

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Criminal Proceedings Legislation Amendment Bill 2011

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# **Criminal Proceedings Legislation Amendment Bill 2011**

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## **A Bill for**

An Act to amend legislation about criminal proceedings, and for other purposes

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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 *Criminal Proceedings Legislation Amendment*  
4 *Act 2011*.

5 **2 Commencement**

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

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

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • *Crimes Act 1900*  
12 • *Supreme Court Act 1933*.

13 *Note* This Act also amends other legislation (see sch 1).

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1	<b>Part 2</b>	<b>Crimes Act 1900</b>
2	<b>4</b>	<b>Act of indecency without consent</b>
3		<b>Section 60 (1)</b>
4		<i>omit</i>
5		5 years
6		<i>substitute</i>
7		7 years
8	<b>5</b>	<b>Section 60 (2)</b>
9		<i>omit</i>
10		7 years
11		<i>substitute</i>
12		9 years
13	<b>6</b>	<b>Possessing child pornography</b>
14		<b>Section 65 (1), penalty</b>
15		<i>substitute</i>
16		Maximum penalty: 700 penalty units, imprisonment for 7 years or
17		both.
18	<b>7</b>	<b>Using the internet etc to deprave young people</b>
19		<b>Section 66 (1), penalty, paragraph (a)</b>
20		<i>omit</i>
21		5 years
22		<i>substitute</i>
23		7 years

- 1 **8 Section 66 (2), penalty**
- 2 *substitute*
- 3 Maximum penalty: 700 penalty units, imprisonment for 7 years or
- 4 both.
- 5 **9 Section 66 (6), definition of *pornographic material***
- 6 *substitute*
- 7 ***pornographic material*** means—
- 8 (a) material of a sexual nature that has been, or is likely to be,
- 9 classified R 18+, RC, category 1 restricted or category 2
- 10 restricted; or
- 11 (b) material that has been, or is likely to be, classified X 18+.

1 **Part 3** **Supreme Court Act 1933**

2 **10** **Section 68B**

3 *substitute*

4 **68B** **Trial by judge alone in certain criminal proceedings**

- 5 (1) A criminal proceeding against an accused person for an offence  
6 other than an excluded offence must be tried by a judge alone if—
- 7 (a) the person elects in writing to be tried by a judge alone; and
- 8 (b) the person produces a certificate signed by a legal practitioner  
9 stating that—
- 10 (i) the legal practitioner has advised the person in relation to  
11 the election; and
- 12 (ii) the person has made the election freely; and
- 13 (c) the election and certificate are filed in the court before—
- 14 (i) the court first allocates a date for the person's trial; and
- 15 (ii) the person, or the person's legal representative, knows  
16 the trial judge's identity; and
- 17 (d) if there is more than 1 accused person in the proceeding—
- 18 (i) each other accused person also elects to be tried by a  
19 judge alone; and
- 20 (ii) each other accused person's election is made in relation  
21 to all offences for which that person is to be tried in the  
22 proceeding; and
- 23 (iii) none of the offences for which any other accused person  
24 is to be tried is an excluded offence.

- 1 (2) An accused person who elects to be tried by a judge alone may, at  
2 any time before the person is arraigned, elect to be tried by a jury.
- 3 (3) If an accused person makes and then withdraws an election, the  
4 person may not make another election.
- 5 (4) In this section:
- 6 *excluded offence* means an offence against a provision mentioned in  
7 an item in schedule 2 (Trial by judge alone—excluded offences),  
8 part 2.2, column 3 of an Act mentioned in the item, column 2.

9 **11 Definitions—pt 8A**  
10 **Section 69A, definitions of *ACT court* and *corresponding***  
11 ***court***

- 12 *omit*  
13 schedule 2  
14 *substitute*  
15 schedule 3

16 **12 Section 69H**

- 17 *substitute*

18 **69H Amendment of sch 3**

- 19 A regulation may amend schedule 3.



**13 New schedule 2***insert***Schedule 2 Trial by judge alone—excluded offences**

(see s 68B (4))

**Part 2.1 Definitions—sch 2****2.1 Definitions—sch 2**

In this schedule:

*Crimes Act* means the *Crimes Act 1900*.*Prostitution Act* means the *Prostitution Act 1992*.*Radiation Act* means the *Radiation Protection Act 2006*.

*Note* A reference to an offence against an ACT law includes a reference to an offence against the Criminal Code, pt 2.4 (Extensions of criminal responsibility) and s 717 (Accessory after the fact) that relates to the ACT law (see Legislation Act, s 189).

**Part 2.2 Excluded offences**

column 1 item	column 2 legislation	column 3 provision and case (if any)	column 4 description
1	Crimes Act	12	murder
2	Crimes Act	15	manslaughter
3	Crimes Act	17	suicide—aiding etc
4	Crimes Act	29 (2) or (3)	culpable driving of motor vehicle causing death
5	Crimes Act	42	child destruction
6	Crimes Act	49C	industrial manslaughter—employer offence

**Part 3** Supreme Court Act 1933

Section 13

<b>column 1 item</b>	<b>column 2 legislation</b>	<b>column 3 provision and case (if any)</b>	<b>column 4 description</b>
7	Crimes Act	49D	industrial manslaughter—senior officer offence
8	Crimes Act	51	sexual assault in the first degree
9	Crimes Act	52	sexual assault in the second degree
10	Crimes Act	53	sexual assault in the third degree
11	Crimes Act	54	sexual intercourse without consent
12	Crimes Act	55	sexual intercourse with young person
13	Crimes Act	56	maintaining sexual relationship with young person
14	Crimes Act	57	act of indecency in the first degree
15	Crimes Act	58	act of indecency in the second degree
16	Crimes Act	59	act of indecency in the third degree
17	Crimes Act	60	act of indecency without consent
18	Crimes Act	61	acts of indecency with young people
19	Crimes Act	62	incest and similar offences
20	Crimes Act	63	abduction (for sexual purposes)
21	Crimes Act	63A	bestiality
22	Crimes Act	64	using child for production of child pornography etc
23	Crimes Act	64A	trading in child pornography
24	Crimes Act	65	possessing child pornography
25	Crimes Act	66	using the internet etc to deprave young people
26	Crimes Act	74	prohibition of female genital mutilation
27	Crimes Act	75	removal of child from ACT for genital mutilation
28	Crimes Act	79	sexual servitude offences
29	Crimes Act	80	deceptive recruiting for sexual services
30	Prostitution Act	20	causing child to provide commercial sexual services etc
31	Prostitution Act	21	receiving proceeds of child prostitution

column 1 item	column 2 legislation	column 3 provision and case (if any)	column 4 description
32	Radiation Act	55, if failure causes death	failure to comply with safety duty causing death

1 **14 Schedule 2 heading**

2 *substitute*

3 **Schedule 3 ACT and corresponding courts**

1 **Schedule 1** Consequential amendment

2 (see s 3)

3 **Part 1.1** Court Procedures Rules 2006

4 **[1.1]** Rule 4733 (b), note 1

5 *substitute*

6 *Note 1* See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in  
7 certain criminal proceedings).

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**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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