



# Crimes Amendment Act 1995

No. 11 of 1995

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## An Act to amend the *Crimes Act 1914*

[Assented to 15 March 1995]

The Parliament of Australia enacts:

### Short title etc.

- 1.(1) This Act may be cited as the *Crimes Amendment Act 1995*.
- (2) In this Act, “**Principal Act**” means the *Crimes Act 1914*<sup>1</sup>.

### Commencement

- 2.(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### Substitution of section

3. Section 4 of the Principal Act is repealed and the following section is substituted:

**Application of the common law**

“4.(1) Subject to this Act and any other Act, the principles of the common law with respect to criminal liability apply in relation to offences against laws of the Commonwealth.

“(2) This section has effect despite section 80 of the *Judiciary Act 1903*.”.

**Insertion of new sections**

4. After section 4L of the Principal Act the following sections are inserted:

**Children under 10**

“4M. A child under 10 years old cannot be liable for an offence against a law of the Commonwealth.

**Children over 10 but under 14**

“4N.(1) A child aged 10 years or more but under 14 years old can only be liable for an offence against a law of the Commonwealth if the child knows that his or her conduct is wrong.

“(2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.”.

**Attempt**

5. Section 7 of the Principal Act is amended by adding at the end the following subsections:

“(2) For the person to be guilty, the person’s conduct must be more than merely preparatory to the commission of the offence. The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

“(3) A person may be found guilty even if:

- (a) committing the attempted offence is impossible; or
- (b) the person actually committed the attempted offence.

“(4) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.

“(5) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

“(6) It is not an offence to attempt to commit an offence against section 5 or 7B.”.

**Persons already subject to a non-parole period**

6. Section 19AD of the Principal Act is amended by omitting from paragraph (3)(a) “superceded” and substituting “superseded”.

**Persons already subject to recognizance release order**

7. Section 19AE of the Principal Act is amended by omitting from paragraphs (3)(a) and (4)(a) “superceded” and substituting “superseded”.

**Repeal of sections 86 and 86A and substitution of new section**

8. Sections 86 and 86A of the Principal Act are repealed and the following section is substituted:

**Conspiracy**

“86.(1) A person who conspires with another person to commit an offence against a law of the Commonwealth punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

“(2) Despite subsection (1), if the person conspires with another person to commit an offence against section 29D of this Act, the conspiracy is punishable by a fine not exceeding 2,000 penalty units, or imprisonment for a period not exceeding 20 years, or both.

Note: Penalty units are defined in section 4AA.

“(3) For the person to be guilty:

- (a) the person must have entered into an agreement with one or more other persons; and
- (b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and
- (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

“(4) A person may be found guilty of conspiracy to commit an offence even if:

- (a) committing the offence is impossible; or
- (b) the only other party to the agreement is a body corporate; or
- (c) each other party to the agreement is at least one of the following:
  - (i) a person who is not criminally responsible;
  - (ii) a person for whose benefit or protection the offence exists; or
- (d) subject to paragraph (5)(a), all other parties to the agreement have been acquitted of the conspiracy.

“(5) A person cannot be found guilty of conspiracy to commit an offence if:

- (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

- (b) he or she is a person for whose benefit or protection the offence exists.

“(6) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person:

- (a) withdrew from the agreement; and
- (b) took all reasonable steps to prevent the commission of the offence.

“(7) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.

“(8) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.

“(9) Proceedings for an offence of conspiracy must not be commenced without the consent of the Director of Public Prosecutions. However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent has been given.

“(10) In any law of the Commonwealth:

- (a) a reference to paragraph 86(1)(a) of this Act is taken to be a reference to subsection (1) of this section; and
- (b) a reference to the application of subsection (1) of this section because of or by virtue of paragraph 86(1)(a) of this Act is taken to be a reference to subsection (1) of this section; and
- (c) a reference to section 86A of this Act is taken to be a reference to subsection (2) of this section.”.

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#### NOTE

1. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915 (as amended by No. 54, 1920); No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981 (as amended by No. 193, 1985); Nos. 67 (as amended by No. 193, 1985), 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; Nos. 63 and 108, 1989; Nos. 4, 11 and 75, 1990; Nos. 28, 59, 99 (as amended by No. 145, 1991), 120, 123, 140 and 145, 1991; No. 164, 1992; No. 98, 1993; and Nos. 65, 105, 141 and 142, 1994.

*[Minister's second reading speech made in—  
Senate on 30 June 1994  
House of Representatives on 1 March 1995]*