



# **Veterans' Affairs Legislation Amendment (Application of Criminal Code) Act 2001**

**No. 16, 2001**



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**An Act relating to the application of the *Criminal Code* to certain offences, and for related purposes**

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## **An Act relating to the application of the *Criminal Code* to certain offences, and for related purposes**

*[Assented to 30 March 2001]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Veterans' Affairs Legislation Amendment (Application of Criminal Code) Act 2001*.

### **2 Commencement**

This Act commences on the latest of the following days:

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- (a) the 28th day after the day on which this Act receives the Royal Assent;
  - (b) the 28th day after the day on which the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* receives the Royal Assent;
  - (c) the day on which item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* commences.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

## **Schedule 1—Amendment of Acts**

### ***Defence Service Homes Act 1918***

#### **1 At the end of Part I**

Add:

#### **4E Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **2 At the end of section 50A**

Add:

(3) An offence under this section is an offence of strict liability.

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

### ***Veterans' Entitlements Act 1986***

#### **3 After section 4**

Insert:

#### **4A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **4 Subsection 32(6)**

Omit “without reasonable excuse, and”.

#### **5 After subsection 32(6)**

Insert:

(6A) An offence under subsection (6) is an offence of strict liability.

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

## 6 Subsections 32(7), (10) and (11)

Omit “, without reasonable excuse,”.

## 7 After subsection 32(11)

Insert:

(11A) A person does not commit an offence under this section if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11A). See subsection 13.3(3) of the *Criminal Code*.

## 8 Subsection 54(6)

Repeal the subsection, substitute:

(6) A person must not fail to comply with a notice under subsection (1).

Penalty: \$1,000 or imprisonment for 6 months, or both.

(7) An offence under subsection (6) is an offence of strict liability.

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

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

## 9 Subsection 54A(6)

Repeal the subsection, substitute:

(6) A person must not fail to comply with a notice under subsection (1).

Penalty: \$1,000 or imprisonment for 6 months, or both.

(7) An offence under subsection (6) is an offence of strict liability.

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

(8) A person does not commit an offence under subsection (6) to the extent that the person is not capable of complying with the notice.



Note: The defendant bears an evidential burden in relation to the matter in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

### **10 Subsection 54AA(7)**

Repeal the subsection, substitute:

- (7) A person must not fail to comply with a notice under subsection (1) or (3).

Penalty: Imprisonment for 6 months.

- (8) An offence under subsection (7) is an offence of strict liability.

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

- (9) A person does not commit an offence under subsection (7) to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3) of the *Criminal Code*.

### **11 Subsection 59ZD(1)**

Repeal the subsection, substitute:

- (1) If a compensation payer has been given a preliminary notice under section 59Y or a recovery notice under section 59ZA in relation to the payment of compensation to a person, the compensation payer must not make the compensation payment to the person.

Penalty: Imprisonment for 12 months.

- (1A) Subsection (1) does not apply if:

- (a) in the case of a preliminary notice—the Commission has given the compensation payer written notice that the preliminary notice is revoked; or
- (b) in the case of a recovery notice—the compensation payer has paid to the Commonwealth the amount specified in the notice; or
- (c) the Commission has given the compensation payer written permission to pay the compensation.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

### **12 Subsection 59ZJ(1)**

Repeal the subsection, substitute:

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- (1) If an insurer has been given a preliminary notice under section 59ZE or a recovery notice under section 59ZG in relation to the insurer's liability to make a payment indemnifying a compensation payer, the insurer must not make the payment to the compensation payer.

Penalty: Imprisonment for 12 months.

- (1A) Subsection (1) does not apply if:

- (a) in the case of a preliminary notice—the Commission has given the insurer written notice that the preliminary notice is revoked; or
- (b) in the case of a recovery notice—the insurer has paid to the Commonwealth the amount specified in the notice; or
- (c) the Commission has given the insurer written permission to make the payment to the compensation payer.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

### **13 After subsection 93B(4)**

Insert:

- (4A) An offence under subsection (1) or (2) is an offence of strict liability.

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

### **14 At the end of subsection 93B(5)**

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

### **15 Paragraph 93D(2)(c)**

Omit “without reasonable excuse,”.

### **16 Subsections 93D(4) and (5)**

Omit “without reasonable excuse,”.

### **17 Subsection 93D(7)**

Omit “wilfully”, substitute “intentionally”.

### **18 After subsection 93D(9)**

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Insert:

(9A) Paragraph (2)(c), and subsections (4) and (5), do not apply if the person concerned has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9A). See subsection 13.3(3) of the *Criminal Code*.

**19 Subsection 93E(1)**

Omit “for the purpose”, substitute “to achieve the result”.

**20 Subsection 93E(7)**

Omit “wilfully”, substitute “intentionally”.

**21 Subsection 93F(2)**

Repeal the subsection, substitute:

- (2) A reference in subsection (1) to an offence against a provision of this Act includes a reference to an offence against:
- (a) section 6 of the *Crimes Act 1914*; or
  - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence against a provision of this Act.

**22 Paragraph 93G(2)(b)**

Repeal the paragraph, substitute:

- (b) an offence against:
- (i) section 6 of the *Crimes Act 1914*; or
  - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence referred to in paragraph (a) of this subsection.

**23 Subsection 118ZI(5)**

Repeal the subsection, substitute:

- (5) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months.

(5A) An offence under subsection (5) is an offence of strict liability.

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

(5B) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5B). See subsection 13.3(3) of the *Criminal Code*.

(5C) Subsection (5) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5C). See subsection 13.3(3) of the *Criminal Code*.

## 24 Subsection 118ZJ(5)

Repeal the subsection, substitute:

(5) A person must not fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months.

(5A) An offence under subsection (5) is an offence of strict liability.

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

(5B) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5B). See subsection 13.3(3) of the *Criminal Code*.

(5C) Subsection (5) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5C). See subsection 13.3(3) of the *Criminal Code*.

## 25 Subsection 127(4)

Repeal the subsection, substitute:

(4) A person who has been given a notice under subsection (1) must not fail to comply with the notice.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(5) An offence under subsection (4) is an offence of strict liability.

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

- (6) Subsection (4) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

## **26 Subsection 128(4)**

Repeal the subsection, substitute:

- (4) A person must not fail to comply with a notice under subsection (1).

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (4A) An offence under subsection (4) is an offence of strict liability.

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

- (4B) Subsection (4) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4B). See subsection 13.3(3) of the *Criminal Code*.

## **27 Subsection 128(5)**

Omit “knowingly”, substitute “intentionally”.

## **28 Section 168**

Omit “, without reasonable excuse”.

## **29 At the end of section 168**

Add:

- (2) An offence under subsection (1) is an offence of strict liability.

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

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

## **30 Subsection 169(1)**

Omit “, without reasonable excuse”.

## **31 Paragraphs 169(1)(a), (b) and (c)**

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Omit “refuse or”.

**32 After subsection 169(1)**

Insert:

(1A) An offence under subsection (1) is an offence of strict liability.

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

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

**33 Subsection 169(2)**

Omit “knowingly”, substitute “intentionally”.

**34 Subsection 205A(3)**

Omit “to the extent that the person is capable of doing so”.

**35 After subsection 205A(3)**

Insert:

(3A) Subsection (3) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the *Criminal Code*.

**36 Paragraph 208(1)(a)**

Omit “knowingly”, substitute “intentionally”.

**37 Subparagraph 208(1)(a)(ii)**

Omit “to deceive”, substitute “with the intention of deceiving”.

**38 Subparagraph 208(1)(a)(iii)**

Omit “to affect”, substitute “with the intention of affecting”.

**39 Paragraphs 208(1)(b), (c), (d) and (e)**

Omit “knowingly”, substitute “intentionally”.

**40 After subsection 208(4)**

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Insert:

(4A) An offence under subsection (3) or (4) is an offence of strict liability.

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

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*[Minister's second reading speech made in—  
House of Representatives on 30 November 2000  
Senate on 5 March 2001]*

(192/00)