

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Attorney-General)

**CRIMES AMENDMENT (CONTROLLED OPERATIONS)
BILL 1995**

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SCHEDULE

AMENDMENTS OF THE CRIMES ACT 1914

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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(Attorney-General)

A BILL

FOR

An Act to amend the *Crimes Act 1914* to exempt from criminal liability certain law enforcement officers who engage in unlawful conduct to obtain evidence of offences relating to narcotic goods, and for related purposes

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Crimes Amendment (Controlled Operations) Act 1995*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Schedule

3. The *Crimes Act 1914* is amended as set out in the Schedule.
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SCHEDULE

Section 3

AMENDMENTS OF THE CRIMES ACT 1914

1. Subsection 3(1):

Insert the following definitions:

“**Assistant Commissioner** means a member of the Australian Federal Police holding the rank of Assistant Commissioner.

associated offence means:

- (a) in relation to an offence against section 233B of the *Customs Act 1901*:
 - (i) an offence under section 236 or 237 of that Act that relates to the offence; or
 - (ii) an offence under section 7A or subsection 86(1) of this Act that relates to that offence; or
- (b) in relation to an offence against a law of a State or Territory—an offence:
 - (i) under a provision of a law of that State or Territory that corresponds to section 5, 7, 7A or subsection 86(1); and
 - (ii) that relates to that offence.

Australian law enforcement officer means a law enforcement officer other than a member of a police force, or other law enforcement agency, of a foreign country.

authorising officer, in relation to an application for a certificate authorising a controlled operation, means the person to whom the application is made under section 15J.

Commissioner means the Commissioner of the Australian Federal Police.

controlled operation has the meaning given by section 15H.

Deputy Commissioner means a Deputy Commissioner of the Australian Federal Police.

law enforcement officer means any of the following:

- (a) a member, staff member or special member of the Australian Federal Police;
- (b) a member of the police force of a State or Territory;
- (c) a member of the staff of the National Crime Authority;
- (d) an officer of the Australian Customs Service;
- (e) a member of a police force, or other law enforcement agency, of a foreign country.

SCHEDULE—continued

narcotic goods has the same meaning as in the *Customs Act 1901*.

narcotic goods offence means:

- (a) an offence against section 233B of the *Customs Act 1901*; or
- (b) an offence against a law of a State or Territory an element of which is the possession of narcotic goods; or
- (c) an associated offence in relation to an offence referred to in paragraph (a) or (b).”.

2. After Part 1A:

Insert:

**“PART 1AB—CONTROLLED OPERATIONS FOR OBTAINING
EVIDENCE ABOUT CERTAIN OFFENCES RELATING TO
NARCOTIC GOODS**

“Division 1—Objects of Part

Objects of Part

“15G. The objects of this Part are:

- (a) to exempt from criminal liability law enforcement officers who, in the course of controlled operations authorised as provided under this Part:
 - (i) take an active part, or are otherwise involved, in the importation or exportation of narcotic goods; or
 - (ii) are involved in activities relating to the possession of narcotic goods; and
- (b) to require:
 - (i) the Commissioner and the Chairperson of the National Crime Authority to report to the Minister on requests to authorise controlled operations; and
 - (ii) the Minister to report on these matters to Parliament; and
- (c) to provide that evidence of importation of narcotic goods obtained through a controlled operation:
 - (i) started before the commencement of this Act; and
 - (ii) in which the Australian Federal Police and the Australian Customs Service acted in concert to allow the narcotic goods to pass through the Customs;

is not to be rejected because of the unlawful conduct of law enforcement officers who took an active part, or were otherwise involved, in the importation of the narcotic goods.

SCHEDULE—continued

“Division 2—General

What is a controlled operation?

“15H. A *controlled operation* is an operation that:

- (a) involves the participation of law enforcement officers; and
- (b) is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence against section 233B of the *Customs Act 1901* or an associated offence; and
- (c) may involve a law enforcement officer engaging in conduct that would, apart from subsection 15I(1) or (3), constitute a narcotic goods offence.

Law enforcement officers not liable for certain offences committed for purposes of authorised controlled operation

“15I.(1) A law enforcement officer (other than a member of the police force of a State) who, in the course of duty, for the purposes of a controlled operation, engages in conduct that, apart from this subsection, would constitute a narcotic goods offence is not liable for that offence if, at the time when he or she engages in that conduct, there is in force a certificate given under section 15M that authorises the controlled operation.

“(2) For the purposes of subsection (1), a member of a police force or other law enforcement agency of a foreign country is taken to be acting in the course of duty to the extent that he or she takes part in the controlled operation in accordance with the instructions given by the Australian law enforcement officer in charge of the operation.

“(3) A member of the police force of a State who, in the course of duty, for the purposes of a controlled operation, engages in conduct that, apart from this subsection, would constitute:

- (a) an offence against section 233B of the *Customs Act 1901*; or
- (b) an associated offence;

is not liable for that offence if, at the time when he or she engages in that conduct, there is in force a certificate given under section 15M that authorises the controlled operation.

“(4) If, because of subsection (1) or (3), a person who has imported narcotic goods into Australia is not liable for an offence under paragraph 233B(1)(b) of the *Customs Act 1901*, the narcotic goods are, nevertheless, for the purposes of section 233B of that Act, taken to be goods imported into Australia in contravention of that Act.

SCHEDULE—continued

**Application for certificate authorising a controlled operation—
by whom and to whom made**

“15J. The Australian law enforcement officer who is in charge of a controlled operation may apply to:

(a) the Commissioner, a Deputy Commissioner or an Assistant Commissioner; or

(b) a member of the National Crime Authority;

for a certificate authorising the controlled operation.

Form and contents of application

“15K. Subject to section 15L, an application for a certificate authorising a controlled operation must:

(a) be in writing signed by the applicant; and

(b) state whether any previous application has been made in relation to the operation; and

(c) if any previous application has been made—state whether it was granted or refused; and

(d) contain, or be accompanied by, such information, in writing, as the authorising officer requires to decide whether or not to grant the application.

Urgent applications

“15L.(1) An applicant may make an application under this section for a certificate authorising a controlled operation if he or she has reason to believe that the delay caused by making an application that complies with section 15K may affect the success of the operation.

“(2) The application may be made:

(a) orally in person; or

(b) by telephone; or

(c) by any other means of communication.

“(3) The applicant must give to the authorising officer, either orally or otherwise, such information as the authorising officer requires to decide whether or not to grant the application.

“(4) The applicant must tell the authorising officer:

(a) whether any previous application has been made in relation to the operation; and

(b) if any previous application has been made—whether it was granted or refused.

SCHEDULE—continued

“(5) If the authorising officer decides to grant the application, the authorising officer must:

- (a) immediately inform the applicant of his or her decision either orally or by any other means of communication; and
- (b) as soon as practicable, give to the applicant a certificate that complies with section 15N.

“(6) The applicant must, as soon as practicable, prepare and give to the authorising officer an application, in writing, that complies with section 15K.

On what grounds may a certificate authorising a controlled operation be given?

“15M. On receiving an application that complies with section 15K or 15L in relation to a controlled operation, the authorising officer may give a certificate authorising the operation if he or she is satisfied that:

- (a) the applicant has provided as much information as is available to the applicant about the nature and quantity of narcotic goods to which the operation relates; and
- (b) the person about whom it is intended to obtain evidence through the operation is likely to commit an offence against section 233B of the *Customs Act 1901* or an associated offence whether or not the operation takes place; and
- (c) the controlled operation will make it much easier to obtain evidence that may lead to the prosecution of the person for such an offence; and
- (d) any narcotic goods:
 - (i) to which the controlled operation relates; and
 - (ii) that will be in Australia at the end of the operation;

will be then under the control of an Australian law enforcement officer.

Form and contents of certificate

“15N.(1) A certificate authorising a controlled operation must be in writing and signed by the authorising officer.

“(2) The certificate must:

- (a) state the name of the applicant for the certificate; and

SCHEDULE—continued

- (b) state whether the application for the certificate was made in accordance with section 15K or 15L; and
- (c) give a brief description of the operation that includes (but is not limited to) the following details to the extent to which they are known and are relevant:
 - (i) the name of any person whose conduct is being, or is to be, investigated;
 - (ii) the nature and quantity of the narcotic goods to which the operation relates;
 - (iii) the foreign countries through which the narcotic goods have passed, or are likely to pass, in the course of the operation;
 - (iv) the place or places at which the narcotic goods have been, or will be, dealt with by the Australian Customs Service;
 - (v) if subparagraph (iv) does not apply—the place or places where the narcotic goods have entered, or are likely to enter, into Australia; and
- (d) state that the authorising officer authorises the operation to be carried out; and
- (e) specify the day on which, and the time when, the certificate was given.

“(3) If the application for the certificate was made under section 15L, the certificate must specify the day on which, and the time when, the applicant was informed of the decision of the authorising officer to give the certificate.

“(4) The certificate may specify a day not later than 30 days after the day on which it was given, on which the certificate is to cease to be in force.

“(5) A failure to comply with this section does not affect the validity of a certificate authorising a controlled operation.

Surrender of certificate

“150.(1) The Australian law enforcement officer in charge of a controlled operation authorised by a certificate given under section 15M may surrender the certificate by sending to the authorising officer a notice in writing signed by him or her to the effect that he or she surrenders the certificate.

- “(2) The notice must specify the time when the notice is to have effect.

SCHEDULE—continued

Period for which certificate is in force

“15P.(1) If a certificate authorising a controlled operation was given as a result of an application made under section 15L, the certificate is taken to have come into force at the time when the authorising officer told the applicant that he or she had decided to give the certificate.

“(2) In any other case, a certificate authorising the controlled operation comes into force, at the time when it was given.

“(3) A certificate remains in force:

- (a) if the certificate specifies a day on which it is to cease to be in force—until the end of that day; or
- (b) if the certificate is surrendered under section 15O—until the time when the surrender notice has effect; or
- (c) in any other case—until the end of the 30th day after the day on which it was given.

Comptroller-General of Customs to be notified of certain certificates

“15Q.(1) This section applies if:

- (a) a certificate authorising a controlled operation is given under section 15M; and
- (b) the applicant for the certificate believes that the narcotic goods to which the operation relates may be dealt with by the Australian Customs Service.

“(2) The applicant for the certificate must, as soon as practicable after the certificate is given, notify the Comptroller-General of:

- (a) the applicant’s name; and
- (b) the date on which the certificate is given; and
- (c) to the extent to which it is known;
 - (i) the place or places at which the narcotic goods will be dealt with by Australian Customs Service; and
 - (ii) the time or times when, and the day or days on which, the narcotic goods are expected to be dealt with by the Australian Customs Service.

“(3) The applicant must notify the Comptroller-General:

- (a) orally in person; or
- (b) by telephone; or
- (c) by any other electronic means.

“(4) A failure to comply with this section does not affect the validity of the certificate authorising the controlled operation.

SCHEDULE—continued

“(5) In this section:

Comptroller-General means the Comptroller-General of Customs.

Minister to be notified of applications for certificate

“15R.(1) As soon as practicable after the Commissioner, a Deputy Commissioner or an Assistant Commissioner has made a decision about an application for a certificate authorising a controlled operation, the Commissioner must inform the Minister of his or her decision and the reasons for that decision.

“(2) As soon as practicable after a member of the National Crime Authority has made a decision about an application for a certificate authorising a controlled operation, the Chairperson of the Authority must inform the Minister of his or her decision and the reasons for that decision.

Minister to table report before Parliament

“15S.(1) Subject to subsection (3), the Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October in each year, a report about the applications for certificates authorising controlled operations made in the financial year ending on the previous 30 June.

“(2) The report must include (but is not limited to) the following details in respect of each application:

- (a) the date on which the application was made;
- (b) the decision taken about the application;
- (c) the reasons for that decision.

The report is not to mention anything about a named person that has not already been published about the person.

“(3) If, on information given by the Commissioner or the Chairperson of the National Crime Authority, the Minister is of the view that it is likely that the inclusion of any information in a report may:

- (a) endanger the safety of a person; or
- (b) prejudice an investigation or prosecution;

the Minister must exclude the information from the report. The Minister must then include that information in the first report laid before the Houses of Parliament after the Minister considers that the information will no longer endanger the safety of the person or prejudice the investigation or prosecution.

SCHEDULE—continued

“Division 3—Controlled operations started before commencement of this Part

Interpretation

“15T.(1) In this Division, a reference to a controlled operation is a reference to a controlled operation started before the commencement of this Part.

“(2) In this Division:

Collector of Customs for a State or Territory has the same meaning as in the *Customs Act 1901*.

Ministerial Agreement means the agreement:

- (a) concerning the relationship between the Australian Customs Service on the one hand, and the National Crime Authority and the Australian Federal Police on the other, with respect to narcotic drug law enforcement; and
- (b) made by the Minister for Industry, Technology and Commerce and the Special Minister of State on 3 June 1987.

Minister may give certificate about controlled operation that involved unlawful importation of narcotic goods by law enforcement officer

“15U.(1) If:

- (a) evidence leading to the prosecution of a person for an offence against section 233B of the *Customs Act 1901* or an associated offence was obtained through a controlled operation; and
- (b) a law enforcement officer, acting in the course of duty for the purposes of the operation:
 - (i) imported narcotic goods contrary to paragraph 233B(1)(b) of the *Customs Act 1901*; or
 - (ii) aided, abetted, counselled, procured, or was in any way knowingly concerned in, the importation of narcotic goods contrary to paragraph 233B(1)(d) of the *Customs Act 1901*; and
- (c) for the purposes of the operation:
 - (i) the Australian Federal Police, by written request signed by one of its members and purported to be made in accordance with the Ministerial Agreement, asked a Collector of Customs for a State or Territory that the narcotic goods, while subject to the control of the Customs (within the meaning of the *Customs Act 1901*), be exempted from detailed scrutiny by officers of the Australian Customs Service; and

SCHEDULE—continued

(ii) the request for exemption was granted;
 the Minister may give a certificate in writing to the effect that, for the purposes of the controlled operation described in the certificate;

(d) a request of the kind referred to in paragraph (c) was made by the person named in the certificate on the day specified in the certificate;
 and

(e) the request was granted on the day specified in the certificate.

“(2) In a prosecution for an offence against section 233B of the *Customs Act 1901* or an associated offence, a document purporting to be a certificate given under subsection (1) is, upon mere production, admissible as *prima facie* evidence of the facts stated in the document.

Evidence of illegal importation etc. of narcotic goods not to be rejected on ground of unlawful conduct by law enforcement officer

“15V. In determining, for the purposes of a prosecution for an offence against section 233B of the *Customs Act 1901* or an associated offence, whether evidence that narcotic goods were imported into Australia in contravention of the *Customs Act 1901* should be admitted, the fact that a law enforcement officer committed an offence in importing the narcotic goods, or in aiding, abetting, counselling, procuring, or being in any way knowingly concerned in, their importation is to be disregarded, if:

(a) the law enforcement officer, when committing the offence, was acting in the course of duty for the purposes of a controlled operation;
 and

(b) for the purposes of the operation:

(i) the Australian Federal Police, by written request signed by one of its members and purported to be made in accordance with the Ministerial Agreement, asked a Collector of Customs for a State or Territory that the narcotic goods, while subject to the control of the Customs (within the meaning of the *Customs Act 1901*), be exempted from detailed scrutiny by officers of the Australian Customs Service; and

(ii) the request for exemption was granted.”.





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