



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2009

A2009-7

Contents

		Page
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Schedule 1	Legislation amended	3
Part 1.1	Bail Act 1992	3
Part 1.2	Crimes (Forensic Procedures) Act 2000	4
Part 1.3	Crimes (Sentence Administration) Act 2005	8
Part 1.4	Crimes (Sentencing) Act 2005	10
Part 1.5	Domestic Violence and Protection Orders Act 2008	11
Part 1.6	Evidence (Miscellaneous Provisions) Act 1991	14
Part 1.7	Liquor Act 1975	21

J2008-427

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Contents

Part 1.8	Magistrates Court Act 1930	Page 23
Part 1.9	Residential Tenancies Act 1997	24



Australian Capital Territory

Justice and Community Safety Legislation Amendment Act 2009

A2009-7

An Act to amend legislation about justice and community safety

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

1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2009*.

2 Commencement

- (1) Section 3 and schedule 1, part 1.2, part 1.7 and part 1.9 commence on the day after this Act's notification day.

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

- (2) Schedule 1, part 1.1 and part 1.5 commences immediately after the later of—
- (a) the commencement of the *Domestic Violence and Protection Orders Act 2008*; and
 - (b) the commencement of this Act, section 3.
- (3) Schedule 1, part 1.3 and part 1.4 commences immediately after the later of—
- (a) the commencement of the *Children and Young People Act 2008*, schedule 1, part 1.4; and
 - (b) the commencement of this Act, section 3.
- (4) Schedule 1, part 1.6 and part 1.8 commences immediately after the commencement of the *Crimes Legislation Amendment Act 2008*, schedule 1, part 1.1.

3 Legislation amended

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Bail Act 1992

[1.1] Section 9F (6), definition of *relevant person*, note

substitute

Note The *Domestic Violence and Protection Orders Act 2008*, s 15 (1) defines a ***relevant person*** in relation to a person (the ***original person***) as any of the following people:

- a domestic partner or former domestic partner of the original person (***domestic partner*** is defined in the Legislation Act, s 169 (1))
- a relative of the original person (***relative*** is defined in the *Domestic Violence and Protection Orders Act 2008*, s 15A)
- a child of a domestic partner or former domestic partner of the original person
- a parent of a child of the original person
- someone who is or has been in a relevant relationship with the original person (***relevant relationship*** is defined in the *Domestic Violence and Protection Orders Act 2008*, s 15).

Part 1.2 Crimes (Forensic Procedures) Act 2000

[1.2] Section 40, except note

substitute

40 Suspect in custody may be kept in custody for carrying out forensic procedure

- (1) This section applies if a magistrate orders the carrying out of a forensic procedure on a suspect mentioned in section 32 (Circumstances in which magistrate may order forensic procedure).
- (2) If the suspect is in custody, the suspect may be detained in custody for as long as reasonably necessary to carry out the forensic procedure.
- (3) An order made in the circumstances set out in section 32 (c) operates despite any other law.

[1.3] New sections 40A to 40D

in division 2.5.2, insert

40A Magistrate may order arrest etc of suspect not in custody for carrying out forensic procedure

- (1) This section applies if a magistrate orders the carrying out of a forensic procedure on a suspect mentioned in section 32 (a *forensic procedure order*).
- (2) If the suspect is not in custody, the magistrate may, on the application of an authorised applicant, also make an order (an *arrest and removal order*) for—
 - (a) the arrest of the suspect for the purpose of carrying out the forensic procedure; and

- (b) the removal of the suspect to the place where the forensic procedure is to be carried out.
- (3) The magistrate may make an arrest and removal order only if satisfied on reasonable grounds that—
 - (a) the order is necessary to ensure that the forensic procedure will be carried out; or
 - (b) the suspect might destroy evidence that might be obtained by carrying out the forensic procedure; or
 - (c) the order is otherwise justified.
- (4) An authorised applicant may apply for an arrest and removal order in relation to a suspect—
 - (a) when the authorised applicant applies for a forensic procedure order in relation to the suspect; or
 - (b) at any time after a magistrate has made a forensic procedure order in relation to the suspect.

40B Arrest, removal and detention of suspect

- (1) This section applies if a police officer has power to arrest a suspect under an arrest and removal order.
 - (2) The police officer must—
 - (a) use the minimum amount of force necessary to arrest or remove the suspect; and
 - (b) before removing the suspect, explain to the suspect the reason for the arrest.
- Note* The *Crimes Act 1900*, s 252I requires that a responsible person for a child be told if the child is arrested.
- (3) The suspect may be detained in custody for as long as reasonably necessary to carry out the forensic procedure.

40C Arrest and removal order—warrant to enter premises

- (1) This section applies if a magistrate makes an arrest and removal order in relation to a suspect.
- (2) An authorised applicant may apply to a magistrate for a warrant to enter premises to arrest the suspect.
- (3) The application must be sworn and state the grounds on which the warrant is sought.

Note Swear an oath includes make an affirmation (see Legislation Act, dict, pt 1, def *swear*).

- (4) The magistrate may refuse to consider the application until the authorised applicant gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (5) The magistrate may issue a warrant only if satisfied on reasonable grounds that the warrant is necessary to enable the arrest of the suspect.
- (6) The warrant must state—
 - (a) that a police officer may, with any necessary assistance and force, enter the premises to arrest the suspect; and
 - (b) the hours when the premises may be entered; and
 - (c) the date (within 7 days after the day the warrant is issued) that the warrant ends.
- (7) An authorised applicant may apply for a warrant in relation to a suspect—
 - (a) when the authorised applicant applies for an arrest and removal order in relation to the suspect; or
 - (b) at any time after a magistrate has made an arrest and removal order in relation to the suspect.

40D Warrant to enter premises—announcement before entry and copy of warrant

- (1) A police officer must, before anyone enters premises under a warrant mentioned in section 40C—
 - (a) announce that the officer is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) A police officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of the officer or anyone assisting the officer; or
 - (b) the safety of anyone at the premises; or
 - (c) that the effective execution of the warrant is not frustrated.
- (3) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a warrant is being executed, the police officer or anyone assisting must make available to the person a copy of the warrant.
- (4) In this section:
occupier, of premises, includes—
 - (a) a person believed on reasonable grounds to be an occupier of the premises; and
 - (b) a person apparently in charge of the premises.

[1.4] Dictionary, new definition of *arrest and removal order*

insert

arrest and removal order—see section 40A.

**Part 1.3 Crimes (Sentence
Administration) Act 2005**

[1.5] Section 26, new note

insert

Note The reference to an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*. A CYP young offender is a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place (see this Act, s 320C).

[1.6] Sections 320B and 320C

substitute

320B Youth justice principles to be considered

(1) An entity exercising a function under this Act in relation to a CYP young offender must consider the youth justice principles when dealing with the offender.

(2) In this section:

CYP young offender means—

- (a) a young offender serving a sentence of imprisonment at a detention place; or
- (b) a young offender serving a sentence (other than a sentence of imprisonment)—
 - (i) who is under 18 years old; or

- (ii) who is over 18 years old but for whom the chief executive (CYP) is responsible in accordance with a decision under section 320F (Young offenders—administration of sentences other than imprisonment).

youth justice principles—see the *Children and Young People Act 2008*, section 94.

320C Young offenders and remandees—references to correctional centre and Corrections Management Act

- (1) A reference in part 4.2 (Serving full-time detention) to a correctional centre or an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*.
- (2) A reference in this Act to the *Corrections Management Act 2007* is, in relation to a young offender in detention under the *Children and Young People Act 2008* or a young remandee, a reference to the *Children and Young People Act 2008*.
- (3) In this section:

CYP young offender means a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place.

[1.7] Section 320D (2), definition of CYP young offender

substitute

CYP young offender—see section 320B (2).

[1.8] Dictionary, note 2

insert

- detention place

Part 1.4 Crimes (Sentencing) Act 2005

[1.9] Section 13 (3) (c), note

substitute

Note A good behaviour order that includes a rehabilitation program condition must also include a probation condition or supervision condition (see s 95 and s 133V).

[1.10] New section 95 (2)

insert

- (2) Subsection (1) does not apply to a good behaviour order for a young offender if a supervision condition is included in the order under section 133V (Supervision conditions—when required).

[1.11] Section 133M (2)

omit everything before paragraph (a), substitute

- (2) In addition to the conditions mentioned in section 13 (3) (b) to (g), a good behaviour order for a young offender may include—

[1.12] Section 133V (1) (b)

substitute

- (b) a rehabilitation program condition; or

Part 1.5 Domestic Violence and Protection Orders Act 2008

[1.13] Section 15

substitute

15 Who is a *relevant person*?

(1) For this Act, *relevant person*, in relation to a person (the *original person*) means—

(a) a domestic partner or former domestic partner of the original person; or

Note A *domestic partner* need not be an adult (see Legislation Act, s 169).

(b) a relative of the original person; or

(c) a child of a domestic partner or former domestic partner of the original person; or

(d) a parent of a child of the original person; or

(e) someone who is or has been in a relevant relationship with the original person.

(2) In this section:

relevant relationship means an intimate relationship between 2 people other than a domestic partnership.

Note For the meaning of *domestic partnership*, see the Legislation Act, s 169. It includes a civil partnership.

(3) For subsection (2), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:

(a) the extent to which each is personally dependent on the other;

- (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
 - (c) the length of the relationship;
 - (d) if there is, or has been, a sexual relationship;
 - (e) the extent to which each is involved in, or knows about, the other's personal life;
 - (f) the degree of mutual commitment to a shared life;
 - (g) if the 2 people share care or support for children or other dependents.
- (4) Also for subsection (2)—
- (a) an intimate relationship may exist between people although they are not, or have not been, members of the same household; and
 - (b) an intimate relationship is not taken to exist between people only because one of them provides a service for the other—
 - (i) for fee or reward; or
 - (ii) on behalf of another person (including a government or corporation); or
 - (iii) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.

15A Who is a *relative*?

For this Act, a *relative* of a person (the *original person*)—

- (a) means the original person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or

- (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and
- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

Note **Domestic partner**—see the Legislation Act, s 169.

- (c) includes—
- (i) someone who has been a relative mentioned in paragraph (a) or (b) of the original person; and
 - (ii) anyone else who could reasonably be considered to be, or have been, a relative of the original person.

Examples—par (c) (ii)

- 1 if the original person is an Aboriginal or Torres Strait Islander, the following people:
 - (a) a person the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
 - (b) a person who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community
- 2 a person regarded and treated by the original person as a relative, for example, as an uncle or aunt

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).

[1.14] Dictionary, definitions of *relative and relevant person*

substitute

relative—see section 15A.

relevant person—see section 15.

Part 1.6 Evidence (Miscellaneous Provisions) Act 1991

[1.15] Section 38 (2) (c)

substitute

- (c) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.16] Section 38 (4), note

insert

Note 1 A complainant is not required to attend and give evidence at a committal proceeding in relation to a sexual offence (see *Magistrates Court Act 1930*, s 90AA (11A)).

Note 2 A witness must not be cross-examined at a committal hearing in relation to a sexual offence if the witness is a complainant in relation to the offence (see *Magistrates Court Act 1930*, s 90AB (1)).

[1.17] Section 38A (1) (c)

substitute

- (c) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.18] Section 38B

substitute

38B Meaning of *relevant person*—div 4.2

(1) For this division, *relevant person*, in relation to a person (the *original person*) means—

(a) a domestic partner or former domestic partner of the original person; or

Note A *domestic partner* need not be an adult (see Legislation Act, s 169).

(b) a relative of the original person; or

(c) a child of a domestic partner or former domestic partner of the original person; or

(d) a parent of a child of the original person; or

(e) someone who is or has been in a relevant relationship with the original person.

(2) In this section:

relevant relationship means an intimate relationship between 2 people other than a domestic partnership.

Note For the meaning of *domestic partnership*, see the Legislation Act, s 169. It includes a civil partnership.

(3) For subsection (2), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:

(a) the extent to which each is personally dependent on the other;

(b) the extent to which each is financially dependent on the other (including any arrangements for financial support);

(c) the length of the relationship;

- (d) if there is, or has been, a sexual relationship;
 - (e) the extent to which each is involved in, or knows about, the other's personal life;
 - (f) the degree of mutual commitment to a shared life;
 - (g) if the 2 people share care or support for children or other dependents.
- (4) Also for subsection (2)—
- (a) an intimate relationship may exist between people although they are not, or have not been, members of the same household; and
 - (b) an intimate relationship is not taken to exist between people only because one of them provides a service for the other—
 - (i) for fee or reward; or
 - (ii) on behalf of another person (including a government or corporation); or
 - (iii) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.

38BA Meaning of *relative*—div 4.2

For this division, a *relative* of a person (the *original person*)—

- (a) means the original person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
 - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or

- (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
- (v) nephew, niece or cousin; and
- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

Note **Domestic partner**—see the Legislation Act, s 169.

- (c) includes—
 - (i) someone who has been a relative mentioned in paragraph (a) or (b) of the original person; and
 - (ii) anyone else who could reasonably be considered to be, or have been, a relative of the original person.

Examples—par (c) (ii)

- 1 if the original person is an Aboriginal or Torres Strait Islander, the following people:
 - (a) a person the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
 - (b) a person who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community
- 2 a person regarded and treated by the original person as a relative, for example, as an uncle or aunt

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).

[1.19] New section 38C (3) (f)

insert

- (f) the prosecutor.

[1.20] Section 40B (1) (b)

substitute

- (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.21] Section 40C (1) (b)

substitute

- (b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.22] Section 40G (2)

omit everything before paragraph (a), substitute

- (2) The prosecutor must give to the accused person or the person's lawyer—

[1.23] Section 40G (3)

substitute

- (3) The notice must state the following:
- (a) each audiovisual recording the prosecutor intends to tender;
 - (b) that the accused person and the person's lawyer are entitled to see and listen to each recording at a police station or somewhere else decided by the chief police officer;
 - (c) the person responsible (the *responsible person*) for arranging access to each recording.
- (4) For subsection (3) (c), the notice must state the responsible person by—
- (a) naming the person; or

(b) stating the occupant of a position prescribed by regulation.

[1.24] Section 400 (1) (b)

substitute

(b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.25] Section 41 (2) (b)

substitute

(b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.26] Section 41 (4), note

insert

Note 1 A complainant is not required to attend and give evidence at a committal proceeding in relation to a sexual offence (see *Magistrates Court Act 1930*, s 90AA (11A)).

Note 2 A witness must not be cross-examined at a committal hearing in relation to a sexual offence if the witness is a complainant in relation to the offence (see *Magistrates Court Act 1930*, s 90AB (1)).

[1.27] Section 41A (1) (b)

substitute

(b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or

[1.28] Section 48 (2) (c)

substitute

- (c) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or

**[1.29] Section 54, definition of *criminal proceeding*,
paragraph (b)**

substitute

- (b) a sentencing proceeding for a person convicted or found guilty of any offence; or

[1.30] Dictionary, definition of *relevant person*

substitute

relative, for division 4.2 (Sexual and violent offence proceedings—general)—see section 38BA.

relevant person, for division 4.2 (Sexual and violent offence proceedings—general)—see section 38B.

Part 1.7 Liquor Act 1975

[1.31] New part 16

insert

Part 16 Validation

183 Validation of appointment

(1) The appointment of Robyn Davies as a member of the Liquor Licensing Board purportedly made by the Minister under section 12 (1) (c) (Membership of board) on 17 October 2008 is taken to be, and always to have been, valid as if the instrument of appointment had been properly—

(a) made (including having regard to the Legislation Act, section 228 (Consultation with appropriate Assembly committee)); and

(b) notified under the Legislation Act, section 61; and

(c) presented to the Legislative Assembly under the Legislation Act, section 64 (1).

Note The instrument of appointment made by the Minister is accessible at www.legislation.act.gov.au and is numbered DI2008-273.

(2) Without limiting subsection (1), and to remove any doubt, anything done, or purporting to have been done by Robyn Davies under the appointment is taken to be, and always to have been, as valid as if the instrument of appointment had been properly—

(a) made; and

(b) notified under the Legislation Act, section 61; and

(c) presented to the Legislative Assembly in accordance with the Legislation Act, section 64 (1).

184 Expiry—pt 16

This part expires on the day it commences.

Note If a law validates something that is or may otherwise be invalid, the validating effect of the law does not end merely because of the repeal of the law (see Legislation Act, s 88 (1)).

Part 1.8 Magistrates Court Act 1930

[1.32] Section 90AA (1)

substitute

- (1) If the informant has served a copy of a written statement on the accused person in accordance with section 90, the court at the committal hearing must (subject to subsection (3)) admit the statement (and any exhibit identified in it) as evidence of the matters in it.

[1.33] Section 90AA (3A) (b)

omit

[1.34] New section 90AA (11A)

insert

- (11A) However, a person must not be required to attend and give evidence at a committal hearing in relation to a sexual offence (whether or not the hearing also relates to another sexual offence) if the person is a complainant in relation to the sexual offence.

[1.35] Section 90AA (12)

substitute

- (12) In this section:
sexual offence means an offence against the *Crimes Act 1900*, part 3 (Sexual Offences), part 4 (Female genital mutilation) or part 5 (Sexual servitude).

Part 1.9 Residential Tenancies Act 1997

[1.36] New part 12

insert

Part 12 Validation

142 Validation of selection

- (1) The selection of Allan Anforth and Jennifer David to be members of the Residential Tenancies Tribunal purportedly made by the Minister under section 112 (5) (Membership) on 17 October 2008 is taken to be, and always to have been, valid as if the instrument of selection had been properly—
 - (a) made (including having regard to the Legislation Act, section 228 (Consultation with appropriate Assembly committee); and
 - (b) notified under the Legislation Act, section 61; and
 - (c) presented to the Legislative Assembly under the Legislation Act, section 64 (1).

Note The instrument of selection made by the Minister is accessible at www.legislation.act.gov.au and is numbered DI2008-272.

- (2) Without limiting subsection (1), and to remove any doubt, anything done, or purporting to have been done by Allan Anforth or Jennifer David as members of the tribunal is taken to be, and always to have been, as valid as if the instrument of selection had been properly—
 - (a) made; and
 - (b) notified under the Legislation Act, section 61; and

- (c) presented to the Legislative Assembly in accordance with the Legislation Act, section 64 (1).

143 Expiry—pt 12

This part expires on the day it commences.

Note If a law validates something that is or may otherwise be invalid, the validating effect of the law does not end merely because of the repeal of the law (see Legislation Act, s 88 (1)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 12 February 2009.

2 Notification

Notified under the Legislation Act on 5 March 2009.

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 Justice and Community Safety Legislation Amendment Bill 2009, which was passed by the Legislative Assembly on 26 February 2009.

Clerk of the Legislative Assembly

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