

Crime Amendment Regulations 2001 (No. 4) 2001 No. 334

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 334

Issued by the Authority of the Minister for Justice and Customs

Subject: *Crimes Act 1914*

Crime Amendment Regulations 2001 (No. 4)

Section 91 of the Crimes Act 1914 (Crimes Act) empowers the Governor-General to make regulations, not inconsistent with the Crimes Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Crimes Regulations made under the Crimes Act set out various matters necessary to give effect to the Act. The purpose of these Regulations is to amend the Crimes Regulations to enhance the Commonwealth's law enforcement framework, both in relation to controlled operations and the postage of dangerous goods, by:

- (i) prescribing an offence involving terrorism or violence as a "serious Commonwealth offence" for the purposes of section 15HB of the Crimes Act, to enable controlled operations to be undertaken in relation to these types of offences. This is considered necessary in view of the serious nature of these activities and the increasing threat of terrorism both globally and domestically;
- (ii) specifying requirements that a person must meet in order to be indemnified by the Commonwealth for a liability incurred in the course of engaging in a controlled operation under Part 1AB or using an assumed identity under Part 1AC. The requirements are designed to ensure that the Commonwealth is able to prudently manage legal proceedings which may give rise to an indemnity; and
- (iii) prescribing dangerous and deleterious substances and things for the purposes of the offence in section 85X of the Crimes Act dealing with the carriage of dangerous or deleterious substance or things by post. The regulations are necessary to give effect to the offence.

Further details are set out in the attachment.

The Regulations commenced on gazettal.

DETAILS OF THE AMENDMENTS TO THE CRIMES REGULATIONS

Schedule 1

Item 1:

Item 1 of Schedule 1 of the Crimes Amendment Regulations inserts new regulations 4A, 4B and 4C into the Crimes Regulations.

Regulation 4A prescribes an offence involving terrorism or violence as a "serious Commonwealth offence" for the purposes of the controlled operations provisions in Part 1AB of the Crimes Act. Amendments made to the Crimes Act by the *Measures to Combat Serious and Organised Crime Act 2001* (Measures Act) allow controlled operations to be conducted for the purpose of investigating a "serious Commonwealth offence". Section 15HB defines a "serious Commonwealth offence" as an offence that is punishable by at least 3 years imprisonment and that involves a specified type of criminal activity or "that is of any other prescribed kind".

By prescribing offences involving terrorism or violence as serious Commonwealth offences, regulation 4A enables controlled operations to be undertaken in relation to these types of offences. This is necessary both in view of the serious nature of these activities and the increasing threat of terrorism both globally and domestically. No controlled operation will be undertaken in respect of offences involving terrorism or violence until the disallowance period for these regulations has ended.

Regulations 4B and 4C prescribe requirements that a person must meet in order to be indemnified by the Commonwealth for a liability incurred in the course of engaging in a controlled operation or in acquiring evidence of, or using, an assumed identity. Subsections 15IA(1), 15IA(2), 15XD(1) and 15XD(2), which were inserted in the Crimes Act by the Measures Act, require the Commonwealth to indemnify officers and other persons against liability for conduct that meets specified criteria including any requirements in the regulations.

The requirements set out in regulations 4B and 4C are drawn from the Commonwealth Legal Services Directions. They are designed to ensure that the Commonwealth is able to properly and prudently manage legal proceedings which may give rise to an indemnity. The regulations require a person seeking an indemnity to notify the Commonwealth of a potential liability; to authorise the Commonwealth to control the defence of any proceedings; to refrain from agreeing to any settlement unless the terms of settlement have been approved by the Commonwealth; to provide all assistance required by the Commonwealth; and to recover any award of costs .

Item 2:

Item 2 of Schedule 1 amends the Crimes Regulations to insert a new regulation 6F. The new regulation prescribes dangerous and deleterious substances and things for the purposes of section 85X of the Crimes Act. Section 85X creates offences dealing with the carriage of dangerous or deleterious substance or things by post. The dangerous substances proscribed by the offences fall into three categories: (i) totally prohibited substances or things; (ii) standard regulated substances or things; and (iii) specially regulated substances or things. The section provides for dangerous and deleterious substances and things in each of these categories to be prescribed by regulation.

The substances listed in subregulation 617(1) are totally prohibited from being carried by post and include toxic and corrosive gases, thermally unstable substances and substances liable to spontaneous combustion. The substances listed in proposed subregulation 617(2) may only be posted in accordance with Australia Post terms and conditions and include flammable substances,

oxidising substances, organic peroxides, corrosive substances, toxic and infectious substances, sharp objects and some animals. For example, Australia Post terms and conditions allow "poisons" and "infectious perishable biological substances" to be posted by qualified medical practitioners if properly addressed and packaged. The regulations do not prescribe any "specially regulated substances or things". This category applies to goods which Australia Post has permitted to be posted subject to compliance with agreed conditions. These types of goods are covered by the "standard regulated substances" category.

The descriptions of dangerous and deleterious substances and things in regulation 6F are based on the Technical Instructions for the Safe Transport of Dangerous Goods by Air published by the International Civil Aviation Organisation. This accords with the approach taken in the Australia Post terms and conditions, which define dangerous goods as goods which meet the criteria of one or more of the nine United Nations hazard classes as prescribed in the Technical Instructions. The fact that a significant proportion of mail is transported by air provides another reason why it is appropriate to draw on the Technical Instructions in framing the regulations.