relevant to laws (such as privacy laws) that limit the collection, use and disclosure of personal information unless authorised by law.

86C Target entity may collect sensitive information for integrity purpose

A target entity may collect for an integrity purpose sensitive information that:

- (a) if the target entity is a Privacy Act agency—is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities; or
- (b) if the target entity is a wholly-owned Commonwealth company—is reasonably necessary for one or more of the entity’s functions or activities.

Note: Subclause 3.3 of Australian Privacy Principle 3 limits the circumstances in which an APP entity may collect sensitive information. This section lets a target entity collect sensitive information for an integrity purpose in circumstances corresponding to those in which it may collect other personal information (see subclauses 3.1 and 3.2 of that Principle).

86D Target entity may use personal information for integrity purpose

A target entity may use personal information for an integrity purpose relating to the entity.

86E Disclosure of personal information to target entity for integrity purpose

- (1) This section applies if a law of the Commonwealth or of a State or Territory:

- (a) limits disclosure of some or all personal information by a person, body or authority (however described); and
- (b) exempts from the limitation a disclosure authorised by a law of the Commonwealth.

Note: Australian Privacy Principle 6 is an example of such a law of the Commonwealth. The Principle prohibits an APP entity from disclosing personal information for a purpose other than the one for which the entity collected the information, unless the disclosure is authorised under an Australian law or certain other exceptions apply.

- (2) For the purposes of the exemption, the person, body or authority may disclose to a target entity for an integrity purpose personal information that the person, body or authority reasonably believes is related to one or more of the target entity's functions or activities.

Limit on subsection (2) for disclosures by target entity

- (3) Subsection (2) applies to a disclosure by a target entity other than the Australian Federal Police only if it is made for the target entity by a person who is authorised to make disclosures for integrity purposes by:
 - (a) the accountable authority (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the entity, if it is a Commonwealth entity; or
 - (b) the entity or its principal executive (within the meaning of the *Privacy Act 1988*), if it is a Privacy Act agency other than a Commonwealth entity; or
 - (c) a director of the entity, if it is a wholly-owned Commonwealth company.

86F This Part does not limit other laws

To avoid doubt, this Part does not impliedly limit other laws (whether written or unwritten) that authorise collection, use or disclosure of personal information.

86G Guidelines on the operation of this Part

- (1) The Secretary of the Department may publish guidelines approved by the Information Commissioner on the operation of this Part.
-

(2) Guidelines under subsection (1) are not a legislative instrument.

4 Application

- (1) Section 86C of the *Crimes Act 1914* applies to the collection of sensitive information on and after the commencement of that section.
- (2) Section 86D of the *Crimes Act 1914* applies to the use of personal information by a target entity on or after the commencement of that section, whether the entity collected the information before, on or after that commencement.
- (3) Section 86E of the *Crimes Act 1914* applies to the disclosure of personal information on or after the commencement of that section, whether the person, body or authority making the disclosure collected the information before, on or after that commencement.

Schedule 8—Exemptions to spent convictions scheme

Crimes Act 1914

1 Section 85ZL (after paragraph (bb) of the definition of *law enforcement agency*)

Insert:

- (bc) the Law Enforcement Conduct Commission of New South Wales, or a similar body established under a law of another State; or

*[Minister's second reading speech made in—
House of Representatives on 30 March 2017
Senate on 13 August 2018]*

(53/17)
