



Australian Capital Territory

# Crimes Legislation Amendment Act 2013 (No 2)

A2013-50

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# Crimes Legislation Amendment Act 2013 (No 2)

A2013-50

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An Act to amend legislation about crimes, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2013 (No 2)*.

### 2 Commencement

- (1) The following provisions commence on the 28th day after this Act's notification day:
- section 13
  - sections 15 and 16
  - part 10 (Firearms Act 1996).

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

- (2) The remaining provisions commence on the day after this Act's notification day.

### 3 Legislation amended

This Act amends the following legislation:

- [Bail Act 1992](#)
- [Crimes Act 1900](#)
- [Crimes \(Assumed Identities\) Act 2009](#)
- [Crimes \(Child Sex Offenders\) Act 2005](#)
- [Crimes \(Forensic Procedures\) Act 2000](#)
- [Criminal Code 2002](#)
- [Criminal Code Regulation 2005](#)
- [Drugs of Dependence Act 1989](#)
- [Firearms Act 1996](#).

## Part 2 Bail Act 1992

### 4 Contravention of Act by police officers Section 52 (2)

*substitute*

- (2) Subsection (1) does not apply to prevent a contravention of a provision of this Act by a police officer from—
- (a) being dealt with under the—
    - (i) *Australian Federal Police Act 1979* (Cwlth), part 5; or
    - (ii) *Law Enforcement Integrity Commissioner Act 2006* (Cwlth); or
    - (iii) *Ombudsman Act 1976* (Cwlth); or
  - (b) constituting grounds for the institution of civil proceedings.

## Part 3 Crimes Act 1900

### 5 Meaning of *in the company of a police officer* Section 252F (3)

*substitute*

- (3) However for section 252E (c), a child or young person is not in the company of a police officer in connection with the investigation of an offence or possible offence—
- (a) if—
- (i) the child or young person is with a police officer by a roadside (whether or not the child or young person is in a motor vehicle); and
  - (ii) the police officer is investigating an offence or possible offence, other than an indictable offence or possible indictable offence, arising out of the use of a motor vehicle; or
- (b) if the child or young person is with a police officer for a drug screening test, or breath or oral fluid analysis, under the [Road Transport \(Alcohol and Drugs\) Act 1977](#); or
- (c) for a person aged 16 years old or older, but not yet an adult—
- if—
- (i) the person is with a police officer in relation to the investigation of an infringement notice offence or possible infringement notice offence; and
  - (ii) the police officer either intends to serve an infringement notice for the offence on the person, or intends to take no action against the person for the offence.

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**6 Section 252F (4), new definitions**

*insert*

*infringement notice*—see the *Magistrates Court Act 1930*, section 117.

*infringement notice offence*—see the *Magistrates Court Act 1930*, section 117.

**7 New sections 441 and 441A**

*insert*

**441 Retrospective repeal of limitation period on criminal proceeding for particular sexual offences**

- (1) Despite any law previously in force in the Territory that limited the time in which a criminal proceeding could be begun (a *limitation law*) for an offence against a repealed sexual offence provision, a criminal proceeding for the offence may be begun as though the limitation law had never been in force.
- (2) To remove any doubt, any right acquired by a person because of the commencement of the 1951 Act, or the 1976 Ordinance, not to be prosecuted for an offence against a repealed sexual offence provision is abrogated.
- (3) In this section:

*1951 Act* means the *Crimes Act 1951* (repealed).

*Note* The 1951 Act—

- (a) commenced on 14 December 1951 (as the *Crimes Ordinance 1951*) and was repealed on 21 December 2000; and
- (b) created new offences under the 1951 repealed provisions, and limited the time in which a person could be prosecuted for the offences (see the 1951 Act, s 78).

**1951 repealed provision** means any of the following provisions of this Act, as in force on the commencement of the 1951 Act:

- (a) section 71 (Carnally knowing a girl between ten and sixteen);
- (b) section 72 (Attempts);
- (c) section 76 (Indecent assault).

**1976 Ordinance** means the *Law Reform (Sexual Behaviour) Ordinance 1976* (repealed).

*Note* The 1976 Ordinance—

- (a) commenced on 8 November 1976 and was repealed on 28 November 1985; and
- (b) created burdens of proof for the prosecution of offences under the 1976 repealed provisions, and limited the time in which a person could be prosecuted for the offences (see the 1976 Ordinance, s 6).

**1976 repealed provision** means any of the following provisions of this Act, as in force on the commencement of the 1976 Ordinance:

- (a) section 79 (Buggery and bestiality);
- (b) section 80 (Attempt, &c., to commit buggery);
- (c) section 81 (Indecent assault on male).

**repealed sexual offence provision** means—

- (a) a 1951 repealed provision; or
- (b) a 1976 repealed provision.

#### **441A Criminal proceedings not allowed by section 441**

- (1) Section 441 does not allow a criminal proceeding to begin—
  - (a) for an offence against a 1951 repealed provision—if the defendant alleged to have committed the offence is not more than 2 years older than the complainant for the offence; or

- (b) for an offence against a 1976 repealed provision—if the prosecution does not allege the offence was committed in circumstances mentioned in repealed section 5 (a) or (b); or
- (c) for an offence against a 1976 repealed provision (other than section 81 (Indecent assault on male))—if the prosecution does not allege that the offence was committed against a person.

(2) In this section:

*1951 Act*—see section 441 (3).

*1976 Ordinance*—see section 441 (3).

*1951 repealed provision*—see section 441 (3).

*1976 repealed provision*—see section 441 (3).

*repealed section 5 (a) or (b)* means this Act, section 5 (a) or (b) as in force on the commencement of the 1976 Ordinance.

## Part 4 Crimes (Assumed Identities) Act 2009

### 8 Making entries in register of births, deaths or marriages Section 16 (2) (a) (ii)

*substitute*

- (ii) the chief officer of a law enforcement agency under a corresponding law; or
- (iii) the chief officer of an intelligence agency; and

### 9 New section 16 (6)

*insert*

- (6) In this section:

*intelligence agency* means—

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation.

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## Part 5 Crimes (Child Sex Offenders) Act 2005

### 10 Offence—offender in ACT must report change of details Section 54 (1) (c)

*substitute*

- (c) the offender's reporting period has not ended before the end of the period within which the report must be given.

### 11 New section 132AA

*in part 5A.1, after section 132A, insert*

#### 132AA Delegation

- (1) Despite any other territory law, the functions of the chief police officer under this Act must not be delegated to anyone else.
- (2) However, the chief police officer may delegate to a deputy chief police officer any of the chief police officer's functions under chapter 5A of this Act.
- (3) Not more than 4 delegations may be in force under this section at any one time.

### 12 Further amendments, new note

*insert*

*Note* The chief police officer may delegate a function under this section (see s 132AA).

*in*

- sections 132B and 132C
- sections 132I to 132K
- section 132M
- section 132O

**Part 5** Crimes (Child Sex Offenders) Act 2005

Section 12

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- section 132R
- section 132ZD
- section 132ZF
- sections 132ZM to 132ZO
- section 132ZR

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## Part 6 Crimes (Forensic Procedures) Act 2000

### 13 Securing the presence of suspects at hearings—suspect not in custody New section 37 (1A) and (1B)

*insert*

- (1A) An application for a summons or warrant under subsection (1) must be—
- (a) made in writing; and
  - (b) supported by evidence on oath or by affidavit dealing with the matters mentioned in—
    - (i) for a summons—subsection (1B) (a) and (b); and
    - (ii) for a warrant—subsection (2) (a) (b) and (c).
- (1B) The magistrate may issue a summons only if satisfied that the issue of the summons—
- (a) is necessary to ensure the appearance of the suspect at the hearing of the application; or
  - (b) is otherwise justified.

### 14 Sex of person carrying out or helping carry out forensic procedures New section 54 (6) and (7)

*insert*

- (6) For subsection (1), (2) and (3), a relevant person may consent to a person of the opposite sex carrying out, or helping to carry out, the forensic procedure.

- (7) However, if the relevant person is a child—
- (a) the person carrying out the forensic procedure must ask the child, before the forensic procedure is carried out, if the child wants a person of the same sex or opposite sex to carry out, or help carry out, the forensic procedure; and
  - (b) if the child asks for a person of a particular sex to carry out, or help carry out, the forensic procedure, a person of that sex must carry out, or help carry out, the procedure; and
  - (c) if the child does not ask for a person of a particular sex to carry out, or help carry out, the forensic procedure, only a person of the same sex as the child may carry out, or help carry out, the procedure.

**15 Court order for carrying out of forensic procedure on serious offender  
Section 77 (3A)**

*insert*

- (3A) An application for an order under subsection (1) or (2) must be—
- (a) made in writing; and
  - (b) be supported by evidence on oath or by affidavit dealing with the matters mentioned in subsection (5).

**16 New sections 77A to 77C**

*insert*

**77A Securing the presence of serious offender at hearing—  
offender in custody**

- (1) This section applies if—
- (a) a police officer makes an application under section 77 in relation to a serious offender; and

- (b) the serious offender is in the custody of a police officer or is otherwise detained under territory law (the *original custody*).
- (2) A magistrate may, on the application of a police officer, issue a warrant directing the person holding the serious offender in the original custody to deliver the serious offender into the custody of the police officer (the *temporary custody*) for the hearing of an application for an order under this part.
- (3) The police officer given temporary custody must return the serious offender to the place of the original custody—
  - (a) if the application for the order is refused—without delay; or
  - (b) if the order is made—without delay after the period after the order is made that is reasonably necessary to carry out the forensic procedure.

**77B Securing the presence of serious offender at hearing—  
offender not in custody**

- (1) This section applies if—
  - (a) a police officer makes an application under section 77 in relation to a serious offender; and
  - (b) the serious offender is not in custody.
- (2) A magistrate may, on the application of a police officer—
  - (a) issue a summons for the appearance of the serious offender at the hearing of the application; or
  - (b) issue a warrant for the arrest of the serious offender to bring the serious offender before the court for the hearing of the application.
- (3) An application for a summons or warrant under subsection (1) must be—
  - (a) made in writing; and

- (b) supported by evidence on oath or by affidavit dealing with the matters mentioned in—
  - (i) for a summons—subsection (4) (a) and (b); and
  - (ii) for a warrant—subsection (5) (a), (b) and (c).
- (4) The magistrate may issue a summons only if satisfied that—
  - (a) the issue of the summons is necessary to ensure the appearance of the serious offender at the hearing of the application; or
  - (b) the issue of the summons is otherwise justified.
- (5) The magistrate may issue a warrant only if satisfied that—
  - (a) the arrest is necessary to ensure the appearance of the serious offender at the hearing of the application; or
  - (b) the serious offender might destroy evidence that might be obtained by carrying out the forensic procedure; or
  - (c) the issue of the warrant is otherwise justified.

### **77C Procedure at hearing of application for order**

- (1) This section applies if a police officer (the *applicant*) makes an application under section 77 in relation to a serious offender.
- (2) The serious offender must be present at the hearing of the application unless—
  - (a) the serious offender is remanded or otherwise detained in lawful custody in a State and it is not practicable for the serious offender to be present by audiovisual link or audio link; or

*Note 1* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

*Note 2* The *Evidence (Miscellaneous Provisions) Act 1991*, pt 3 applies in relation to the taking of evidence and making of submissions by audiovisual link or audio link from a State. See also the *Magistrates Court Act 1930*, s 311 (Appearance by audiovisual or audio links etc).

- (b) the application (and any summons issued under section 77B (2) (a)) has been served on the serious offender and the serious offender is not present.
- (3) If the serious offender is a child or incapable person, the serious offender must be represented by an interview friend and may also be represented by a lawyer.
- (4) Any other serious offender may be represented by a lawyer.
- (5) The serious offender or his or her representative may—
  - (a) cross-examine the applicant for the order; and
  - (b) with the leave of the magistrate, call or cross-examine any other witnesses; and
  - (c) address the magistrate.
- (6) A magistrate may give leave under subsection (5) (b) only if the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.
- (7) In this section:

***audio link*** means a system of 2-way communication linking different places so that a person speaking at any of them can be heard at the other places.

***audiovisual link*** means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

## Part 7 Criminal Code 2002

### 17 Definitions—*applied provisions* and *default application date* Section 10 (1), definition of *default application date*

*substitute*

*default application date* means 1 July 2017.

### 18 Omissions Section 16 (b)

*substitute*

- (b) the law creating the offence impliedly provides that the offence is committed by an omission to do an act that there is a duty to do under a territory law or a law of a State or the Commonwealth.

*Note* **Law**, of the Territory, includes the common law (see [Legislation Act](#), dict, pt 1).

### 19 Receiving Section 313 (3) (b)

*omit*

original

### 20 Section 314

*substitute*

### 314 Receiving—meaning of *stolen property*

For section 313, property is *stolen property* if it is property obtained in a way that is an appropriation of property under section 304.

## Part 8 Criminal Code Regulation 2005

**21** Definitions—Code, s 10 (1), definition of *default application date*  
**Section 4A**

*omit*

## Part 9 Drugs of Dependence Act 1989

### 22 Possessing prohibited substances Section 171 (1) (a)

*omit*

25g

*substitute*

50g

### 23 Offence notices Section 171A (7), definition of *simple cannabis offence*, paragraph (b)

*omit*

25g

*substitute*

50g

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## Part 10 Firearms Act 1996

### 24 Meaning of *firearm* New section 6 (1) (b) (vi)

*insert*

- (vi) a firearm frame or firearm receiver that does not form part of a firearm.

### 25 Adult firearms licences—genuine reasons to possess or use firearms Table 61, item 2, column 2

*omit*

vermin control on rural land

*substitute*

recreational hunting or vermin control on rural land

### 26 Table 61, item 2, column 3, requirement 2.1

*substitute*

- 2.1 For recreational hunting or vermin control on rural land—
- (a) the applicant has the permission of the owner or occupier of the land to shoot on the land; or
- (b) the applicant—
- (i) is an active member of an approved hunting club; and
  - (ii) intends to use the firearm solely to take part in recreational hunting activities conducted by the club; and
  - (iii) proves that the main objects of the club are to conduct recreational hunting activities requiring the use of the firearm for which the licence is sought; and

- (iv) proves that the club has the permission of the owner or occupier of the land to conduct those activities on the land.

**27 New section 263A**

*insert*

**263A Amnesty concerning firearm frames and receivers**

- (1) A person who, before the commencement day, acquires a firearm frame or firearm receiver that is not registered under Part 7 (Firearms licences) does not commit an offence under division 7.1 (Requirement for licence etc) by possessing or selling the frame or receiver during the amnesty period.
- (2) However, subsection (1) only applies in relation to the acquisition or disposal of the unregistered firearm frame or firearm receiver if—
  - (a) the person acquiring the firearm frame or firearm receiver is a licensed firearms dealer; or
  - (b) the transaction has been arranged through a licensed firearms dealer; or
  - (c) if a licensed firearms dealer is not reasonably available—under the supervision of a police officer authorised by the registrar.
- (3) If a person applies, within the amnesty period for registration of the firearm frame or firearm receiver, the amnesty period is taken to be extended until the registrar tells the person about the decision in relation to the application.
- (4) A person commits an offence if—
  - (a) the amnesty period has ended; and
  - (b) the person has been told that an application for registration mentioned in subsection (3) is refused; and

(c) the person fails to surrender the frame or receiver to a police officer as soon as practicable.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(5) This section expires 1 year after the day it commences.

(6) In this section:

*amnesty period* means the period of 3 months beginning on the commencement day.

*commencement day* means the day the *Crimes Legislation Amendment Act 2013 (No 2)*, section 24 commences.

## **28 Dictionary, definition of *firearm part***

*omit*

frame, receiver,

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 31 October 2013.

**2 Notification**

Notified under the [Legislation Act](#) on 9 December 2013.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Crimes Legislation Amendment Bill 2013 (No 2), which originated in the Legislative Assembly as the Crimes Legislation Amendment Bill 2013 and was passed by the Assembly on 28 November 2013.

Clerk of the Legislative Assembly

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