

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2004

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Crimes Legislation Amendment Bill 2004

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 (1) This Act (other than section 7) commences on the day after its
6 notification day.

7 (2) Section 7 commences on the commencement of the *Nurse*
8 *Practitioners Legislation Amendment Act 2004*, section 22.

9 *Note* The naming and commencement provisions automatically commence on
10 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—

- 1 (i) for the production of child pornography; or
2 (ii) for a pornographic performance; and
3 (b) the child is 12 years old or older.
- 4 Maximum penalty: 1 000 penalty units, imprisonment for 10 years
5 or both.
- 6 (4) Strict liability applies to subsection (3) (b).
7 (5) In this section:
- 8 ***child pornography*** means anything that represents—
9 (a) the sexual parts of a child; or
10 (b) a child engaged in an activity of a sexual nature; or
11 (c) someone else engaged in an activity of a sexual nature in the
12 presence of a child;
13 substantially for the sexual arousal or sexual gratification of
14 someone other than the child.
- 15 ***pornographic performance*** means—
16 (a) a performance by a child engaged in an activity of a sexual
17 nature; or
18 (b) a performance by someone else engaged in an activity of a
19 sexual nature in the presence of a child;
20 substantially for the sexual arousal or sexual gratification of
21 someone other than the child.
- 22 **Examples of activity of a sexual nature**
23 1 sexual intercourse or other explicit sexual activity (whether real or simulated)
24 2 a striptease
- 25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 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).

1	Part 3	Prostitution Act 1992
2	6	Legislation amended—pt 3
3		This part amends the <i>Prostitution Act 1992</i> .
4	7	Section 3A, note 1
5		<i>substitute</i>
6		<i>Note 1 Criminal Code</i>
7		The Criminal Code, ch 2 applies to the following offences against this
8		Act (see Code, pt 2.1):
9		• s 20 (Causing child to provide commercial sexual services etc)
10		• s 26 (Medical tests and examinations).
11		The chapter sets out the general principles of criminal responsibility
12		(including burdens of proof and general defences), and defines terms
13		used for offences to which the Code applies (eg <i>conduct</i> , <i>intention</i> ,
14		<i>recklessness</i> and <i>strict liability</i>).
15	8	Participation of children
16		Section 20
17		<i>substitute</i>
18	20	Causing child to provide commercial sexual services etc
19	(1)	A person commits an offence if—
20	(a)	the person causes, permits, offers or procures a child to provide
21		commercial sexual services; and
22	(b)	the child is under 12 years old.
23		Maximum penalty: 1 500 penalty units, imprisonment for 15 years
24		or both.
25	(2)	Absolute liability applies to subsection (1) (b).

- 1 (3) A person commits an offence if—
- 2 (a) the person causes, permits, offers or procures a child to provide
- 3 commercial sexual services; and
- 4 (b) the child is 12 years old or older.
- 5 Maximum penalty: 1 000 penalty units, imprisonment for 10 years
- 6 or both.
- 7 (4) Strict liability applies to subsection (3) (b).

8 **9 Dictionary, definition of *commercial sexual services***

- 9 *substitute*
- 10 *commercial sexual services* means sexual services provided for
- 11 monetary consideration or any other form of consideration or
- 12 material reward (regardless of whether the consideration or reward
- 13 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 2004.
- 2 **Notification**
Notified under the Legislation Act on 2004.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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