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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Crimes Legislation Amendment (Serious  
Drugs, Identity Crime and Other  
Measures) Bill 2012**

**No.     , 2012**

*(Attorney-General)*

**A Bill for an Act to amend various Acts relating to  
criminal law and law enforcement, and for other  
purposes**



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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
<b>Schedule 1—Serious drugs</b>		4
Part 1—Amendments		4
	<i>Criminal Code Act 1995</i>	4
	<i>Customs Act 1901</i>	17
Part 2—Application and transitional		18
<b>Schedule 2—Identity crime and air travel</b>		19
Part 1—Identity crime		19
	<i>Criminal Code Act 1995</i>	19
Part 2—False identity and air travel		23
	<i>Crimes Act 1914</i>	23
	<i>Criminal Code Act 1995</i>	26
Part 3—Application of amendments		31
<b>Schedule 3—Other measures</b>		32
Part 1—Integrity Commissioner functions		32
	Division 1—Amendments	32
	<i>Law Enforcement Integrity Commissioner Act 2006</i>	32
	Division 2—Application	32
Part 2—Penalty units		33
	Division 1—Amendments	33
	<i>Crimes Act 1914</i>	33
	Division 2—Application	33
Part 3—Superannuation orders		34
	Division 1—Amendments	34
	<i>Australian Federal Police Act 1979</i>	34
	<i>Crimes (Superannuation Benefits) Act 1989</i>	34



1     **A Bill for an Act to amend various Acts relating to**  
2     **criminal law and law enforcement, and for other**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Crimes Legislation Amendment*  
7                     *(Serious Drugs, Identity Crime and Other Measures) Act 2012*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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**Commencement information**

<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 this Act receives the Royal Assent.	
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	
4. Schedule 2	The day after this Act receives the Royal Assent.	
5. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	
6. Schedule 3, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 1 month beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
7. Schedule 3, Part 3	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Serious drugs**

2 **Part 1—Amendments**

3 *Criminal Code Act 1995*

4 **1 Subsection 300.1(1) of the *Criminal Code***

5 After “20 December 1988”, insert “(the *TINDAPS Convention*)”.

6 **2 Section 300.2 of the *Criminal Code* (definition of *border***  
7 ***controlled drug*)**

8 Repeal the definition, substitute:

9 *border controlled drug* has the meaning given by section 301.4.

10 **3 Section 300.2 of the *Criminal Code* (definition of *border***  
11 ***controlled plant*)**

12 Repeal the definition, substitute:

13 *border controlled plant* has the meaning given by section 301.5.

14 **4 Section 300.2 of the *Criminal Code* (definition of *border***  
15 ***controlled precursor*)**

16 Repeal the definition, substitute:

17 *border controlled precursor* has the meaning given by  
18 section 301.6.

19 **5 Section 300.2 of the *Criminal Code* (definition of**  
20 ***commercial quantity*)**

21 Repeal the definition, substitute:

22 *commercial quantity* of a serious drug, controlled precursor or  
23 border controlled precursor has the meaning given by  
24 section 301.10.

25 **6 Section 300.2 of the *Criminal Code* (definition of *controlled***  
26 ***drug*)**

27 Repeal the definition, substitute:

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1                    *controlled drug* has the meaning given by section 301.1.

2        **7 Section 300.2 of the *Criminal Code* (definition of *controlled***  
3                    ***plant*)**

4                    Repeal the definition, substitute:

5                    *controlled plant* has the meaning given by section 301.2.

6        **8 Section 300.2 of the *Criminal Code* (definition of *controlled***  
7                    ***precursor*)**

8                    Repeal the definition, substitute:

9                    *controlled precursor* has the meaning given by section 301.3.

10        **9 Section 300.2 of the *Criminal Code***

11                    Insert:

12                    *determined*, in relation to a serious drug, controlled precursor or  
13                    border controlled precursor, means:

- 14                    (a) for a serious drug—determined by the Minister under  
15                    section 301.13; or  
16                    (b) for a precursor—determined by the Minister under  
17                    section 301.14.

18        **10 Section 300.2 of the *Criminal Code***

19                    Insert:

20                    *drug analogue* has the meaning given by section 301.9.

21        **11 Section 300.2 of the *Criminal Code***

22                    Insert:

23                    *listed*, in relation to a serious drug, means:

- 24                    (a) for a controlled drug—listed by a regulation made for the  
25                    purposes of paragraph 301.1(a); or  
26                    (b) for a controlled plant—listed by a regulation made for the  
27                    purposes of paragraph 301.2(a); or  
28                    (c) for a border controlled drug—listed by a regulation made for  
29                    the purposes of paragraph 301.4(a); or

1 (d) for a border controlled plant—listed by a regulation made for  
2 the purposes of paragraph 301.5(a).

3 **12 Section 300.2 of the *Criminal Code* (definition of**  
4 ***marketable quantity*)**

5 Repeal the definition, substitute:

6 *marketable quantity* of a serious drug, controlled precursor or  
7 border controlled precursor has the meaning given by  
8 section 301.11.

9 **13 Section 300.2 of the *Criminal Code***

10 Insert:

11 *serious drug* means one of the following:

- 12 (a) a controlled drug;  
13 (b) a controlled plant;  
14 (c) a border controlled drug;  
15 (d) a border controlled plant.

16 **14 Section 300.2 of the *Criminal Code***

17 Insert:

18 *TINDAPS Convention* has the meaning given by section 300.1.

19 **15 Section 300.2 of the *Criminal Code* (definition of *trafficable***  
20 ***quantity*)**

21 Repeal the definition, substitute:

22 *trafficable quantity* of a controlled drug, or a controlled plant, has  
23 the meaning given by section 301.12.

24 **16 Division 301 of the *Criminal Code***

25 Repeal the Division, substitute:

1 **Division 301—Serious drugs and precursors**

2 **Subdivision A—Serious drugs and precursors: definitions**

3 **301.1 Meaning of *controlled drug***

- 4 (1) For the purposes of this Part, a ***controlled drug*** is a substance,  
5 other than a growing plant, that is:  
6 (a) listed by a regulation as a controlled drug; or  
7 (b) a drug analogue of a listed controlled drug; or  
8 (c) determined by the Minister as a controlled drug under  
9 section 301.13 (which deals with emergency determinations  
10 of serious drugs).

11 Note: Some conditions must be satisfied before:

- 12 (a) a regulation can be made for paragraph (1)(a) (see section 301.7);  
13 or  
14 (b) a determination can be made for paragraph (1)(c) (see subsection  
15 301.13(2)).

- 16 (2) The purpose of subsection (1) is to permit certain substances that  
17 are covered by the TINDAPS Convention, or drug analogues of  
18 such substances, to be treated as ***controlled drugs*** for the purposes  
19 of this Part (see also section 300.1).

20 Note: For the meaning of ***drug analogue***, see section 301.9.

21 **301.2 Meaning of *controlled plant***

- 22 (1) For the purposes of this Part, a ***controlled plant*** is a growing plant  
23 that is:  
24 (a) listed by a regulation as a controlled plant; or  
25 (b) determined by the Minister as a controlled plant under  
26 section 301.13 (which deals with emergency determinations  
27 of serious drugs).

28 Note: Some conditions must be satisfied before:

- 29 (a) a regulation can be made for paragraph (1)(a) (see section 301.7);  
30 or  
31 (b) a determination can be made for paragraph (1)(b) (see subsection  
32 301.13(2)).

- 1 (2) The purpose of subsection (1) is to permit growing plants that are  
2 covered by the TINDAPS Convention to be treated as *controlled*  
3 *plants* for the purposes of this Part (see also section 300.1).

4 **301.3 Meaning of *controlled precursor***

- 5 (1) For the purposes of this Part, a *controlled precursor* is a substance  
6 (including a growing plant) that is:  
7 (a) listed by a regulation as a controlled precursor; or  
8 (b) a salt or ester of a controlled precursor that is so listed; or  
9 (c) determined by the Minister as a controlled precursor under  
10 section 301.14 (which deals with emergency determinations  
11 of serious drug precursors).

12 Note: Some conditions must be satisfied before:

- 13 (a) a regulation can be made for paragraph (a) (see section 301.8); or  
14 (b) a determination can be made for paragraph (c) (see subsection  
15 301.14(2)).

- 16 (2) The purpose of subsection (1) is to permit certain substances that  
17 are covered by the TINDAPS Convention, or salts or esters of such  
18 substances, to be treated as *controlled precursors* for the purposes  
19 of this Part (see also section 300.1).

20 **301.4 Meaning of *border controlled drug***

21 For the purposes of this Part, a *border controlled drug* is a  
22 substance, other than a growing plant, that is:

- 23 (a) listed by a regulation as a border controlled drug; or  
24 (b) a drug analogue of a listed border controlled drug; or  
25 (c) determined by the Minister as a border controlled drug under  
26 section 301.13 (which deals with emergency determinations  
27 of serious drugs).

28 Note 1: Some conditions must be satisfied before:

- 29 (a) a regulation can be made for paragraph (a) (see section 301.7); or  
30 (b) a determination can be made for paragraph (c) (see subsection  
31 301.8(2)).

32 Note 2: For the meaning of *drug analogue*, see section 301.9.

1 **301.5 Meaning of *border controlled plant***

2 For the purposes of this Part, a ***border controlled plant*** is a  
3 growing plant:

- 4 (a) listed by a regulation as a border controlled plant; or  
5 (b) determined by the Minister as a border controlled plant under  
6 section 301.13 (which deals with emergency determinations  
7 of serious drugs).

8 Note: Some conditions must be satisfied before:

- 9 (a) a regulation can be made for paragraph (a) (see section 301.7); or  
10 (b) a determination can be made for paragraph (b) (see subsection  
11 301.13(2)).

12 **301.6 Meaning of *border controlled precursor***

13 (1) For the purposes of this Part, a ***border controlled precursor*** is a  
14 substance (including a growing plant) that is:

- 15 (a) listed by a regulation as a border controlled precursor; or  
16 (b) a salt or ester of a precursor that is so listed; or  
17 (c) an immediate precursor of a precursor that is so listed; or  
18 (d) determined by the Minister as a border controlled precursor  
19 under section 301.14 (which deals with emergency  
20 determinations of serious drug precursors).

21 Note: Some conditions must be satisfied before:

- 22 (a) a regulation can be made for paragraph (a) (see section 301.8); or  
23 (b) a determination can be made for paragraph (d) (see subsection  
24 301.14(2)).

25 (2) In this section:

26 ***immediate precursor*** of a precursor listed for the purposes of  
27 paragraph (1)(a) means a chemical or compound (other than  
28 another precursor that is so listed) that is an immediate precursor in  
29 the manufacture by a chemical process of the listed precursor.

30 **301.7 Serious drugs—conditions for listing by regulation**

31 Before a regulation is made listing a substance or plant as a serious  
32 drug for the purposes of this Part, the Minister must be satisfied  
33 that:

- 34 (a) the substance or plant is likely to be taken without  
35 appropriate medical supervision; and
-

- 1 (b) one or more of the following conditions is met:
- 2 (i) taking the substance or plant would create a risk of
- 3 death or serious harm;
- 4 (ii) taking the substance or plant would have a physical or
- 5 mental effect substantially similar to that caused by
- 6 taking a serious drug that is already listed;
- 7 (iii) the substance or plant has the capacity to cause
- 8 physiological dependence;
- 9 (iv) possession or conduct in relation to the substance or
- 10 plant is proscribed under a law of a State, a Territory or
- 11 a foreign country that has purposes similar to those of
- 12 this Part;
- 13 (v) the substance or plant poses a substantial risk to the
- 14 health or safety of the public.

15 **301.8 Serious drug precursors—conditions for listing by regulation**

16 Before a regulation is made listing a substance as a controlled

17 precursor or a border controlled precursor, the Minister must be

18 satisfied that there is a risk that the substance will be used to

19 unlawfully manufacture a controlled drug (other than a determined

20 controlled drug).

21 **301.9 Meaning of *drug analogue***

- 22 (1) For the purposes of this Part, a substance is a *drug analogue* of a
- 23 listed controlled drug, or a listed border controlled drug, if the
- 24 substance is any of the following in relation to the listed drug (or in
- 25 relation to a primary analogue of the listed drug), however the
- 26 substance is obtained:
- 27 (a) one of the following (a *primary analogue*):
- 28 (i) a stereoisomer;
- 29 (ii) a structural isomer having the same constituent groups;
- 30 (iii) an alkaloid;
- 31 (b) a structural modification obtained by the addition of one or
- 32 more of the following groups:
- 33 (i) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or
- 34 dialkylamino groups with up to 6 carbon atoms in any
- 35 alkyl residue;

- 1 (ii) alkyl, alkenyl or alkynyl groups with up to 6 carbon  
2 atoms in the group, where the group is attached to  
3 oxygen (for example, an ester or an ether group),  
4 nitrogen, sulphur or carbon;  
5 (iii) halogen, hydroxy, nitro or amino groups;  
6 (c) a structural modification obtained in one or more of the  
7 following ways:  
8 (i) by the replacement of up to 2 carbocyclic or  
9 heterocyclic ring structures with different carbocyclic or  
10 heterocyclic ring structures;  
11 (ii) by the addition of hydrogen atoms to one or more  
12 unsaturated bonds;  
13 (iii) by the replacement of one or more of the groups  
14 specified in paragraph (b) with another such group or  
15 groups;  
16 (iv) by the conversion of a carboxyl or an ester group into an  
17 amide group;  
18 (d) any other homologue, analogue, chemical derivative or  
19 substance substantially similar in chemical structure.  
20 (2) However, a *drug analogue* does not include a substance that is  
21 itself a listed controlled drug or a listed border controlled drug.

22 **Subdivision B—Serious drugs and precursors: commercial,**  
23 **marketable and trafficable quantities**

24 **301.10 Meaning of *commercial quantity***

25 For the purposes of this Part, a *commercial quantity* of a serious  
26 drug, controlled precursor or border controlled precursor is a  
27 quantity not less than that provided by the following table:  
28

<b>Commercial quantities of serious drugs and precursors</b>		
<b>Item</b>	<b>Serious drug or precursor</b>	<b>Commercial quantity (minimum)</b>
1	A serious drug (other than a drug analogue), controlled precursor or border controlled precursor	Either: (a) the quantity listed as a commercial quantity of the drug or precursor in a regulation made for the purposes of this section; or







**Schedule 1** Serious drugs  
**Part 1** Amendments

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**Trafficable quantities of controlled drugs and plants**

<b>Item</b>	<b>Controlled drug or plant</b>	<b>Trafficable quantity (minimum)</b>
		under section 301.15 (which deals with emergency determinations of quantities).
2	A drug analogue of 1 or more listed controlled drugs	Either: (a) for a drug analogue of a single listed controlled drug—the trafficable quantity of the listed drug; or (b) for a drug analogue of 2 or more listed controlled drugs—the smallest trafficable quantity of any of the listed drugs.

1 Note: A drug analogue of a listed controlled drug is itself a controlled drug  
2 (see paragraph 301.1(b) and the definition of *drug analogue* in  
3 section 301.9).

4 **Subdivision C—Serious drugs and precursors: emergency**  
5 **determinations**

6 **301.13 Emergency determinations—serious drugs**

- 7 (1) The Minister may, by legislative instrument, determine that:  
8 (a) a substance, other than a growing plant, is a controlled drug  
9 or a border controlled drug; or  
10 (b) a growing plant is a controlled plant or a border controlled  
11 plant.
- 12 (2) The Minister must not make a determination under subsection (1)  
13 unless he or she is satisfied:  
14 (a) that there is an imminent and substantial risk that the  
15 substance or plant will be taken without appropriate medical  
16 supervision; and  
17 (b) one or more of the following conditions is met:  
18 (i) taking the substance or plant may create a risk of death  
19 or serious harm;  
20 (ii) taking the substance or plant may have a physical or  
21 mental effect substantially similar to that caused by  
22 taking a listed serious drug;  
23 (iii) there is limited or no known lawful use of the substance  
24 or plant in Australia, and the substance or plant has been

- 1 found by a public official in the course of the  
2 performance of the official's duties;  
3 (iv) the substance or plant may pose a substantial risk to the  
4 health or safety of the public.
- 5 (3) The Minister must not make more than one determination under  
6 this section in relation to a particular substance or plant.

7 **301.14 Emergency determinations—serious drug precursors**

- 8 (1) The Minister may, by legislative instrument, determine that a  
9 substance (including a growing plant) is a controlled precursor or a  
10 border controlled precursor.
- 11 (2) The Minister must not make a determination under subsection (1)  
12 unless he or she is satisfied that there is an imminent and  
13 substantial risk that the substance will be used to unlawfully  
14 manufacture a controlled drug.
- 15 (3) The Minister must not make more than one determination under  
16 this section in relation to a particular substance or plant.

17 **301.15 Emergency determinations—commercial, marketable and**  
18 **trafficable quantities**

- 19 (1) The Minister may, by legislative instrument, determine:  
20 (a) a quantity of a serious drug as a commercial or marketable  
21 quantity of the drug; or  
22 (b) a quantity of a controlled drug or a controlled plant as a  
23 trafficable quantity of the drug or plant; or  
24 (c) a quantity of a controlled precursor or a border controlled  
25 precursor as a commercial or marketable quantity of the  
26 precursor.
- 27 (2) However, the Minister may only make a determination of a  
28 commercial, marketable or trafficable quantity of a serious drug,  
29 controlled precursor or border controlled precursor under  
30 subsection (1) if there is no regulation currently in force listing  
31 such a quantity of the drug or precursor.

32 Note: The definitions of *commercial quantity*, *marketable quantity* and  
33 *trafficable quantity* in Subdivision B allow for regulations to list such  
34 quantities of serious drugs and precursors.

1 **301.16 Emergency determinations—effectiveness**

- 2 (1) A determination under this Subdivision in relation to a substance  
3 (including a growing plant) or a quantity of such a substance has  
4 effect:  
5 (a) from the time the determination is registered (within the  
6 meaning of the *Legislative Instruments Act 2003*); and  
7 (b) for the period of 12 months from that registration, or such  
8 shorter period as is specified in the determination, as  
9 extended (if at all) under subsection (2).
- 10 (2) If exceptional circumstances prevent the listing (by regulation) of  
11 the substance or quantity, to the same effect, the Minister may, by  
12 legislative instrument, extend the period during which the  
13 determination is in force by a further period or periods.
- 14 (3) The Minister must not extend the period under subsection (2) with  
15 the effect that the determination would stay in force for longer than  
16 18 months after the time the determination is registered (within the  
17 meaning of the *Legislative Instruments Act 2003*).
- 18 (4) A determination made under this Subdivision has no effect to the  
19 extent that it is inconsistent with a regulation made for the  
20 purposes of Subdivision A.

21 **301.17 Emergency determinations—publication**

- 22 (1) The Minister must, on or before the day on which a determination  
23 under this Subdivision is registered (within the meaning of the  
24 *Legislative Instruments Act 2003*):  
25 (a) make a public announcement of the determination; and  
26 (b) cause a copy of the announcement to be published:  
27 (i) on the internet; and  
28 (ii) in a newspaper circulating in each State, the Australian  
29 Capital Territory and the Northern Territory.
- 30 (2) An announcement made under subsection (1) is not a legislative  
31 instrument.

32 **17 At the end of paragraphs 307.4(1)(b), 307.7(1)(c) and**  
33 **307.10(1)(c) of the *Criminal Code***

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1 Add “, other than a determined border controlled drug or a determined  
2 border controlled plant”.

3 **18 At the end of paragraph 308.1(1)(b) of the *Criminal Code***

4 Add “, other than a determined controlled drug”.

5 **19 Division 314 of the *Criminal Code***

6 Repeal the Division.

7 ***Customs Act 1901***

8 **20 Subsection 51A(1)**

9 Omit “301.8 or 301.9 of the *Criminal Code*”, substitute “Subdivision C  
10 of Division 301 of the *Criminal Code* (which deals with emergency  
11 Ministerial determinations of serious drugs and precursors)”.

12 **21 Subsection 112A(1)**

13 Omit “301.8 of the *Criminal Code*”, substitute “section 301.13 of the  
14 *Criminal Code* (which deals with emergency Ministerial determinations  
15 of serious drugs)”.

16 **22 Subsection 112A(3)**

17 Omit “301.9 of the *Criminal Code*”, substitute “section 301.14 of the  
18 *Criminal Code* (which deals with emergency Ministerial determinations  
19 of serious drug precursors)”.

20

1 **Part 2—Application and transitional**

2 **23 Application—offences committed after commencement**

3 The amendments made by this Schedule apply in relation to offences  
4 against Part 9.1 of the *Criminal Code* that are committed on or after the  
5 commencement of Part 1 of this Schedule.

6 Note: For the commencement of Part 1 of this Schedule, see section 2 of this Act.

7 **24 Transitional—listing of existing serious drugs and**  
8 **precursors by regulation**

9 (1) This item applies in relation to a substance or plant that, immediately  
10 before the commencement of this item, was listed under Division 314 of  
11 the *Criminal Code* as belonging to any of the following classes of  
12 substances or plants (the substance's or plant's *Criminal Code class*):

- 13 (a) a controlled drug;  
14 (b) a controlled plant;  
15 (c) a controlled precursor;  
16 (d) a border controlled drug;  
17 (e) a border controlled plant;  
18 (f) a border controlled precursor.

19 (2) Sections 301.7 and 301.8 of the *Criminal Code*, as amended by Part 1 of  
20 this Schedule, do not apply in relation to a regulation made for the  
21 purposes of Subdivision A of Division 301 of the *Criminal Code* (as so  
22 amended) listing the substance or plant as belonging to the same  
23 Criminal Code class as that to which it belonged immediately before the  
24 commencement of this item.

25 Note 1: Sections 301.7 and 301.8 of the *Criminal Code*, as so amended, provide that some  
26 conditions must be satisfied before new regulations can be made listing a substance or  
27 plant as belonging to a Criminal Code class.

28 Note 2: For the commencement of this item, see section 2 of this Act.  
29

1 **Schedule 2—Identity crime and air travel**

2 **Part 1—Identity crime**

3 *Criminal Code Act 1995*

4 **1 At the end of Division 370 of Part 9.5 of the *Criminal Code***

5 Add:

6 **370.2 Definition of *foreign indictable offence***

7 In Division 372:

8 *foreign indictable offence* means an offence against a law of a  
9 foreign country or part of a foreign country that is constituted by  
10 conduct that, if engaged in in Australia, would constitute an  
11 indictable offence against a law of the Commonwealth.

12 **370.3 Concurrent operation intended**

- 13 (1) This Part is not intended to exclude or limit the concurrent  
14 operation of any law of a State or Territory.
- 15 (2) Without limiting subsection (1), this Part is not intended to exclude  
16 or limit the concurrent operation of a law of a State or Territory  
17 that makes:
- 18 (a) an act or omission that is an offence against a provision of  
19 this Part; or
- 20 (b) a similar act or omission;  
21 an offence against the law of the State or Territory.
- 22 (3) Subsection (2) applies even if the law of the State or Territory does  
23 any one or more of the following:
- 24 (a) provides for a penalty for the offence that differs from the  
25 penalty provided for in this Part;
- 26 (b) provides for a fault element in relation to the offence that  
27 differs from the fault elements applicable to the offence  
28 under this Part;
- 29 (c) provides for a defence in relation to the offence that differs  
30 from the defences applicable to the offence under this Part.

1 **2 Paragraph 372.1(1)(c) of the *Criminal Code***

2 Repeal the paragraph, substitute:

- 3 (c) the offence referred to in paragraph (b) is:  
4 (i) an indictable offence against a law of the  
5 Commonwealth; or  
6 (ii) a foreign indictable offence.

7 **3 After section 372.1 of the *Criminal Code***

8 Insert:

9 **372.1A Dealing in identification information that involves use of a  
10 carriage service**

11 *Dealing in identification information using a carriage service*

- 12 (1) A person (the *first person*) commits an offence if:  
13 (a) the first person deals in identification information; and  
14 (b) the first person does so using a carriage service; and  
15 (c) the first person intends that any person (the *user*) (whether or  
16 not the first person) will use the identification information to  
17 pretend to be, or to pass the user off as, another person  
18 (whether living, dead, real or fictitious) for the purpose of:  
19 (i) committing an offence; or  
20 (ii) facilitating the commission of an offence; and  
21 (d) the offence referred to in paragraph (c) is:  
22 (i) an indictable offence against a law of the  
23 Commonwealth; or  
24 (ii) an indictable offence against a law of a State or  
25 Territory; or  
26 (iii) a foreign indictable offence.

27 Penalty: Imprisonment for 5 years.

28 Note: *Deal*, in identification information, includes make, supply or use any  
29 such information. See section 370.1.

- 30 (2) Absolute liability applies to the paragraphs (1)(b) and (d) elements  
31 of the offence.

32 Note: For absolute liability, see section 6.2.



1                    *Dealing in identification information obtained using a carriage*  
2                    *service*

- 3                    (3) A person (the **first person**) commits an offence if:  
4                        (a) the first person obtains identification information; and  
5                        (b) the first person does so using a carriage service; and  
6                        (c) the first person deals in the identification information; and  
7                        (d) the first person intends that any person (the **user**) (whether or  
8                            not the first person) will use the identification information to  
9                            pretend to be, or to pass the user off as, another person  
10                            (whether living, dead, real or fictitious) for the purpose of:  
11                                (i) committing an offence; or  
12                                (ii) facilitating the commission of an offence; and  
13                        (e) the offence referred to in paragraph (d) is:  
14                            (i) an indictable offence against a law of the  
15                                Commonwealth; or  
16                            (ii) an indictable offence against a law of a State or  
17                                Territory; or  
18                            (iii) a foreign indictable offence.

19                    **Penalty:** Imprisonment for 5 years.

20                    **Note:**         **Deal**, in identification information, includes make, supply or use any  
21                                such information. See section 370.1.

- 22                    (4) Absolute liability applies to the paragraphs (3)(b) and (e) elements  
23                        of the offence.

24                    **Note:**         For absolute liability, see section 6.2.

25                    *Presumption that conduct was engaged in using carriage service*

- 26                    (5) If the prosecution proves beyond reasonable doubt that a person  
27                        engaged in the conduct referred to in paragraph (1)(a) or (3)(a),  
28                        then it is presumed, unless the person proves to the contrary, that  
29                        the person used a carriage service to engage in that conduct.

30                    **Note:**         A defendant bears a legal burden in relation to the matter in this  
31                                subsection. See section 13.4.

32                    *Application of section*

- 33                    (6) This section applies:  
34                        (a) even if:
-

**Schedule 2** Identity crime and air travel

**Part 1** Identity crime

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- 1 (i) committing the offence referred to in paragraph (1)(c) or  
2 (3)(d) is impossible; or  
3 (ii) the offence referred to in paragraph (1)(c) or (3)(d) is to  
4 be committed at a later time; and  
5 (b) whether or not the person to whom the identification  
6 information concerned relates consented to the dealing in the  
7 identification information.

8 (7) This section does not apply to dealing in the first person's own  
9 identification information.

10 **4 Paragraph 372.2(1)(c) of the *Criminal Code***

11 After "section 372.1", insert "or subsection 372.1A(1) or (3)".

12 **5 Paragraph 372.3(1)(d) of the *Criminal Code***

13 After "section 372.1", insert "or subsection 372.1A(1) or (3)".

14 **6 Subsection 372.5(1) of the *Criminal Code***

15 After "section 372.1", insert "or subsection 372.1A(1) or (3)".

16 **7 Subsection 372.5(2) of the *Criminal Code***

17 After "section 372.1", insert "or subsection 372.1A(1) or (3) (as the  
18 case requires)".  
19

1 **Part 2—False identity and air travel**

2 ***Crimes Act 1914***

3 **8 After Division 3A of Part IAA**

4 Insert:

5 **Division 3B—Powers to require identity information at**  
6 **airports**

7 **3UL Definitions—Division 3B**

8 In this Division:

9 ***constitutional airport*** means:

- 10 (a) a Commonwealth aerodrome within the meaning of the  
11 *Crimes (Aviation) Act 1991* (see section 3 of that Act); or  
12 (b) another airport, if the airport is in a Territory.

13 ***government photographic identity document*** means an identity  
14 document providing photographic identification of a person that is  
15 issued by:

- 16 (a) the government of the Commonwealth or a State or Territory;  
17 or  
18 (b) the government of a foreign country or part of a foreign  
19 country.

20 ***identity document***:

- 21 (a) means a document (such as a driver's licence, birth  
22 certificate, credit card or identity card) that evidences or  
23 indicates, or can be used to evidence or indicate, a person's  
24 identity or any aspect of a person's identity; but  
25 (b) does not include a document prescribed by regulation for the  
26 purposes of this definition.

1 **3UM Identity information at airports—requirements**

2 *Scope of section*

- 3 (1) A constable may make a request under this section of a person (a  
4 *suspect*) if:
- 5 (a) the request is made at a constitutional airport; and
  - 6 (b) the constable reasonably suspects that the suspect has  
7 committed, is committing or intends to commit an offence  
8 against a law of the Commonwealth, or a law of a State or  
9 Territory, punishable by imprisonment for 12 months or  
10 more.
- 11 (2) A constable may also make a request under this section of a person  
12 (a *suspect*) if:
- 13 (a) the request is made at an airport other than a constitutional  
14 airport; and
  - 15 (b) the constable reasonably suspects that the suspect has  
16 committed, is committing or intends to commit an offence  
17 against a law of the Commonwealth punishable by  
18 imprisonment for 12 months or more.

19 *Evidence of identity*

- 20 (3) The constable may request the suspect to give the constable  
21 evidence of the suspect's identity by:
- 22 (a) producing a government photographic identity document  
23 issued in relation to the suspect, if held by the suspect; and
  - 24 (b) if the suspect does not produce a government photographic  
25 identity document as requested under paragraph (a)—  
26 producing another identity document in relation to the  
27 suspect, if held by the suspect; and
  - 28 (c) if the suspect does not produce an identity document as  
29 requested under paragraph (a) or (b)—giving the constable  
30 the suspect's name and address.

31 *Constable's duties*

- 32 (4) The constable must, before making a request under subsection (3):  
33 (a) if the constable is not in uniform:

- 1 (i) show the suspect evidence that the constable is a  
2 constable; and  
3 (ii) if the suspect requests—comply with subsection (5);  
4 and  
5 (b) in any case—inform the suspect that it may be an offence not  
6 to comply with the request, or to give the constable a false or  
7 misleading document, or false or misleading information, in  
8 response to the request.
- 9 (5) If the constable is not in uniform, the constable must give the  
10 suspect any of the following information if requested by the  
11 suspect:  
12 (a) the constable's name;  
13 (b) the address of the constable's place of duty;  
14 (c) the constable's identification number (if any);  
15 (d) if the constable has no identification number—the  
16 constable's rank.

17 **3UN Identity information at airports—offences relating to**  
18 **section 3UM**

19 *Offence by suspect*

- 20 (1) A person commits an offence if:  
21 (a) a constable makes a request of the person under subsection  
22 3UM(3); and  
23 (b) the person fails to comply with the request; and  
24 (c) the constable complies with subsection 3UM(4).

25 **Penalty:** 20 penalty units.

26 **Note:** The following more serious offences may also apply:

- 27 (a) giving false or misleading information (see section 137.1 of the  
28 *Criminal Code*);  
29 (b) producing a false or misleading document (see section 137.2 of  
30 the *Criminal Code*);  
31 (c) obstructing a Commonwealth public official (see section 149.1 of  
32 the *Criminal Code*).

- 33 (2) **Strict liability applies to paragraphs (1)(a) and (c).**

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

1                    *Offence by constable*

- 2                    (3) A person commits an offence if:  
3                         (a) the person is subject to a requirement under subsection  
4                                 3UM(4); and  
5                         (b) the person engages in conduct; and  
6                         (c) the conduct breaches the requirement.

7                    Penalty: 5 penalty units.

- 8                    (4) In this section:

9                         *engage in conduct* means:

- 10                                 (a) do an act; or  
11                                 (b) omit to perform an act.

12                    ***Criminal Code Act 1995***

13                    **9 At the end of Part 9.5 of the *Criminal Code***

14                         Add:

15                    **Division 376—False identity and air travel**

16                    **376.1 Definitions for Division 376**

17                         In this Division:

18                         *air passenger ticket*, for a flight, means a ticket, or electronic  
19                                 record, on the basis of which a person is treated as being entitled to  
20                                 travel as a passenger on:

- 21                                 (a) the flight; or  
22                                 (b) a journey that includes the flight.

23                         *false*: identification information relating to a person is *false* if it is  
24                                 false in a material particular that affects the capacity of the  
25                                 information to be used (whether alone or in conjunction with other  
26                                 information or documents) to identify the person.

27                         Note:             For the meaning of *identification information*, see section 370.1.

1 **376.2 False identification information—at constitutional airports**

- 2 (1) A person (the *defendant*) commits an offence if:  
3 (a) the defendant uses information at a place; and  
4 (b) the defendant does so reckless as to whether the information  
5 is used to identify the defendant as a passenger on a flight;  
6 and  
7 (c) the information is identification information; and  
8 (d) the information is false in relation to the defendant; and  
9 (e) the place is a constitutional airport.

10 Penalty: Imprisonment for 12 months.

- 11 (2) Absolute liability applies to paragraph (1)(e).

12 Note: For absolute liability, see section 6.2.

- 13 (3) In this section:

14 *constitutional airport* means:

- 15 (a) a Commonwealth aerodrome within the meaning of the  
16 *Crimes (Aviation) Act 1991* (see section 3 of that Act); or  
17 (b) another airport, if the airport is in a Territory.

18 **376.3 False identification information—air passenger tickets**  
19 **obtained using a carriage service**

20 *Carriage service offence—using information to obtain an air*  
21 *passenger ticket*

- 22 (1) A person (the *defendant*) commits an offence if:  
23 (a) the defendant uses information; and  
24 (b) the defendant does so:  
25 (i) with the result that an air passenger ticket for a flight is  
26 obtained (whether by the defendant or another person);  
27 and  
28 (ii) reckless as to whether the information is used to identify  
29 the defendant, or another person, as a passenger on the  
30 flight; and  
31 (c) the information is identification information; and  
32 (d) the information is false in relation to the person who takes, or  
33 intends to take, the flight using the ticket; and
-

**Schedule 2** Identity crime and air travel

**Part 2** False identity and air travel

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1 (e) a carriage service is used (whether by the defendant or  
2 another person) to obtain the ticket; and

3 (f) the flight starts or ends within Australia.

4 Penalty: Imprisonment for 12 months.

5 *Carriage service offence—taking a flight using an air passenger*  
6 *ticket*

7 (2) A person (the *defendant*) commits an offence if:

8 (a) the defendant takes a flight using an air passenger ticket; and

9 (b) identification information was used (whether by the  
10 defendant or another person) to obtain the ticket; and

11 (c) the information resulted in the identification of a person as a  
12 passenger on the flight; and

13 (d) the information is false in relation to the defendant; and

14 (e) a carriage service was used (whether by the defendant or  
15 another person) to obtain the ticket; and

16 (f) the flight starts or ends within Australia.

17 Penalty: Imprisonment for 12 months.

18 *General*

19 (3) In a prosecution for an offence against subsection (1) or (2), if the  
20 prosecution proves beyond reasonable doubt that an air passenger  
21 ticket was obtained, then it is presumed, unless the defendant  
22 proves to the contrary, that a carriage service was used to obtain  
23 the ticket.

24 Note: A defendant bears a legal burden in relation to the matter in this  
25 subsection: see section 13.4.

26 (4) Absolute liability applies to paragraphs (1)(e) and (f) and (2)(e)  
27 and (f).

28 Note: For absolute liability, see section 6.2.



1 **376.4 False identification information—air passenger tickets for**  
2 **constitutional flights**

3 *Constitutional flight offence—using information to obtain an air*  
4 *passenger ticket*

- 5 (1) A person (the *defendant*) commits an offence if:  
6 (a) the defendant uses information; and  
7 (b) the defendant does so:  
8 (i) with the result that an air passenger ticket for a flight is  
9 obtained (whether by the defendant or another person);  
10 and  
11 (ii) reckless as to whether the information is used to identify  
12 the defendant, or another person, as a passenger on the  
13 flight; and  
14 (c) the information is identification information; and  
15 (d) the information is false in relation to the person who takes, or  
16 intends to take, the flight using the ticket; and  
17 (e) the flight is a constitutional flight.

18 Penalty: Imprisonment for 12 months.

19 *Constitutional flight offence—taking a flight using an air*  
20 *passenger ticket*

- 21 (2) A person (the *defendant*) commits an offence if:  
22 (a) the defendant takes a flight using an air passenger ticket; and  
23 (b) identification information was used (whether by the  
24 defendant or another person) to obtain the ticket; and  
25 (c) the information resulted in the identification of a person as a  
26 passenger on the flight; and  
27 (d) the information is false in relation to the defendant; and  
28 (e) the flight is a constitutional flight.

29 Penalty: Imprisonment for 12 months.

30 *General*

- 31 (3) Absolute liability applies to paragraphs (1)(e) and (2)(e).

32 Note: For absolute liability, see section 6.2.

1 (4) In this section:

2 *constitutional flight* means:

- 3 (a) a flight that starts or ends in a Territory; or  
4 (b) a flight between Australia and a foreign country in which an  
5 aircraft is used in the course of trade or commerce, for the  
6 carriage of passengers; or  
7 (c) a flight between one State and another State in which an  
8 aircraft is used in the course of trade or commerce, for the  
9 carriage of passengers.

10 **376.5 False identification information—extended jurisdiction**  
11 **(Category D)**

12 Section 15.4 of the *Criminal Code* (extended geographical  
13 jurisdiction—category D) applies to the offences in sections 376.3  
14 and 376.4.

1 **Part 3—Application of amendments**

2 **10 Amendments made by Part 2**

3 (1) Division 3B of Part IAA of the *Crimes Act 1914*, as inserted by Part 2  
4 of this Schedule, applies in relation to persons reasonably suspected of  
5 offences whether the offences are suspected of having been committed  
6 before, on or after the commencement of this item.

7 (2) Division 376 of the *Criminal Code*, as inserted by Part 2 of this  
8 Schedule, applies in relation to conduct and circumstances arising on or  
9 after the commencement of this item.

10 Note: This item commences on the day after this Act receives the Royal Assent (see  
11 section 2).  
12

1 **Schedule 3—Other measures**

2 **Part 1—Integrity Commissioner functions**

3 **Division 1—Amendments**

4 *Law Enforcement Integrity Commissioner Act 2006*

5 **1 Before paragraph 15(a)**

6 Insert:

7 (aa) to detect corrupt conduct in law enforcement agencies;

8 **2 After paragraph 15(d)**

9 Insert:

10 (da) to prevent corrupt conduct in law enforcement agencies;

11 **3 Subsection 104(5)**

12 Omit “an authorisation”, substitute “a delegation”.

13 **4 Subsection 156(3)**

14 Repeal the subsection, substitute:

15 (3) The Minister must not refer the ACLEI corruption issue to the  
16 Integrity Commissioner for investigation under Division 3 if the  
17 ACLEI corruption issue relates to the conduct of:

18 (a) the Integrity Commissioner; or

19 (b) an Assistant Integrity Commissioner.

20 **5 Subsection 219(2)**

21 Repeal the subsection.

22 **Division 2—Application**

23 **6 Application of amendment**

24 Subsection 156(3) of the *Law Enforcement Integrity Commissioner Act*  
25 *2006*, as in force after the commencement of this item, applies in  
26 relation to corrupt conduct engaged in before, on or after that  
27 commencement.

1 **Part 2—Penalty units**

2 **Division 1—Amendments**

3 ***Crimes Act 1914***

4 **7 Subsection 4AA(1) (definition of *penalty unit*)**

5 Omit “\$110”, substitute “\$170”.

6 **8 After subsection 4AA(1)**

7 Insert:

8 (1A) The Attorney-General must cause a review of the amount of a  
9 penalty unit to be conducted as soon as possible after each third  
10 anniversary of the day an alteration of the amount of a penalty unit  
11 last came into force.

12 **Division 2—Application**

13 **9 Application of amendments**

14 (1) The amendment made by item 7 of this Schedule applies in relation to  
15 an offence committed after the commencement of this item.

16 Note: Subitem (1) mirrors subsection 4F(1) of the *Crimes Act 1914*.

17 (2) Subsection 4AA(1A) of the *Crimes Act 1914*, as inserted by this  
18 Schedule, applies in relation to the alteration of the amount of a penalty  
19 unit made by this Schedule, and future alterations.  
20

1 **Part 3—Superannuation orders**

2 **Division 1—Amendments**

3 ***Australian Federal Police Act 1979***

4 **10 Paragraph 46(3)(a)**

5 After “superannuation scheme”, insert “for any period of employment  
6 (not just a period during which the offence was committed)”.

7 **11 Paragraph 46(4)(a) (definition of *AB* (amount of benefits))**

8 After “the scheme”, insert “for any period of employment (not just a  
9 period during which the offence was committed)”.

10 ***Crimes (Superannuation Benefits) Act 1989***

11 **12 Paragraph 19(3)(a)**

12 After “superannuation scheme”, insert “for any period of employment  
13 (not just a period during which the offence was committed)”.

14 **13 Paragraph 19(4)(a) (definition of *AB* (amount of benefits))**

15 After “the scheme”, insert “for any period of employment (not just a  
16 period during which the offence was committed)”.

17 **Division 2—Application**

18 **14 Application of amendments: the *Australian Federal Police***  
19 ***Act 1979***

20 Section 46 of the *Australian Federal Police Act 1979*, as amended by  
21 this Schedule, applies in relation to a superannuation order applied for  
22 on or after the commencement of this item, whether an offence to which  
23 the order relates was committed before, on or after that commencement.

24 **15 Application of amendments: the *Crimes (Superannuation***  
25 ***Benefits) Act 1989***

1 Section 19 of the *Crimes (Superannuation Benefits) Act 1989*, as  
2 amended by this Schedule, applies in relation to a superannuation order  
3 applied for on or after the commencement of this item, whether an  
4 offence to which the order relates was committed before, on or after that  
5 commencement.