



Australian Capital Territory

Crimes Legislation Amendment Act 2004

A2004-30

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
Part 2	Crimes Act 1900	
3	Legislation amended—pt 2	3
4	Offences against the Act—application of Criminal Code etc Section 7A, note 1, new dot points	3
5	Sections 64 and 65	3
Part 3	Prostitution Act 1992	
6	Legislation amended—pt 3	6
7	Section 3A, note 1	6

2004 010B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

		Page
8	Participation of children Section 20	6
9	Dictionary, definition of <i>commercial sexual services</i>	7



Australian Capital Territory

Crimes Legislation Amendment Act 2004

A2004-30

An Act to amend the *Crimes Act 1900* and the *Prostitution Act 1992*

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

2004 010B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2004*.

2 Commencement

- (1) This Act (other than section 7) commences on the day after its notification day.
- (2) Section 7 commences on the commencement of the *Nurse Practitioners Legislation Amendment Act 2004*, section 22.

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

Part 2 Crimes Act 1900

3 Legislation amended—pt 2

This part amends the *Crimes Act 1900*.

4 Offences against the Act—application of Criminal Code etc Section 7A, note 1, new dot points

insert

- section 64 (Using child for production of child pornography etc)
- section 64A (Trading in child pornography)
- section 65 (Possessing child pornography)

5 Sections 64 and 65

substitute

64 Using child for production of child pornography etc

- (1) A person commits an offence if—
- (a) the person uses, offers or procures a child—
- (i) for the production of child pornography; or
- (ii) for a pornographic performance; and
- (b) the child is under 12 years old.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) Absolute liability applies to subsection (1) (b).
- (3) A person commits an offence if—
- (a) the person uses, offers or procures a child—

- (i) for the production of child pornography; or
 - (ii) for a pornographic performance; and
- (b) the child is 12 years old or older.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (4) Strict liability applies to subsection (3) (b).
- (5) In this section:

child pornography means anything that represents—

- (a) the sexual parts of a child; or
- (b) a child engaged in an activity of a sexual nature; or
- (c) someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

pornographic performance means—

- (a) a performance by a child engaged in an activity of a sexual nature; or
- (b) a performance by someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

Examples of activity of a sexual nature

- 1 sexual intercourse or other explicit sexual activity (whether real or simulated)
- 2 a striptease

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

represent means depict or otherwise represent on or in a film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else.

64A Trading in child pornography

- (1) A person commits an offence if the person produces, publishes, offers or sells child pornography.

Maximum penalty: 1 200 penalty units, imprisonment for 12 years or both.

- (2) In this section:

child pornography—see section 64 (5).

65 Possessing child pornography

- (1) A person commits an offence if—

- (a) the person intentionally possesses pornography; and
(b) the pornography is child pornography.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (b).
(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the pornography concerned was child pornography.

- (4) In this section:

child pornography—see section 64 (5).

Part 3 Prostitution Act 1992

6 Legislation amended—pt 3

This part amends the *Prostitution Act 1992*.

7 Section 3A, note 1

substitute

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 20 (Causing child to provide commercial sexual services etc)
- s 26 (Medical tests and examinations).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

8 Participation of children Section 20

substitute

20 Causing child to provide commercial sexual services etc

- (1) A person commits an offence if—
- (a) the person causes, permits, offers or procures a child to provide commercial sexual services; and
 - (b) the child is under 12 years old.

Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.

- (2) Absolute liability applies to subsection (1) (b).

- (3) A person commits an offence if—
- (a) the person causes, permits, offers or procures a child to provide commercial sexual services; and
 - (b) the child is 12 years old or older.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (4) Strict liability applies to subsection (3) (b).

9 Dictionary, definition of *commercial sexual services*

substitute

commercial sexual services means sexual services provided for monetary consideration or any other form of consideration or material reward (regardless of whether the consideration or reward is, or is to be, paid or given to the prostitute or another person).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2004.

2 Notification

Notified under the Legislation Act on 7 July 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes Legislation Amendment Bill 2004, which was passed by the Legislative Assembly on 23 June 2004 a.m.

Clerk of the Legislative Assembly

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