

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2009

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Crimes Legislation Amendment Bill 2009

A Bill for

An Act to amend legislation in relation to criminal proceedings

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

1 **1 Name of Act**

2 This Act is the *Crimes Legislation Amendment Act 2009*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Legislation amended—sch 1**

8 This Act amends the legislation mentioned in schedule 1.

9 **4 Legislation repealed**

10 The following regulations are repealed:

- 11 • *Crimes (Transitional Provisions) Regulation 2009* (SL2009-21)
12 • *Magistrates Court (Transitional Provisions) Regulation 2009*
13 (SL2009-20).

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **Bail Act 1992**

4 **[1.1] Section 25 (9), new definition of *chief executive***

5 *insert*

6 *chief executive* means—

- 7 (a) if section 25A applies in relation to the accused person—the
8 responsible chief executive decided under that section; or
9 (b) in any other case—the chief executive responsible for this Act.

10 **[1.2] New section 25A (3) and (4)**

11 *insert*

- 12 (3) If the responsible chief executive for matters relating to the
13 supervision of an accused person is the chief executive responsible
14 for the *Children and Young People Act 2008*, the accused person
15 must be supervised as a person under 18 years old.
- 16 (4) If the responsible chief executive for matters relating to the
17 supervision of an accused person is the chief executive responsible
18 for this Act, the accused person must be supervised as an adult.

1 **Part 1.2 Court Procedures Act 2004**

2 **[1.3] Section 71 (5) (b)**

3 *omit*

4 the offence

5 *substitute*

6 an offence

7 **[1.4] Section 71 (7), new definition of *victim***

8 *insert*

9 *victim*, of an offence—see the *Crimes (Sentencing) Act 2005*,
10 section 47.

11 **[1.5] Section 72 (4), new definition of *victim***

12 *insert*

13 *victim*, of an offence—see the *Crimes (Sentencing) Act 2005*,
14 section 47.

15 **Part 1.3 Crimes Act 1900**

16 **[1.6] Section 375A (4), examples and note**

17 *omit*

18 **[1.7] New section 600 (2) and (3)**

19 *insert*

20 (2) That part, as in force immediately before the amendments
21 commence, continues to apply to the proceeding.

- 1 (3) For subsection (1), the hearing in a proceeding for an offence has
2 started if—
- 3 (a) the defendant has pleaded guilty to the charge and the court has
4 accepted the plea; or
- 5 (b) the defendant has pleaded not guilty to the charge, or is taken
6 to have pleaded not guilty to the charge under section 375 (6)
7 and the court has begun to take oral or written evidence in the
8 proceeding (other than in relation to bail or any other
9 interlocutory matter).

10 **Part 1.4** **Crimes (Sentence**
11 **Administration) Act 2005**

12 **[1.8] Section 95 (1)**

13 *omit*

14 (other than a young offender)

15 **[1.9] New section 95 (3)**

16 *insert*

17 (3) In this section:

18 *offender*—

19 (a) includes a young offender for whom the chief executive
20 responsible for this Act is responsible in accordance with a
21 decision under section 320F; but

22 (b) does not include any other young offender.

23 **[1.10] Section 96 (1)**

24 *omit*

25 (other than a young offender)

1 **[1.11] New section 96 (3)**

2 *insert*

3 (3) In this section:

4 *offender*—

5 (a) includes a young offender for whom the chief executive
6 responsible for this Act is responsible in accordance with a
7 decision under section 320F; but

8 (b) does not include any other young offender.

9 **[1.12] Section 102 (4) and note**

10 *substitute*

11 (4) In this section:

12 *offender*—

13 (a) includes a young offender for whom the chief executive
14 responsible for this Act is responsible in accordance with a
15 decision under section 320F; but

16 (b) does not include any other young offender.

17 *Note* For other young offenders, see s 320G (Young offenders—breach of
18 good behaviour obligations).

19 **[1.13] Section 320F (2)**

20 *substitute*

21 (2) The chief executive responsible for this Act and the chief executive
22 responsible for the *Children and Young People Act 2008* must
23 decide which of them is to be the administering chief executive for
24 the person.

25 (3) If the administering chief executive is the chief executive
26 responsible for this Act, the person is dealt with under this Act in
27 the same way as an adult offender.

1 (4) If the administering chief executive is the chief executive
2 responsible for the *Children and Young People Act 2008*, the person
3 continues to be dealt with under this Act as a young offender.

4 **[1.14] Section 320G (3), new definition of *young offender***

5 *insert*

6 *young offender* does not include a young offender for whom the
7 chief executive responsible for this Act is responsible in accordance
8 with a decision under section 320F.

9 *Note* Section 102 (Corrections officers to report breach of good behaviour
10 obligations) applies to these young offenders (see s 102 (4)).

11 **Part 1.5 Crimes (Sentencing) Act 2005**

12 **[1.15] Section 133M (2) (a), note**

13 *substitute*

14 *Note* An education and training condition must not be included in the
15 order unless the young offender is convicted or found guilty of
16 the offence (see s 133P).

17 **[1.16] Section 133P heading**

18 *substitute*

19 **133P Education and training conditions—for young offenders**
20 **convicted or found guilty**

21 **[1.17] Section 133Z heading**

22 *substitute*

23 **133Z Accommodation orders—for young offenders convicted**
24 **or found guilty**

1 **Part 1.6 Criminal Code 2002**

2 **[1.18] Section 10 (1), definition of *default application date***

3 *omit*

4 1 July 2009

5 *substitute*

6 1 July 2013

7 **Part 1.7 Criminal Code Regulation 2005**

8 **[1.19] Section 4A**

9 *omit*

10 **Part 1.8 Evidence (Miscellaneous**
11 **Provisions) Act 1991**

12 **[1.20] Section 38C (1) (c) (ii)**

13 *omit*

14 disability

15 *substitute*

16 vulnerability

1 **[1.21] Section 38D**

2 *substitute*

3 **38D Examination of witness by self-represented accused**
4 **person—procedure**

5 (1) This section applies to the complainant or a similar act witness
6 (the *witness*) giving evidence in—

7 (a) a sexual offence proceeding; or

8 (b) a violent offence proceeding in relation to a serious violent
9 offence; or

10 (c) a violent offence proceeding in relation to a less serious violent
11 offence if—

12 (i) the witness is a relevant person in relation to the accused
13 person; or

14 (ii) the court considers that the witness has a vulnerability
15 that affects the witness's ability to give evidence because
16 of the circumstances of the proceeding or the witness's
17 circumstances.

18 **Examples—par (c) (ii)**

19 1 the witness is likely to suffer severe emotional trauma because of the nature
20 of the alleged offence

21 2 the witness is intimidated or distressed because of the witness's relationship
22 to the accused person

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

26 (2) This section also applies to a child or witness with a disability
27 (the *witness*) giving evidence for the prosecution in a sexual or
28 violent offence proceeding.

- 1 (3) The witness must not be examined personally by the accused person
2 but may be examined instead by—
- 3 (a) the accused person’s legal representative; or
- 4 (b) if the accused person does not have a legal representative—a
5 person appointed by the court.
- 6 (4) If the accused person does not have a legal representative, the court
7 must, as soon as practicable, tell the person—
- 8 (a) about the terms of subsection (3); and
- 9 (b) that the person may not adduce evidence from another witness
10 in relation to a fact in issue to contradict the evidence of the
11 witness in relation to the fact if the fact in the other witness’s
12 evidence intended to contradict the witness’s evidence has not
13 been put to the witness in cross-examination.
- 14 (5) A person appointed by the court for subsection (3) (b) may ask the
15 witness only the questions that the accused person asks the person to
16 put to the witness, and must not independently give the accused
17 person legal or other advice.
- 18 *Note 1* If the court considers a question to be harassing, intimidating etc, the
19 court must disallow it or tell the witness that it need not be answered
20 (see *Evidence Act 1995* (Cwlth), s 41 (Improper questions)).
- 21 *Note 2* If the court considers a question to be indecent or scandalous, the court
22 may disallow it unless the question relates to a fact in issue in the
23 proceeding or to matters necessary to be known to determine an issue of
24 fact in the proceeding (see *Evidence Act 1971*, s 59 (Scandalous and
25 insulting questions)).
- 26 (6) If the accused person does not have a legal representative, the court
27 may, if it considers it is in the interests of justice, do 1 or more of
28 the following:
- 29 (a) adjourn the proceeding to enable the person to obtain a legal
30 representative to conduct the examination;

- 1 (b) make—
- 2 (i) an order that the person obtain legal representation; and
- 3 (ii) any other order the court considers necessary to secure
- 4 legal representation for the person.
- 5 (7) If the proceeding is a trial by jury, the court must tell the jury that—
- 6 (a) the accused person may not examine the witness personally;
- 7 and
- 8 (b) obtaining, or being provided with, legal representation to
- 9 examine the witness, or having the accused person's questions
- 10 put to the witness by a person appointed by the court, is a usual
- 11 practice; and
- 12 (c) the jury must not draw any inference against the accused
- 13 person, or give the evidence more or less weight, because the
- 14 examination is not conducted personally by the accused
- 15 person.
- 16 (8) In this section:
- 17 *examine* includes cross-examine and re-examine.
- 18 **[1.22] Section 38E (1) (c) (ii)**
- 19 *omit*
- 20 disability
- 21 *substitute*
- 22 vulnerability

1 **[1.23] Section 39 (1) (c) (ii)**

2 *omit*

3 disability

4 *substitute*

5 vulnerability

6 **[1.24] Section 40M (2)**

7 *substitute*

8 (2) For this section, a person has **authority** in relation to an audiovisual
9 recording only if the person possesses the recording, or does
10 something with the recording, in connection with—

11 (a) the investigation of, or a proceeding for, an offence in relation
12 to which the recording is prepared; or

13 (b) a re-hearing, re-trial or appeal in relation to the proceeding; or

14 (c) another proceeding in which the recording is or may be
15 admitted in evidence under section 40V.

16 **[1.25] Section 40Q heading**

17 *substitute*

18 **40Q Witness may give evidence at pre-trial hearing**

19 **[1.26] New section 40Q (1A)**

20 *before subsection (1), insert*

21 (1A) A witness may give evidence at a pre-trial hearing.

1 **[1.27] Section 40Q (1)**

2 *omit*

3 A witness must give the witness's evidence at a pre-trial hearing

4 *substitute*

5 The evidence must be given

6 **[1.28] Section 40Q (4)**

7 *after*

8 for all purposes

9 *insert*

10 (other than subsection (3))

11 **[1.29] Section 40T (6)**

12 *after*

13 for all purposes

14 *insert*

15 (other than section 40S (4))

16 **[1.30] Section 42 (1) (c) (ii)**

17 *omit*

18 disability

19 *substitute*

20 vulnerability

1 **[1.31] Section 43 (4)**
2 *after*
3 for all purposes
4 *insert*
5 (other than section 40F (3))

6 **[1.32] Section 81D (1)**
7 *omit*
8 disability
9 *substitute*
10 vulnerability

11 **[1.33] New section 150 (2) and (3)**
12 *insert*
13 (2) This Act, as in force immediately before the amendments
14 commence, continues to apply to the proceeding.
15 (3) For subsection (1), the hearing of a proceeding has started if the
16 court has begun to take oral or written evidence in the proceeding
17 (other than in relation to bail or any other interlocutory matter).

1 **Part 1.9** **Magistrates Court Act 1930**

2 **[1.34] Section 90AA (3) (b)**

3 *omit*

4 **[1.35] Section 90AA (8)**

5 *omit*

6 another sexual offence

7 *substitute*

8 another offence

9 **[1.36] Section 94 (a) and (b), except notes**

10 *substitute*

11 (a) if the court is satisfied, having regard to all the evidence before
12 it, that there is no reasonable prospect that the person would be
13 found guilty of an indictable offence—if the person is in
14 custody in relation to the offence, immediately order that the
15 person be released from custody in relation to the offence; or

16 (b) if the court is not satisfied as mentioned in paragraph (a)—
17 commit the person for trial.

18 **[1.37] Section 97 (a)**

19 *omit*

20 the offence

21 *substitute*

22 an indictable offence

23 **[1.38] Section 110 (2)**

24 *omit*

1 **[1.39] New section 110 (8) and (9)**

2 *insert*

- 3 (8) The court must not sentence a defendant to imprisonment for an
4 offence if the court has heard and decided the case under
5 subsection (1) (a) in the absence of the defendant.
- 6 (9) The court must set aside an order made in hearing and deciding a
7 case under subsection (1) (a) if—
- 8 (a) the defendant applies under the rules to have the order set
9 aside; and
- 10 (b) the court is satisfied on reasonable grounds that the
11 defendant—
- 12 (i) did not know the hearing date; or
- 13 (ii) did not understand that the court could proceed to hear
14 and decide the case in the defendant's absence if the
15 defendant failed to appear; or
- 16 (iii) otherwise had a reasonable excuse for failing to appear.

17 **[1.40] Section 451**

18 *substitute*

19 **451 Application of certain other amendments**

- 20 (1) The amendments of part 3.5 (Proceedings for indictable offences)
21 made by the *Crimes Legislation Amendment Act 2008* do not apply
22 in relation to a proceeding if the court has begun to take oral or
23 written evidence in the proceeding before the amendments
24 commence.
- 25 (2) Part 3.5, as in force immediately before the amendments mentioned
26 in subsection (1) commence, continues to apply in relation to the
27 proceeding.

1 (3) The amendments of part 3.10 (Criminal appeals) made by the
2 *Crimes Legislation Amendment Act 2008* do not apply to a
3 proceeding on an appeal if the proceeding has started before the
4 amendments commence.

5 (4) Part 3.10, as in force immediately before the amendments
6 mentioned in subsection (3) commence, continues to apply to the
7 proceeding.

8 **451A Admissibility of certain written statements made before**
9 **commencement day**

10 (1) In this section:

11 *commencement day* means the day the *Crimes Legislation*
12 *Amendment Act 2008*, part 1.11 (Magistrates Court Act 1930)
13 commences.

14 (2) A written statement is not inadmissible only because it does not
15 comply with section 90AA (3) if it—

16 (a) was made before the commencement day; and

17 (b) contains words to the effect of the endorsement set out in
18 section 90AA (3) (a).

19 (3) This section is a law to which the Legislation Act, section 88
20 (Repeal does not end effect of transitional laws etc) applies.

21 **[1.41] Chapter 12**

22 *omit*

1 **Part 1.10 Supreme Court Act 1933**

2 **[1.42] New section 68G**

3 *in part 8, insert*

4 **68G Alternative verdict—summary offence**

5 (1) This section applies if, on the trial of a person for an indictable
6 offence against a territory law—

7 (a) the person is found not guilty of the offence but guilty of
8 another offence that, under that law, is an alternative offence;
9 and

10 (b) the alternative offence is a summary offence.

11 (2) The court may sentence or otherwise deal with the person for the
12 alternative offence.

13 (3) In sentencing or otherwise dealing with the person, the court has the
14 same functions as the Magistrates Court.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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