



# **Crimes (Overseas) Amendment Act 2003**

**No. 102, 2003**

**An Act to amend the *Crimes (Overseas) Act 1964*,  
and for related purposes**

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



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2

<b>Schedule 1—Amendments</b>	3
------------------------------	---

<i>Crimes (Overseas) Act 1964</i>	3
-----------------------------------	---





# Crimes (Overseas) Amendment Act 2003

No. 102, 2003

---

---

## An Act to amend the *Crimes (Overseas) Act 1964*, and for related purposes

[Assented to 15 October 2003]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Crimes (Overseas) Amendment Act 2003*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

---

column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 October 2003
2. Schedule 1	1 July 2003.	1 July 2003

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

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

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

---

## Schedule 1—Amendments

### *Crimes (Overseas) Act 1964*

#### **1 Section 3**

Insert:

*act* includes an omission.

#### **2 Section 3**

Insert:

*ASIS* has the same meaning as in the *Intelligence Services Act 2001*.

#### **3 Section 3**

Insert:

*Australian* means a person who:

- (a) is an Australian citizen; or
- (b) is not an Australian citizen but is permitted to travel to, enter and remain in Australia indefinitely under the *Migration Act 1958*.

#### **4 Section 3**

Insert:

*criminal laws* of the Jervis Bay Territory means laws in force in that Territory (including unwritten laws):

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or for reduction of the degree of criminal liability; or
- (d) dealing with other subjects declared by regulation to be within the ambit of the criminal laws of the Jervis Bay Territory; or
- (e) providing for the interpretation of laws of the kinds mentioned above.

## 5 Section 3

Insert:

***declared agreement or arrangement*** means a relevant agreement or arrangement that regulations made for the purposes of section 3B provide is a declared agreement or arrangement for the purposes of this Act.

## 6 Section 3

Insert:

***declared foreign country*** means a foreign country that regulations made for the purposes of section 3C provide is a declared foreign country for the purposes of this Act.

## 7 Section 3

Insert:

***declared part of a foreign country*** means a part of a foreign country that regulations made for the purposes of section 3C provide is a declared part of a foreign country for the purposes of this Act.

## 8 Section 3

Insert:

***DSD*** has the same meaning as in the *Intelligence Services Act 2001*.

## 9 Section 3

Insert:

***foreign country***:

- (a) means any country other than Australia or an external Territory (whether or not an independent sovereign State); and
- (b) includes:
  - (i) all the territory and maritime areas over which the country exercises sovereignty or sovereign rights; and
  - (ii) the air space over those areas.



---

**10 Section 3**

Insert:

***international organisation*** means an organisation:

- (a) of which Australia and a country or countries other than Australia are members; or
- (b) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia.

**11 Section 3**

Insert:

***Minister for Foreign Affairs*** means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

**12 Section 3 (definition of *non-citizen*)**

Repeal the definition.

**13 Section 3 (definition of *person to whom this Act applies*)**

Repeal the definition.

**14 Section 3**

Insert:

***relevant agreement or arrangement*** means an agreement or arrangement (whether formal or informal) between:

- (a) Australia and the United Nations or an organ of the United Nations; or
- (b) Australia and another country.

**15 Section 3**

Insert:

***staff member*** of ASIS or DSD has the same meaning as in the *Intelligence Services Act 2001*.

**16 Section 4**

Repeal the section, substitute:

**3A When this Act applies to a person in relation to an act of the person in a foreign country**

*Australians given diplomatic, consular or similar immunity*

- (1) Subject to subsection (2), this Act applies to a person in relation to an act of the person in a foreign country if:
  - (a) the person is an Australian at the time the act occurs (the **relevant time**); and
  - (b) the person is, at the relevant time, not subject to criminal proceedings in the courts of the foreign country in respect of the act because of:
    - (i) an immunity granted by the foreign country in accordance with the Vienna Convention on Diplomatic Relations (a copy of the English text of which is set out in the Schedule to the *Diplomatic Privileges and Immunities Act 1967*); or
    - (ii) an immunity granted by the foreign country in accordance with the Vienna Convention on Consular Relations (a copy of the English text of which is set out in the Schedule to the *Consular Privileges and Immunities Act 1972*); or
    - (iii) an immunity granted by the foreign country because of the person's relationship with an international organisation.
- (2) This Act does not apply to the person in relation to the act at a particular time after the act occurs if:
  - (a) the person:
    - (i) is, at that time, subject to criminal proceedings in the courts of the foreign country in respect of the act; or
    - (ii) will, at some future time, become subject to criminal proceedings in the courts of the foreign country in respect of the act because of the limited duration of the immunity granted to the person; and
  - (b) the person would continue to be subject to criminal proceedings in the courts of the foreign country in respect of the act even if the person were to be prosecuted under the laws of the Commonwealth in relation to that act and acquitted or convicted.

---

In determining whether the person would continue to be subject to criminal proceedings in the courts of the foreign country in respect of the act, have regard not only to the laws in force in the foreign country but also to any agreement entered into, or undertaking given, by the foreign country.

*Australians undertaking tasks etc. under relevant agreement or arrangement*

- (3) This Act also applies to a person in relation to an act of the person in a foreign country if:
    - (a) the person is an Australian at the time the act occurs (the ***relevant time***); and
    - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country under a relevant agreement or arrangement; and
    - (c) under, or because of:
      - (i) a relevant agreement or arrangement; or
      - (ii) an agreement or arrangement (whether formal or informal) between the United Nations, or an organ of the United Nations, and the foreign country;
 the person is, at the relevant time, not subject to criminal proceedings in the courts of the foreign country in respect of the act.
  - (4) This Act also applies to a person in relation to an act of the person in a foreign country if:
    - (a) the person is an Australian at the time the act occurs (the ***relevant time***); and
    - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country under a relevant agreement or arrangement; and
    - (c) the relevant agreement or arrangement is, at the relevant time, a declared agreement or arrangement; and
    - (d) if, at the relevant time, the regulations provide that the relevant agreement or arrangement is a declared agreement or arrangement only in relation to people who fall within a specified category—the person falls within that category at the relevant time.
-

*Australians undertaking tasks etc. in declared foreign country etc.*

- (5) This Act also applies to a person in respect of an act of the person in a foreign country if:
- (a) the person is an Australian at the time the act occurs (the ***relevant time***); and
  - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country:
    - (i) on behalf of the Commonwealth; or
    - (ii) pursuant to commitments or directions given by, or on terms determined by, the Commonwealth; and
  - (c) the foreign country is, at the relevant time, a declared foreign country; and
  - (d) if, at the relevant time, the regulations provide that the foreign country is a declared foreign country only in relation to people who fall within a specified category—the person falls within that category at the relevant time.
- (6) This Act also applies to a person in respect of an act of the person in a part of a foreign country if:
- (a) the person is an Australian at the time the act occurs (the ***relevant time***); and
  - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in that part of the foreign country:
    - (i) on behalf of the Commonwealth; or
    - (ii) pursuant to commitments or directions given by, or on terms determined by, the Commonwealth; and
  - (c) that part of the foreign country is, at the relevant time, a declared part of a foreign country; and
  - (d) if, at the relevant time, the regulations provide that that part of the foreign country is a declared part of a foreign country only in relation to people who fall within a specified category—the person falls within that category at the relevant time.

*Acts done while undertaking tasks etc.*

- (7) Subsections (8) and (9) apply if a person undertakes a task or project, or performs a function, in a foreign country (or a part of a

foreign country) from time to time during a particular period (the *relevant period*).

- (8) The person is taken, for the purposes of subsections (3) to (6), to be undertaking the task or project, or performing the function, at all times during the relevant period.

**Note:** This means that this Act may apply to the person in relation to an act that occurs during the relevant period even if the act does not occur in the course of undertaking the task or project or performing the function.

**Example:** If an Australian is sent to the foreign country to undertake a particular project during a period, this Act applies not only to acts done while the Australian is actively engaged in carrying out the project but also to acts done during that period while the Australian is “off duty”.

- (9) If the person is sent to the foreign country (or that part of the foreign country) to undertake the task or project, or to perform the function, the person is taken, for the purposes of subsections (3) to (6), to be undertaking the task or project, or performing the function, at all times:
- (a) during the period that:
    - (i) starts when the person arrives in the foreign country (or that part of the foreign country); and
    - (ii) ends when the relevant period starts; and
  - (b) during the period that:
    - (i) starts when the relevant period ends; and
    - (ii) ends when the person leaves the foreign country (or that part of the foreign country).

*Defence Force members and ASIS and DSD staff not covered*

- (10) Despite subsections (1) to (6), this Act does not apply to a person in respect of an act of the person if:
- (a) the person is a member of the Defence Force at the time the act occurs; or
  - (b) the person is a staff member of ASIS or DSD at the time the act occurs and the act is done in the proper performance of a function of ASIS or DSD.

**Note:** Section 14 of the *Intelligence Services Act 2001*:

- (a) authorises the Inspector-General of Intelligence and Security to give a certificate certifying any fact relevant to the question

whether an act was done in the proper performance of a function of ASIS or DSD; and

- (b) provides for such a certificate to be prima facie evidence of the facts certified in any proceedings.

### **3B Declared agreement or arrangements**

- (1) The regulations may:
  - (a) provide that a relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act; or
  - (b) provide that a relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act but only in relation to a specified category of persons.
- (2) Without limiting paragraph (1)(b), the regulations may provide that the relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act only in relation to persons who undertake specified tasks or projects, or perform specified functions, under the agreement or arrangement.
- (3) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister, after consulting the Minister for Foreign Affairs, must be satisfied that it is appropriate to do so having regard to:
  - (a) whether this Act would apply to Australians in relation to activities engaged in under the relevant agreement or arrangement even if the regulations were not made; and
  - (b) the nature of the activities to be engaged in by Australians under the relevant agreement or arrangement; and
  - (c) the period during which those activities are to be engaged in; and
  - (d) the number of Australians likely to be engaging in those activities; and
  - (e) the circumstances in which Australians engaging in activities under the relevant agreement or arrangement are subject to, or immune from, the criminal laws in force in the foreign country concerned; and
  - (f) any other relevant matter.

---

### **3C Declared foreign countries and declared parts of foreign countries**

- (1) The regulations may:
    - (a) provide that a foreign country (or a part of a foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act; or
    - (b) provide that a foreign country (or a part of a foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act but only in relation to a specified category of persons.
  - (2) Without limiting paragraph (1)(b), the regulations may provide that the foreign country (or the part of the foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act only in relation to persons who undertake specified tasks or projects, or perform specified functions, in the foreign country (or that part of the foreign country).
  - (3) The regulations must specify:
    - (a) the day on which the foreign country (or the part of the foreign country) is to start being a declared foreign country (or a declared part of a foreign country) for the purposes of this Act; and
    - (b) the day on which the foreign country (or the part of the foreign country) is to cease being a declared foreign country (or a declared part of a foreign country) for the purposes of this Act.
  - (4) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister, after consulting the Minister for Foreign Affairs, must be satisfied that it is appropriate to do so having regard to:
    - (a) whether this Act would apply to Australians in relation to acts in the foreign country (or the part of the foreign country) even if the regulations were not made; and
    - (b) the nature of the activities to be engaged in by Australians in the foreign country (or that part of the foreign country); and
    - (c) the period during which those activities are to be engaged in; and
    - (d) the number of Australians likely to be engaging in those activities; and
-

- (e) the circumstances in which Australians engaging in activities in the foreign country (or that part of the foreign country) are subject to, or immune from, the criminal laws in force in the foreign country; and
  - (f) any other relevant matter.
- (5) Regulations made for the purposes of subsection (1) within 3 months after the day on which the *Crimes (Overseas) Amendment Act 2003* receives the Royal Assent may provide that a foreign country (or a part of a foreign country) is taken to have been a declared foreign country (or a declared part of a foreign country) on and from 1 July 2003.

#### **4 Application of Australian criminal law to person to whom this Act applies**

- (1) If:
  - (a) this Act applies to a person in relation to an act of the person in a foreign country; and
  - (b) the act would, if it had occurred in the Jervis Bay Territory, have contravened the criminal laws of the Jervis Bay Territory as in force at the time the act occurred;the criminal laws of the Jervis Bay Territory, as in force at the time the act occurred, are taken to have applied, at the time the act occurred, to the person in relation to the act and to so apply as laws of the Commonwealth.
- (2) Proceedings for an offence against the laws applied under subsection (1) must not be commenced without the Minister's written consent.
- (3) Before giving a consent under subsection (2), the Minister must consult with the Minister for Foreign Affairs.
- (4) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against the laws applied under subsection (1) before the necessary consent has been given.
- (5) If:
  - (a) a person is a person to whom this Act applies in relation to an act at the time when the person is convicted of an offence against a law applied under subsection (1); and



---

(b) the person subsequently ceases to be a person to whom this Act applies in relation to the act because of subsection 3A(2); the person's ceasing to be a person to whom this Act applies in relation to the act does not affect the validity of the conviction or any sentence imposed in relation to the conviction.

**17 Section 5**

Omit "offence against this Act", substitute "offence against the laws applied under subsection 4(1)".

**18 Section 5**

Omit "or omission".

**19 Subsection 6(1)**

After "this Act applies", insert "in relation to an act".

**20 Subsection 6(1)**

Omit "offence against this Act", substitute "offence against the laws applied under subsection 4(1)".

**21 Subsection 7(1)**

Omit "offences against this Act", substitute "offences against the laws applied under subsection 4(1)".

**22 Subsections 7(4), (5) and (6)**

Omit "offence against this Act" (wherever occurring), substitute "offence against the laws applied under subsection 4(1)".

**23 Subsection 7(7)**

Omit "offences against this Act", substitute "offences against the laws applied under subsection 4(1)".

**24 Section 8**

Repeal the section, substitute:

**8 Evidence**

- (1) The Minister may, in writing, authorise:
- (a) the Secretary of the Department; or

- (b) an SES employee, or acting SES employee, in the Department;

to issue certificates under this section.
- (2) A person authorised to issue certificates under this section may certify:
  - (a) that a person specified in the certificate was, on a date that is before 1 July 2003 and that is specified in the certificate, a person to whom this Act (as in force on that date) applied; and
  - (b) that, on that date, that person was a person who, under arrangements referred to in paragraph 4(b) of this Act (as in force on that date), was not to be subject to proceedings in the courts of a country specified in the certificate in respect of acts or omissions taking place in that country.
- (3) A person authorised to issue certificates under this section may certify as to any matter that is relevant to determining whether a person specified in the certificate was, on a date that is on or after 1 July 2003 and that is specified in the certificate, a person to whom this Act (as in force on that date) applied in relation to an act.
- (4) A certificate under subsection (2) or (3) is admissible as prima facie evidence of the matter stated in the certificate.
- (5) For the purposes of this section, a document purporting to be a certificate under subsection (2) or (3) is, unless the contrary is proved, taken to be such a certificate and to have been duly given.
- (6) A certificate under subsection (2) or (3) must not be admitted in evidence in proceedings for an offence against this Act, or against the laws applied under subsection 4(1), unless:
  - (a) the person charged with the offence; or
  - (b) a barrister or solicitor who has appeared for the person in those proceedings;

has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable evidence of the intention to produce the certificate as evidence in the proceedings.
- (7) Subject to subsection (8), if a certificate under subsection (2) or (3) is admitted in evidence in proceedings for an offence against this

---

Act, or against the laws applied under subsection 4(1), the person charged with the offence may require the person who issued the certificate (the ***certificate issuer***) to be called as a witness for the prosecution and cross-examined as if the certificate issuer had given evidence of the matters stated in the certificate.

- (8) Subsection (7) does not entitle the person charged to require the person who issued the certificate (the ***certificate issuer***) to be called as a witness for the prosecution unless:
- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the certificate issuer to be so called; or
  - (b) the Court, by order, allows the person charged to require the certificate issuer to be so called.
- (9) Any evidence given in support, or in rebuttal, of a matter stated in a certificate under subsection (2) or (3) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

## **9 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **25 Application of amendments**

- (1) Subsection 3A(1) of the *Crimes (Overseas) Act 1964* applies only in relation to acts that occur after the day on which this Act receives the Royal Assent.
- (2) Subsection 3A(3) of the *Crimes (Overseas) Act 1964* applies only in relation to acts that occur after the day on which this Act receives the Royal Assent.
- (3) The provisions of the *Crimes (Overseas) Act 1964* (as in force immediately before 1 July 2003) continue to apply, after that date, in relation to a person serving in a country outside Australia under arrangements made between the Commonwealth and the United Nations as if the amendments made by this Schedule had not been made.

- (4) Subitem (3) ceases to have effect at the end of the day on which this Act receives the Royal Assent.
- (5) To avoid doubt, sections 7 and 8 of the *Acts Interpretation Act 1901* apply to the provisions of the *Crimes (Overseas) Act 1964* (as in force immediately before 1 July 2003) ceasing to have effect under subitem (4) on the day on which this Act receives the Royal Assent as if those provisions had been repealed by this Act on that day.

## 26 Savings

- (1) A certificate by the Minister in force under section 8 of the *Crimes (Overseas) Act 1964* immediately before this Act commences continues to have effect after this Act commences as if:
  - (a) the certificate had, immediately after this Act commences, been issued under subsection 8(2) of the *Crimes (Overseas) Act 1964* by the Secretary of the Department; and
  - (b) the Secretary of the Department had been authorised by the Minister to issue certificates under section 8.
- (2) A certificate that:
  - (a) the Minister gives on or after 1 July 2003 under section 8 of the *Crimes (Overseas) Act 1964* as it continues to apply under subitem 25(3); and
  - (b) is in force immediately before this Act receives the Royal Assent;continues to have effect after this Act receives the Royal Assent as if:
  - (c) the certificate had, immediately after this Act receives the Royal Assent, been issued under subsection 8(2) or (3) of the *Crimes (Overseas) Act 1964* by the Secretary of the Department; and
  - (d) the Secretary of the Department had been authorised by the Minister to issue the certificates under section 8.

---

*[Minister's second reading speech made in—  
House of Representatives on 11 September 2003  
Senate on 18 September 2003]*

(136/03)

---