



Australian Capital Territory

Criminal Code 2001

No 64 of 2001

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Australian Capital Territory

Criminal Code 2001

No 64 of 2001

An Act relating to the criminal law

[Notified in ACT Gazette S66: 10 September 2001]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Criminal Code 2001*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2000*, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*conduct*—see section 9 (2) (Physical elements).’ means that the expression ‘conduct’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

Chapter 2 General principles of criminal responsibility

Part 2.1 Purpose and application

5 Purpose of ch 2

- (1) The purpose of this chapter is to codify general principles of criminal responsibility under ACT law.
- (2) It contains some, but not all, of the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

6 Application of ch 2

- (1) This chapter applies to all offences against this Act and all other offences against ACT law.
- (2) However, this chapter does not apply to offences created before its commencement until 1 January 2006 or, if another date is prescribed under the regulations for this subsection, that date.
- (3) Subsection (2) and this subsection expire on 1 January 2006 or, if another date is prescribed under the regulations for this subsection, that date.

Part 2.2 The elements of an offence

Division 2.2.1 General

7 Elements

- (1) An offence consists of physical elements and fault elements.
- (2) However, the law that creates the offence may provide that there is no fault element for 1 or more physical elements.
- (3) The law that creates the offence may provide different fault elements for different physical elements.

8 Establishing guilt of offences

A person must not be found guilty of committing an offence unless the following is proved:

- (a) the existence of the physical elements that are, under the law creating the offence, relevant to establishing guilt;
- (b) for each of the physical elements for which a fault element is required, 1 of the fault elements for the physical element.

Note See pt 2.6 on proof of criminal responsibility.

Division 2.2.2 Physical elements

9 Physical elements

- (1) A physical element of an offence may be—
 - (a) conduct; or
 - (b) a circumstance in which conduct happens; or
 - (c) a result of conduct.
- (2) In this Act:

conduct means an act, an omission to perform an act or a state of affairs.

10 Voluntariness

- (1) Conduct can only be a physical element if it is voluntary.
- (2) Conduct is voluntary only if it is a product of the will of the person whose conduct it is.
- (3) The following are examples of conduct that is not voluntary:
 - (a) a spasm, convulsion or other unwilled bodily movement;
 - (b) an act performed during sleep or unconsciousness;
 - (c) an act performed during impaired consciousness depriving the person of the will to act.
- (4) An omission to perform an act is voluntary only if the act omitted is an act that the person can perform.
- (5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is voluntary only if it is a state of affairs over which the person can exercise control.

Note The *Crimes Act 1900*, part 11B deals with intoxication.

11 Omissions

An omission to perform an act can only be a physical element if—

- (a) the law creating the offence makes it a physical element; or
- (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that, by law, there is a duty to perform.

Division 2.2.3 Fault elements

12 Fault elements

- (1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.
- (2) Subsection (1) does not prevent a law that creates an offence from providing other fault elements for a physical element of the offence.

13 Intention

- (1) A person has intention in relation to conduct if the person means to engage in the conduct.
- (2) A person has intention in relation to a circumstance if the person believes that it exists or will exist.
- (3) A person has intention in relation to a result if the person means to bring it about or is aware that it will happen in the ordinary course of events.

14 Knowledge

A person has knowledge of a circumstance or result if the person is aware that it exists or will exist in the ordinary course of events.

15 Recklessness

- (1) A person is reckless in relation to a circumstance if—
 - (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is reckless in relation to a result if—
 - (a) the person is aware of a substantial risk that the result will happen; and

- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is a question of fact.
- (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

16 Negligence

A person is negligent in relation to a physical element of an offence if the person's conduct merits criminal punishment for the offence because it involves—

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the physical element exists or will exist.

Division 2.2.4 Cases where fault elements are not required

17 Strict liability

- (1) If a law that creates an offence provides that the offence is an offence of strict liability—
 - (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 20 (Mistake of fact—strict liability) is available.
- (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence—
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 20 is available in relation to that physical element.

- (3) The existence of strict liability does not make any other defence unavailable.

18 Absolute liability

- (1) If a law that creates an offence provides that the offence is an offence of absolute liability—
- (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 20 (Mistake of fact—strict liability) is not available.
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence—
- (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 20 is not available in relation to that physical element.
- (3) The existence of absolute liability does not make any other defence unavailable.

Part 2.3 **Circumstances where there is no criminal responsibility**

19 **Mistake or ignorance of fact—fault elements other than negligence**

- (1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if—
 - (a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and
 - (b) the existence of the mistaken belief or ignorance negates any fault element applying to that physical element.
- (2) In deciding whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

20 **Mistake of fact—strict liability**

- (1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if—
 - (a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted an offence.
- (2) A person may be regarded as having considered whether or not facts existed if—

- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Note Section 18 (Absolute liability) prevents this section applying to offences of absolute liability.

21 Mistake or ignorance of statute law

- (1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, the person is mistaken about, or ignorant of, the existence or content of a law that directly or indirectly creates the offence or affects its scope or operation.
- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if—
 - (a) a law expressly or impliedly provides that the person is not criminally responsible; or
 - (b) the ignorance or mistake negates a fault element applying to a physical element of the offence.
- (3) In this section:

law means an Act or subordinate law.

22 Claim of right

- (1) A person is not criminally responsible for an offence that has a physical element relating to property if—
 - (a) at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and

- (b) the existence of the right would negate a fault element for any physical element of the offence.
- (2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of a proprietary or possessory right that the person mistakenly believes to exist.
- (3) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

Part 2.6 Proof of criminal responsibility

Note The part numbering is out of sequence because it follows the part numbering in the *Criminal Code Act 1995*, sch (Cwlth).

23 Legal burden of proof—prosecution

- (1) The prosecution has the legal burden of proving every element of an offence relevant to the guilt of the person charged.

Note See s 7 (Elements) on what elements are relevant to a person's guilt.

- (2) The prosecution also has the legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof on the defendant.

- (3) In this Act:

legal burden, in relation to a matter, means the burden of proving the existence of the matter.

24 Standard of proof—prosecution

- (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.
- (2) Subsection (1) does not apply if an Act or subordinate law provides for a different standard of proof.

25 Evidential burden of proof—defence

- (1) Subject to section 26 (Legal burden of proof—defence), a burden of proof that a law imposes on a defendant is an evidential burden only.
- (2) A defendant who wishes to deny criminal responsibility by relying on a provision of part 2.3 (Circumstances where there is no criminal responsibility) has an evidential burden in relation to the matter.

- (3) Subject to section 26, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence (whether or not it accompanies the description of the offence) has an evidential burden in relation to the matter.
- (4) The defendant no longer has the evidential burden in relation to a matter if evidence sufficient to discharge the burden is presented by the prosecution.
- (5) The question whether an evidential burden has been discharged is a question of law.
- (6) In this Act:

evidential burden, in relation to a matter, means the burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

26 Legal burden of proof—defence

A burden of proof that a law imposes on the defendant is a legal burden only if the law expressly—

- (a) provides that the burden of proof in relation to the matter in question is a legal burden; or
- (b) requires the defendant to prove the matter; or
- (c) creates a presumption that the matter exists unless the contrary is proved.

27 Standard of proof—defence

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

28 Use of averments

A law that allows the prosecution to make an averment (however expressed) does not allow the prosecution—

- (a) to aver any fault element of an offence; or
- (b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

Chapter 3 Miscellaneous

29 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

30 Consequential amendments—sch 1

Schedule 1 amends the Acts mentioned in it.

Schedule 1 **Consequential amendments**

(see s 30)

Part 1 **Interpretation Act 1967**

[1.1] Section 33G

omit

14,

Part 2 **Magistrates Court Act 1930**

[1.2] Section 59

omit

Dictionary

(see s 3)

conduct—see section 9 (2) (Physical elements).

evidential burden—see section 25 (6) (Evidential burden of proof—defence).

fault element—see section 12.

intention—see section 13.

knowledge—see section 14.

law means a law of the Territory, and includes this Act.

legal burden—see section 23 (Legal burden of proof—prosecution).

negligence—see section 16.

offence means an offence against a law of the Territory.

physical element—see section 9.

recklessness—see section 15.

[Presentation speech made in Assembly on 15 June 2001]