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2001B00574

Communications, Information Technology and the Arts Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. /)¹

Statutory Rules 2001 No. /²

337

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian National Maritime Museum Act 1990*, the *National Gallery Act 1975*, the *National Library Act 1960*, the *Radiocommunications Act 1992* and the *Telecommunications Act 1997*.

Dated 20 DEC 2001 2001

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

RICHARD ALSTON

Minister for Communications, Information Technology
and the Arts

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1 Name of Regulations

These Regulations are the *Communications, Information Technology and the Arts Legislation Amendment (Application of Criminal Code) Regulations 2001* (No. 1).

2 Commencement

These Regulations commence on gazettal.

2	<i>Communications, Information Technology and the Arts Legislation Amendment (Application of Criminal Code) Regulations 2001</i> (No. 1)	2001, 1	337
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- 3 Amendment of Australian National Maritime Museum Regulations 1991**
Schedule 1 amends the *Australian National Maritime Museum Regulations 1991*.
- 4 Amendment of National Gallery Regulations 1982**
Schedule 2 amends the *National Gallery Regulations 1982*.
- 5 Amendment of National Library Regulations**
Schedule 3 amends the *National Library Regulations*.
- 6 Amendment of Radiocommunications Regulations 1993**
Schedule 4 amends the *Radiocommunications Regulations 1993*.
- 7 Amendment of Telecommunications (Arbitration) Regulations**
Schedule 5 amends the *Telecommunications (Arbitration) Regulations*.

2001, *L*

*Communications, Information Technology and the Arts
Legislation Amendment (Application of Criminal Code)
Regulations 2001 (No. *L*)*

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337

1

**Schedule 1 Amendments of Australian
National Maritime Museum
Regulations 1991**
(regulation 3)

[1] Regulation 5
substitute

5 Offences

- (1) A person who does not have the consent of the Director, or a person authorised by the Director, must not, on Museum premises:
- (a) engage in unauthorised conduct that interferes with or causes damage to Museum material; or
 - (b) fail to obey a direction of a security officer given in the exercise of his or her powers under these Regulations; or
 - (c) engage in conduct that exposes, or causes to be exposed, for show, sale or hire any article for use or consumption by a member of the public; or
 - (d) fail to obey a notice displayed in Museum premises; or
 - (e) if the person is carrying a prescribed article when he or she enters Museum premises — fail to deposit the prescribed article at the place in the Museum premises made available by the Director for the purpose.

Penalty: 5 penalty units.

- (2) For paragraph (1) (c), the consent must be in writing.

-
- (3) A person who does not have the consent of the Director, or a person authorised by the Director, must not:
- (a) cause or permit an animal belonging to the person or in his or her charge to enter or remain on Museum premises if the animal is not a guide dog for a person with a hearing or visual impairment; or
 - (b) attach any article to, or write upon or engage in conduct that defaces, Museum premises; or
 - (c) bring any food or drink that is not medication onto Museum premises; or
 - (d) consume any food or drink that is not medication on Museum premises in an area that is not set aside by the Director for that purpose; or
 - (e) smoke on Museum premises; or
 - (f) fish or engage in fishing activities from Museum premises; or
 - (g) enter, or remain on an area of Museum premises to which a notice declaring that that area is not open to the public relates.

Penalty: 5 penalty units.

- (4) If, by the same act or omission, a person has committed more than one of the offences created under paragraphs (1) (a), (1) (d) and (3) (b), the person is liable to be prosecuted and punished for one of those offences but is not liable to be punished for more than one of those offences.
- (5) Strict liability applies to paragraphs (1) (b), (d) and (e).
- (6) It is a defence to a prosecution for an offence against subregulation (1) or (3) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

(7) In paragraph (1) (a):

unauthorised conduct means touching, handling or operating Museum material otherwise than in accordance with:

- (a) a notice or instructions for use, displayed next to the material or otherwise on Museum premises; or
- (b) the permission of the Director or a member of the staff of the Museum.

(8) In paragraph (1) (e):

prescribed article means an aerosol container or any other article that is capable of being used to cause damage to Museum material.

[2] Regulation 7

substitute

7 Motor vehicles, water craft etc

- (1) A security officer may direct the person apparently in charge of a motor vehicle that is on Museum premises:
 - (a) not to park the vehicle on Museum premises in a place that is not a specified place; or
 - (b) not to park the vehicle in a specified place; or
 - (c) not to park the vehicle on Museum premises.

- (2) A person must comply with a direction under subregulation (1).

Penalty: 1 penalty unit.

- (3) A security officer may direct the person apparently in charge of a vessel:
 - (a) not to enter into a water area of Museum premises; or
 - (b) if the vessel is about to enter, or has entered, a water area of Museum premises made available by

- the Director for the purpose, to occupy a part of the area indicated by the security officer; or
- (c) to leave a water area of Museum premises.
- (4) A person must comply with a direction under subregulation (3).
- Penalty: 5 penalty units.
- (5) Strict liability applies to subregulations (2) and (4).
- (6) It is a defence to a prosecution for an offence against subregulation (2) or (4) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[3] Subregulation 8 (3)

substitute

- (3) The holder of an authority must not sell or supply liquor on Museum premises if the sale or supply is not in accordance with the authority.

Penalty: 5 penalty units.

[4] Subregulation 10 (2)

substitute

- (2) If a person to whom liquor was sold or supplied was not less than 16 years of age, it is a defence to a prosecution for an offence against subregulation (1) that the holder of the authority had reasonable grounds for believing that the person was not less than 18 years of age.

Note A defendant bears an evidential burden in relation to having had reasonable grounds for the belief (see section 13.3 of the *Criminal Code*).

[5] Subregulation 15 (1)

omit everything before paragraph (a), insert

A person who does not have the consent of the Director, or a person authorised by the Director for this regulation, must not:

[6] Subregulation 15 (2)

omit

[7] Further amendments — conversion of references to penalties to penalty units

The penalty at the foot of each of the following provisions is amended by omitting '\$500' and inserting '5 penalty units':

- regulation 9
- subregulation 10 (1)
- regulation 11
- regulation 12
- regulation 14
- subregulation 15 (1).

Schedule 2 **Amendments of *National Gallery Regulations 1982***

(regulation 4)

[1] **Regulation 7**

substitute

7 Offences

- (1) A person must not, in a Gallery building or on Gallery land:
- (a) touch, interfere with or engage in conduct that damages a work of art; or
 - (b) fail to obey a direction of a security officer given in the exercise of his or her powers under these Regulations; or
 - (c) engage in conduct that exposes or causes to be exposed for show, sale or hire any article for use or consumption by a member of the public if the person does not have the consent in writing of the Council; or
 - (d) fail to obey a notice displayed in the Gallery building or on Gallery land that is issued by the authority of the Council and bears a statement to that effect; or
 - (e) if the person is carrying a prescribed article — fail to deposit the prescribed article at the place in the Gallery building designated by the Council for the purpose.

Penalty: 5 penalty units.

- (2) Strict liability applies to paragraphs (1) (b), (d) and (e).

(3) A person must not:

- (a) allow an animal belonging to the person or in his or her charge to enter or remain in a Gallery building if the animal is not a guide dog for a person with a hearing or visual impairment; or
- (b) attach any article to, write upon or engage in conduct that defaces a Gallery building or any wall or fence on Gallery land; or
- (c) bring any food or liquid that is not medication into a Gallery building; or
- (d) consume any food or drink that is not medication within a Gallery building in an area that is not set aside by the Council for that purpose; or
- (e) smoke in an area of a Gallery building that is not an area in which smoking is permitted; or
- (f) enter, or remain in, an area of a Gallery building or of Gallery land if:
 - (i) a properly placed notice declares that that area is not open to the public; and
 - (ii) the person does not have the consent of the Council or a person authorised by the Council to give consents for this paragraph.

Penalty: 5 penalty units.

(4) In this regulation:

prescribed article means:

- (a) an umbrella, an aerosol container or any other article that is capable of being used to damage a work of art; and
- (b) a bag, case, parcel or other container that cannot be wholly enclosed within a cube each side of which is 300 millimetres in length.

properly placed notice means a notice that:

- (a) was issued by the authority of the Council and bears a statement to that effect; and

- (b) is clearly displayed at the entrance to the area of the Gallery building or Gallery land to which it relates.

[2] Regulation 7A

substitute

7A Photographic equipment

- (1) A person who does not have the consent in writing of the Council or a person authorised by the Council to give consents for this subregulation must not have in his or her possession, or use, a camera or associated equipment in a Gallery building.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not prohibit a person from bringing a camera or an item of associated equipment into a Gallery building and promptly depositing it at the place in the Gallery building mentioned in paragraph 7 (1) (c).

[3] Subregulation 8 (2)

substitute

- (2) A person to whom a direction under subregulation (1) is given must comply with the direction.

Penalty: 5 penalty units.

- (3) Strict liability applies to subregulation (2).
- (4) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[4] Regulation 10*substitute***10 Sale of liquor**

- (1) A person who does not hold an authority must not sell or supply liquor to a person in a Gallery building.
- (2) The holder of an authority must not sell or supply liquor if the sale or supply is not in accordance with the authority.

Penalty: 5 penalty units.

[5] Subregulation 12 (2)*substitute*

- (2) If a person to whom liquor was sold or supplied was not less than 16 years of age, it is a defence to a prosecution for an offence against subregulation (1) that the holder of the authority had reasonable grounds for believing that the person was not less than 18 years of age.

Note A defendant bears an evidential burden in relation to having had reasonable grounds for the belief (see section 13.3 of the *Criminal Code*).

[6] Regulation 15*substitute***15 Persons under 18 years not to enter certain parts of Gallery building**

A person who has not attained the age of 18 years must not enter that part of a Gallery building to which an authority relates if the person is not in the care of a responsible adult.

Penalty: 5 penalty units.

[7] Further amendments — conversion of references to penalties to penalty units and increase in penalties

The penalty at the foot of each of the following provisions is amended by omitting '\$100' and inserting '5 penalty units':

- regulation 11
- subregulation 12 (1)
- regulation 13
- regulation 14
- regulation 16.

[8] Further amendments

The following provisions are amended by omitting 'shall' and inserting 'must':

- subregulation 9 (2)
- regulation 11
- subregulation 12 (1)
- regulation 13
- regulation 14
- regulation 16.

Schedule 3 Amendments of National Library Regulations

(regulation 5)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *National Library Regulations 1994*.

[2] Subregulation 3 (2)

substitute

- (2) A person must comply with a direction under subregulation (1).

Penalty: 5 penalty units.

- (3) Strict liability applies to subregulation (2).

- (4) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[3] Subregulation 4 (2)

omit

purpose, unless he or she has a reasonable excuse.

insert

purpose.

[4] Subregulation 4 (4)*omit*

direction, unless he or she has a reasonable excuse.

insert

direction.

[5] After subregulation 4 (4), including the penalty*insert*

(4A) Strict liability applies to subregulations (2) and (4).

(4B) It is a defence to a prosecution for an offence against subregulation (2) or (4) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[6] Regulation 5*substitute***5 Animals in Library buildings**

- (1) A person must not bring into a Library building an animal belonging to the person or in his or her charge if the animal is not a guide dog for a person with a hearing or visual impairment.

Penalty: 5 penalty units.

- (2) A person must take reasonable steps to prevent an animal belonging to the person or in his or her charge to enter, or remain in, a Library building if the animal is not a guide dog for a person with a hearing or visual impairment.

Penalty: 5 penalty units.

[7] Regulation 6*substitute***6 Dangerous items in Library buildings**

- (1) A person must not bring into, or possess in, a Library building:
- (a) a projectile; or
 - (b) a weapon (including a firearm); or
 - (c) an inflammable or explosive article or substance.

Penalty: 5 penalty units.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[8] After subregulation 7 (2)*insert*

- (3) A person must not contravene a direction under subregulation (1).

Penalty: 5 penalty units.

[9] Subregulation 8 (1), except the penalty*substitute*

- (1) A person must not smoke, eat or drink in a Library building in an area that is not an area where smoking, eating or drinking is permitted by the Director-General.

[10] After subregulation 8 (2)*insert*

- (2A) It is a defence to a prosecution for an offence against subregulation (1) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[11] Subregulation 8 (3)*substitute*

- (3) A person must not ignite any article, material or substance in a Library building if the ignition is not for:
- (a) maintenance work; or
 - (b) cooking or smoking in an area where it is permitted by the Director-General.

Penalty: 5 penalty units.

[12] Regulation 10*substitute***10 Personal conduct on Library property**

- (1) A person must not, on Library property:
- (a) interfere with, or engage in conduct that damages, an exhibit, plant, structure or object; or
 - (b) engage in conduct that obstructs, disturbs or annoys another person properly using the premises; or
 - (c) engage in conduct that destroys, alters or erases a computer program on a computer, computer system or part of a computer system; or

- (d) attach any article to, write on or otherwise engage in conduct that defaces, any structure; or
- (e) engage in conduct that exposes or causes to be exposed for show, sale or hire any article for use or consumption by a member of the public if the person does not have the written consent of the Council or the Director-General; or
- (f) contravene a reasonable direction of an authorised person.

Penalty: 5 penalty units.

- (2) It is a defence to a prosecution for an offence against paragraph (1) (d) or (f) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) Strict liability applies to paragraph (1) (f).

[13] Subregulation 11 (2)

omit

direction, unless he or she has a reasonable excuse.

insert

direction.

[14] After subregulation 11 (2), including the penalty

insert

- (2A) Strict liability applies to subregulation (2).
- (2B) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[15] Subregulation 12 (2)*omit*

direction, unless he or she has a reasonable excuse.

insert

direction.

[16] After subregulation 12 (2), including the penalty*insert*

(3) Strict liability applies to subregulation (2).

(4) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[17] Subregulation 13 (3)*substitute*

(3) An authorised liquor seller must not sell or supply liquor if the sale or supply is not in accordance with the authority.

Penalty: 5 penalty units.

[18] Subregulation 20 (3)*omit*

direction, unless he or she has a reasonable excuse.

insert

direction.

[19] After subregulation 20 (3), including the penalty*insert*

- (4) Strict liability applies to subregulation (3).
- (5) It is a defence to a prosecution for an offence against subregulation (3) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[20] Subregulation 21 (1), except the penalty*substitute*

- (1) A person who does not have the written permission of an authorised person must not:
 - (a) remove an item of library material that forms part of the Library's collection from a book storage area or a reading room; or
 - (b) place anything on an item of library material that forms part of the Library's collection to copy or trace the library material.

[21] Subregulation 21 (2)*substitute*

- (2) A person who does not have authority must not remove an item of library material that forms part of the Library's collection from a Library building

Penalty: 5 penalty units.

- (2A) For subregulation (2), a person has authority if the person:
 - (a) has written permission of an authorised person; or
 - (b) has had a loan record approved by an authorised person.

[22] Subregulation 21 (3)*substitute*

- (3) A person must not:
- (a) write in or on, or mark, an item of library material forming part of the Library's collection; or
 - (b) engage in conduct that damages an item of library material forming part of the Library's collection; or
 - (c) handle an item of library material forming part of the Library's collection in a way likely to damage it.

Penalty: 5 penalty units.

[23] After subregulation 21 (4)*insert*

- (5) It is a defence to a prosecution for an offence against subregulation (1), (2) or (3) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

**Schedule 4 Amendment of
Radiocommunications
Regulations 1993**
(regulation 6)

[1] Subregulations 40 (2), (3) and (4)

substitute

- (2) A licensee must comply with a direction under subregulation (1).

Penalty: 10 penalty units.

- (3) Strict liability applies to the physical element of an offence under subregulation (2) that the direction was a direction under subregulation (1).

- (4) A licensee must not engage in conduct that results in alteration to a station or service, or to any accessory apparatus used in the operation of the station or service, if:

- (a) the licensee is not acting:
- (i) in accordance with a direction given under subregulation (1); or
 - (ii) with the consent in writing of an inspector; and
- (b) the alteration is of a kind that is likely to cause interference to radiocommunications.

Penalty: 10 penalty units.

Schedule 5 Amendments of Telecommunications (Arbitration) Regulations

(regulation 7)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Telecommunications
(Arbitration) Regulations 1997*.

[2] Regulation 21

substitute

21 Failure to attend as witness

(1) A person who:

- (a) is summoned under regulation 17 to attend an arbitration hearing; and
- (b) has not been excused, or released from further attendance, by a member of the ACCC for the arbitration;

must attend the hearing as required by the summons.

Penalty: 10 penalty units.

(2) Strict liability applies to subregulation (1).

(3) It is a defence to a prosecution for an offence against subregulation (1) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[3] Regulation 22

substitute

22 Failure to answer questions etc

- (1) A witness at an arbitration hearing must not:
- (a) fail to be sworn or to make an affirmation; or
 - (b) fail to answer a question that the witness is required by the ACCC to answer; or
 - (c) fail to produce a document that the witness is required to produce by a summons under paragraph 17 (1) (b).

Penalty: 10 penalty units.

- (2) Without limiting subregulation (4), paragraph (1) (b) or (c) does not require a witness to answer a question or produce a document if the answer or the production of the document might tend to incriminate the witness or expose him or her to a penalty.
- (3) Strict liability applies to subregulation (1).
- (4) It is a defence to a prosecution for an offence against subregulation (1) if the witness had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[4] Regulations 23 and 24

omit

[5] Subregulation 25 (2)*substitute*

(2) A person must not engage in conduct that:

- (a) threatens, intimidates, or coerces a person mentioned in subregulation (1); or
- (b) causes damage, disadvantage or loss to the person.

Penalty: 10 penalty units.

(3) Strict liability applies to the physical element in paragraph (2) (a) that the person is a person mentioned in subregulation (1).

Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1991 No. 10, as amended by 1991 Nos. 220 and 348; 1996 No. 93; 1999 No. 72.

These Regulations also amend (in Schedule 2) Statutory Rules 1982 No. 259, as amended by 1984 No. 250; 1986 No. 296; 1987 No. 190; 1996 No. 92; 1998 No. 376.

These Regulations also amend (in Schedule 3) Statutory Rules 1994 No. 329.

These Regulations also amend (in Schedule 4) Statutory Rules 1993 No. 177, as amended by 1995 Nos. 62 and 259; 1996 No. 158; 1997 Nos. 121 and 283; 1998 No. 330; 1999 No. 271; 2000 No. 221 and 257.

These Regulations also amend (in Schedule 5) Statutory Rules 1997 No. 350.

2. Notified in the *Commonwealth of Australia Gazette* on 2001. 21 December