

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2012 (No 2)

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Crimes Act 1900	
4	Section 35A	3
5	Meaning of <i>sexual intercourse</i> in pt 3 Section 50 (1), definition of <i>sexual intercourse</i> , paragraphs (a) and (b)	3
6	Section 50 (1), new paragraph (ca)	4

J2012-697

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	Page
7	Section 50 (1) (e) 4
8	Section 50 (2), new definition of <i>female person</i> 4
9	New section 55A 4
10	New section 61A 7
11	Alternative verdicts for certain sexual offences New section 70 (6) 8
12	Indictment for act of indecency Section 72 9
13	Destroying or damaging property Section 116 (3) 9
14	Summary disposal of certain cases Section 375 (1) (c) 10
15	New section 375 (4A) 10
Part 3	Crimes (Child Sex Offenders) Act 2005
16	Schedule 1, part 1.1, new item 10A 11
17	Schedule 2, part 2.1, new item 4A 11
Part 4	Crimes (Sentencing) Act 2005
18	Sentencing—relevant considerations New section 33 (1) (wa) 12
19	Sentencing—irrelevant considerations New section 34 (1) (fa) 12
20	Pre-sentence report matters New section 40A (ja) 12
21	New section 40B 13
22	Victim impact statements—use in court New section 52 (3) and (4) 14
Part 5	Criminal Code 2002
23	New section 612A 15
24	Sections 613 and 614 15
25	New section 614A 15
26	Sections 620 and 621 16
27	Participating in a criminal group—causing harm New section 653 (3) and (4) 17

		Page
28	Participating in a criminal group—property damage Section 654 (1), new note	17
29	Section 654 (3)	17
30	Section 654 (4), definition of <i>threat</i>	17
Part 6	Domestic Violence and Protection Orders Act 2008	
31	Schedule 1, table 1.2, new item 27A	18
32	Schedule 1, table 1.2, new item 32A	18
Part 7	Evidence (Miscellaneous Provisions) Act 1991	
33	Meaning of <i>witness</i> —div 4.2A Section 40D (1)	19
34	Section 40D (1) (a)	19
35	Meaning of <i>witness</i> —div 4.2B Section 40P (1) (a)	19
36	New section 43A	20
Part 8	Firearms Act 1996	
37	Adult firearms licences—genuine reasons to possess or use firearms Table 61, item 2	22
38	Regulation-making power Section 272 (2) (a)	22
Part 9	Magistrates Court Act 1930	
39	Appeals to which div 3.10.2 applies New section 208 (1) (g)	23
40	Jurisdiction of Childrens Court New section 288 (1) (e)	23
41	Section 289 heading	23
42	Section 289 (1) and (2)	24
Part 10	Prostitution Act 1992	
43	Schedule 1, new item 14A	25
44	Schedule 1, new item 19A	25

		Page
Part 11	Supreme Court Act 1933	
45	Schedule 2, part 2.2, new item 12A	26
46	Schedule 2, part 2.2, new item 18A	26

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2012 (No 2)

A Bill for

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

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

J2012-697

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1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes Legislation Amendment Act 2012 (No 2)*.

4 **2 Commencement**

5 This Act commences on the 7th day after its notification day.

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

8 **3 Legislation amended**

9 This Act amends the following legislation:

- 10 • *Crimes Act 1900*
- 11 • *Crimes (Child Sex Offenders) Act 2005*
- 12 • *Crimes (Sentencing) Act 2005*
- 13 • *Criminal Code 2002*
- 14 • *Domestic Violence and Protection Orders Act 2008*
- 15 • *Evidence (Miscellaneous Provisions) Act 1991*
- 16 • *Firearms Act 1996*
- 17 • *Magistrates Court Act 1930*
- 18 • *Prostitution Act 1992*
- 19 • *Supreme Court Act 1933*.

1 **Part 2** **Crimes Act 1900**

2 **4** **Section 35A**

3 *substitute*

4 **35A** **Affray**

5 (1) A person commits an offence if—

6 (a) the person engages in conduct; and

7 (b) the conduct is violence or the threat of violence; and

8 (c) the violence or threat is directed towards someone else; and

9 (d) the violence or threat would be likely to cause a reasonable
10 person to fear for his or her safety.

11 Maximum penalty: imprisonment for 2 years.

12 (2) For subsection (1) (b), the violence, or the threat of violence, must
13 involve more than words.

14 (3) In this section:

15 *engage in conduct*—see the [Criminal Code](#), section 13.

16 **5** **Meaning of *sexual intercourse* in pt 3**
17 **Section 50 (1), definition of *sexual intercourse*,**
18 **paragraphs (a) and (b)**

19 *omit*

20 the vagina or anus of a person

21 *substitute*

22 the genitalia of a female person or the anus of any person

1 **6 Section 50 (1), new paragraph (ca)**

2 *insert*

3 (ca) fellatio; or

4 **7 Section 50 (1) (e)**

5 *after*

6 (c)

7 *insert*

8 , (ca)

9 **8 Section 50 (2), new definition of *female person***

10 *insert*

11 *female person* includes a transsexual person with a surgically
12 constructed vagina.

13 **9 New section 55A**

14 *insert*

15 **55A Sexual intercourse with young person under special care**

16 (1) A person commits an offence if—

17 (a) the person engages in sexual intercourse with a young person;
18 and

19 (b) the young person is under the person's special care.

20 Maximum penalty: imprisonment for 10 years.

21 *Note* A reference to an offence includes a reference to a related ancillary
22 offence, eg attempt (see [Legislation Act](#), s 189).

- 1 (2) Without limiting subsection (1), a young person is under a person's
2 special care if—
- 3 (a) the person is a teacher at a school, or a person with
4 responsibility for students at a school, and the young person is
5 a student at the school; or
- 6 (b) the person is a step-parent, foster carer or legal guardian of the
7 young person; or
- 8 (c) the person provides religious instruction to the young person;
9 or
- 10 (d) the person is the young person's employer; or
- 11 (e) the person is the young person's sports coach; or
- 12 (f) the person provides professional counselling to the young
13 person; or
- 14 (g) the person is a health professional and the young person is the
15 person's patient; or
- 16 (h) the person is a custodial officer and the young person is a
17 young detainee in the officer's care, custody or control.
- 18 (3) Subsection (1) does not apply to a person if the person—
- 19 (a) was married to the young person at the time of the alleged
20 offence; or
- 21 (b) is not more than 2 years older than the young person.
- 22 *Note* The defendant has an evidential burden in relation to the matters
23 mentioned in s (3) (see [Criminal Code](#), s 58).
- 24 (4) It is a defence to a prosecution for an offence against subsection (1)
25 if the defendant proves that the defendant believed on reasonable
26 grounds that the young person was at least 18 years old.
- 27 *Note* The defendant has a legal burden in relation to the matters mentioned in
28 s (4) (see [Criminal Code](#), s 59).

- 1 (5) In this section:
- 2 **custodial officer** means—
- 3 (a) a police officer; or
- 4 (b) a corrections officer; or
- 5 (c) a youth detention officer under the *Children and Young People*
- 6 *Act 2008*, section 96; or
- 7 (d) a transfer escort under the *Children and Young People*
- 8 *Act 2008*, section 114; or
- 9 (e) a prison officer under the *Crimes (Sentence Administration)*
- 10 *Act 2005*, section 217.
- 11 **employer**, of a young person, includes someone authorised to—
- 12 (a) decide or vary the terms of the young person’s employment; or
- 13 (b) end the young person’s employment.
- 14 **health professional** includes—
- 15 (a) a health practitioner; and
- 16 (b) a registered health professional under the *Health Professionals*
- 17 *Act 2004*; and
- 18 (c) someone providing a health service.
- 19 **health service**—see the *Human Rights Commission Act 2005*,
- 20 section 7.
- 21 **young detainee**—see the *Children and Young People Act 2008*,
- 22 section 95.
- 23 **young person** means a person who is at least 16 years old, but not
- 24 yet an adult.
- 25 *Note* **Adult**—see the *Legislation Act*, dictionary, pt 1.

10 New section 61A

insert

61A Act of indecency with young person under special care

(1) A person commits an offence if—

- (a) the person commits an act of indecency on, or in the presence of, a young person; and
- (b) the young person is under the person's special care.

Maximum penalty: imprisonment for 7 years.

Note A reference to an offence includes a reference to a related ancillary offence, eg attempt (see [Legislation Act](#), s 189).

(2) Without limiting subsection (1), a young person is under a person's special care if—

- (a) the person is a teacher at a school, or a person with responsibility for students at a school, and the young person is a student at the school; or
- (b) the person is a parent, grandparent, step-parent, foster carer or legal guardian of the young person; or
- (c) the person provides religious instruction to the young person; or
- (d) the person is the young person's employer; or
- (e) the person is the young person's sports coach; or
- (f) the person provides professional counselling to the young person; or
- (g) the person is a health professional and the young person is the person's patient; or
- (h) the person is a custodial officer and the young person is a young detainee in the officer's care, custody or control.

- 1 (3) Subsection (1) does not apply to a person if the person—
2 (a) was married to the young person at the time of the alleged
3 offence; or
4 (b) is not more than 2 years older than the young person.

5 *Note* The defendant has an evidential burden in relation to the matters
6 mentioned in s (3) (see [Criminal Code](#), s 58).

- 7 (4) It is a defence to a prosecution for an offence against subsection (1)
8 if the defendant proves that the defendant believed on reasonable
9 grounds that the young person was at least 18 years old.

10 *Note* The defendant has a legal burden in relation to the matters mentioned in
11 s (4) (see [Criminal Code](#), s 59).

- 12 (5) In this section:

13 *custodial officer*—see section 55A (5).

14 *employer*, of a young person—see section 55A (5).

15 *health professional*—see section 55A (5).

16 *young detainee*—see the [Children and Young People Act 2008](#),
17 section 95.

18 *young person*—see section 55A (5).

19 **11 Alternative verdicts for certain sexual offences**
20 **New section 70 (6)**

21 *insert*

- 22 (6) If, on the trial of a person for an offence against section 55A (1), the
23 jury is not satisfied that the accused is guilty of the offence but is
24 satisfied that the accused is guilty of an offence against
25 section 61A (1), the jury may find the accused not guilty of the
26 offence charged but guilty of an offence against section 61A (1).

1 **12 Indictment for act of indecency**
2 **Section 72**

3 *omit*

4 section 60 or 61

5 *substitute*

6 section 60, 61 or 61A

7 **13 Destroying or damaging property**
8 **Section 116 (3)**

9 *substitute*

10 (3) A person commits an offence if—

11 (a) the person destroys or causes damage to property, other than
12 by fire or explosive; and

13 (b) the property belongs to—

14 (i) someone else; or

15 (ii) the person and someone else; and

16 (c) the person intends to destroy or cause damage, or is reckless
17 about destroying or causing damage, to the property; and

18 (d) the damage to the property does not exceed \$5 000.

19 Maximum penalty: 50 penalty units, imprisonment for 2 years or
20 both.

21 *Note* The defence of lawful authority applies in relation to the offence under
22 s (3) (see [Criminal Code](#), s 43).

1 **14 Summary disposal of certain cases**
2 **Section 375 (1) (c)**

3 *substitute*

4 (c) an offence against the [Criminal Code](#), section 310 (Aggravated
5 robbery), section 311 (1) (b) (Burglary) or section 312
6 (Aggravated burglary).

7 *Note* Under the [Criminal Code](#), s 311 (1) (b), a person commits an
8 offence if the person enters or remains in a building as a
9 trespasser with intent to commit an offence that involves causing
10 harm, or threatening to cause harm, to anyone in the building.

11 **15 New section 375 (4A)**

12 *insert*

13 (4A) To remove any doubt, for subsection (4) (b), property does not
14 include real property or any building at which the offence charged
15 was allegedly committed.

1 **Part 3** **Crimes (Child Sex Offenders)**
 2 **Act 2005**

3 **16** **Schedule 1, part 1.1, new item 10A**

4 *insert*

10A	<i>Crimes Act 1900</i> , section 55A (1)	sexual intercourse with young person under special care	
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5 **17** **Schedule 2, part 2.1, new item 4A**

6 *insert*

4A	<i>Crimes Act 1900</i> , section 61A (1)	act of indecency with young person under special care	
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1 **Part 4 Crimes (Sentencing) Act 2005**

2 **18 Sentencing—relevant considerations**
3 **New section 33 (1) (wa)**

4 *insert*

5 (wa) if the offender has complied with an order for assessment,
6 treatment, referral or monitoring by the court alcohol and drug
7 assessment service under section 40B (2)—that fact;

8 **19 Sentencing—irrelevant considerations**
9 **New section 34 (1) (fa)**

10 *insert*

11 (fa) that the offender did not comply with an order for assessment,
12 treatment, referral or monitoring by the court alcohol and drug
13 assessment service under section 40B (2);

14 **20 Pre-sentence report matters**
15 **New section 40A (ja)**

16 *insert*

17 (ja) whether the offender—
18 (i) is addicted to, or misuses, alcohol or a controlled drug;
19 and
20 (ii) has been assessed, treated or monitored by the court
21 alcohol and drug assessment service under section 40B;

21 New section 40B*insert***40B Pre-sentence report matters—court alcohol and drug assessment service**

- (1) This section applies if the offender is addicted to, or misuses, alcohol or a controlled drug.
- (2) Before sentencing the offender, a court may order that the offender—
 - (a) be assessed by the court alcohol and drug assessment service (*CADAS*); and
 - (b) comply with any treatment, referral to treatment or monitoring by *CADAS* as a result of the assessment.
- (3) A court must not make an order under subsection (2) without the offender's consent.
- (4) In making an order under subsection (2), the court may also order that the offender comply with any reasonable direction given by the director-general of the administrative unit responsible for the administration of the *Corrections Management Act 2007* in relation to the assessment, treatment, referral or monitoring.
- (5) If the court makes an order under subsection (2), the court may make an order requiring a clinician from *CADAS* to appear before the court at the time and place stated in the order for the sentencing of the offender.

- 1 **22** **Victim impact statements—use in court**
2 **New section 52 (3) and (4)**
- 3 *insert*
- 4 (3) The court must allow the statement to be read out in court if the
5 maker of the statement wishes the statement to be given to the court
6 in that way.
- 7 (4) If the maker of the statement wishes, a statement may be read out by
8 audiovisual link if the maker of the statement was eligible to give
9 evidence in the proceeding to which the statement relates by
10 audiovisual link under the *Evidence (Miscellaneous Provisions)*
11 *Act 1991*—
- 12 (a) part 2 (Evidence of children); or
- 13 (b) part 4 (Evidence in sexual and violent offence proceedings).

Part 5 Criminal Code 2002

23 New section 612A

insert

612A Possessing offence—presumption if controlled precursor possessed to manufacture controlled drug

- (1) This section applies if, in a prosecution for an offence against section 612 (5) (Possessing controlled precursor), it is proved that the defendant possessed a controlled precursor with the intention of using any of it to manufacture a controlled drug.
- (2) It is presumed, unless the contrary is proved, that the defendant had the intention or belief about the sale of the drug required for the offence.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see s 59).

24 Sections 613 and 614

omit

containing instructions

substitute

containing instructions,

25 New section 614A

in part 6.3, insert

614A Possessing tablet press

- (1) A person commits an offence if—
- (a) the person possesses a thing; and
 - (b) the thing is a tablet press; and

1 (c) the person is reckless about whether the thing is a tablet press.
2 Maximum penalty: 200 penalty units, imprisonment for 2 years or
3 both.

4 (2) Subsection (1) does not apply to a person if the person has a
5 reasonable excuse for possessing the tablet press.

6 **Examples—reasonable excuse**

- 7 1 to manufacture a regulated substance in accordance with authorisation under
8 the *Medicines, Poisons and Therapeutic Goods Act 2008*
9 2 to supply a regulated therapeutic good in accordance with authorisation
10 under the *Medicines, Poisons and Therapeutic Goods Act 2008*
11 3 to give the tablet press to a person authorised under the *Medicines, Poisons*
12 *and Therapeutic Goods Act 2008* to manufacture a regulated substance or to
13 supply a regulated therapeutic good

14 *Note 1* The defendant has an evidential burden in relation to the matters
15 mentioned in s (2) (see s 58).

16 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 [Legislation Act](#), s 126 and s 132).

19 (3) In this section:

20 *tablet press* means an instrument or machine that may be used to
21 manufacture a controlled drug in tablet form.

22 **26 Sections 620 and 621**

23 *omit*

24 containing instructions

25 *substitute*

26 containing instructions,

1 **27 Participating in a criminal group—causing harm**
2 **New section 653 (3) and (4)**

3 *insert*

4 (3) In the prosecution of an offence against subsection (2), it is not
5 necessary to prove that the person threatened actually feared that the
6 threat would be carried out.

7 (4) In this section:

8 *threat* includes the meaning given by section 402.

9 *Note* For further definition of *threat*, see the dictionary.

10 **28 Participating in a criminal group—property damage**
11 **Section 654 (1), new note**

12 *insert*

13 *Note* The fault element of recklessness can be satisfied by proof of intention,
14 knowledge or recklessness (see s 20 (4)).

15 **29 Section 654 (3)**

16 *after*

17 carried

18 *insert*

19 out

20 **30 Section 654 (4), definition of *threat***

21 *substitute*

22 *threat* includes the meaning given by section 402.

23 *Note* For further definition of *threat*, see the dictionary.

1 **Part 6** **Domestic Violence and**
2 **Protection Orders Act 2008**

3 **31** **Schedule 1, table 1.2, new item 27A**

4 *insert*
27A [Crimes Act](#) 55A sexual intercourse with young person
under special care

5 **32** **Schedule 1, table 1.2, new item 32A**

6 *insert*
32A [Crimes Act](#) 61A act of indecency with young person under
special care

1 **Part 7** **Evidence (Miscellaneous**
2 **Provisions) Act 1991**

3 **33** **Meaning of *witness*—div 4.2A**
4 **Section 40D (1)**

5 *omit*

6 the complainant

7 *substitute*

8 a witness

9 **34** **Section 40D (1) (a)**

10 *after*

11 child

12 *insert*

13 on the day an audiovisual recording is made

14 **35** **Meaning of *witness*—div 4.2B**
15 **Section 40P (1) (a)**

16 *after*

17 child

18 *insert*

19 on the day the proceeding started in the Magistrates Court

36 **New section 43A***insert***43A** **Recording evidence given by audiovisual link in sexual offence proceedings**

- (1) This section applies if—
 - (a) a complainant or similar act witness gives evidence in a proceeding by audiovisual link under section 43; and
 - (b) the proceeding is a sexual offence proceeding.
- (2) The complainant's or similar act witness's evidence given by audiovisual link must be recorded as an audiovisual recording.
- (3) The recording is admissible as the complainant's or similar act witness's evidence in a related proceeding unless the court in the related proceeding otherwise orders.
- (4) However, the court in the related proceeding may—
 - (a) refuse to admit any part of the recording in evidence; and
 - (b) if the court refuses to admit part of the recording in evidence—order that the part that is not admitted be deleted from the recording.
- (5) A party to a related proceeding may apply to the court for an order that the complainant or similar act witness attend the hearing to give further evidence.
- (6) The court must not make the order unless satisfied that—
 - (a) the applicant has become aware of something that the applicant did not know or could not reasonably have known when the recording was made; and
 - (b) if the complainant or similar act witness had given evidence in person at the hearing, the complainant or similar act witness could be recalled; and

- 1 (c) it is in the interests of justice to make the order.
- 2 (7) In this section:
- 3 ***related proceeding***, in relation to the proceeding in which the
4 evidence given by audiovisual link was recorded, means—
- 5 (a) a re-hearing or re-trial of, or appeal from, the hearing of the
6 proceeding; or
- 7 (b) another proceeding in the same court as the proceeding for the
8 offence, or another offence arising from the same, or the same
9 set of, circumstances; or
- 10 (c) a civil proceeding arising from the offence.

1 **Part 8 Firearms Act 1996**

2 **37 Adult firearms licences—genuine reasons to possess or**
3 **use firearms**
4 **Table 61, item 2**

5 *substitute*

2	vermin control on rural land	2.1 For vermin control on rural land—the applicant has the permission of the owner or occupier of the land to shoot vermin on the land. 2.2 For vermin control on land within a reserved area under the <i>Nature Conservation Act 1980</i> —the applicant has the permission of an officer of the ACT Parks and Conservation Service or ACT Forests or another authority prescribed by regulation, to shoot vermin on the land.
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6 **38 Regulation-making power**
7 **Section 272 (2) (a)**

8 *before*

9 acquisition

10 *insert*

11 manufacture,

Part 9 Magistrates Court Act 1930

39 Appeals to which div 3.10.2 applies New section 208 (1) (g)

insert

- (g) an appeal from an order of the court to disqualify a person from holding or obtaining a driver licence under an automatic disqualification provision under the *Road Transport (General) Act 1999*, division 4.2 (Licence suspension, disqualification and related matters), if the order is for a longer period than the minimum.

Note Automatic disqualification provision—see the *Road Transport (General) Act 1999*, s 61A.

40 Jurisdiction of Childrens Court New section 288 (1) (e)

insert

- (e) if a child and an adult are jointly charged with an offence—the proceeding against the child and the proceeding against the adult that arise out of the charge.

41 Section 289 heading

substitute

289 Procedure for proceedings where children jointly charged with adults

42 Section 289 (1) and (2)

1

substitute

2

3

- (1) If section 288 (1) (e) applies, a magistrate may, considering the nature of the alleged offence and the time and expense involved in carrying out hearings for the offence separately, order that the hearing for the offence against the child and the adult be heard together.

4

5

6

7

8

Note Section 288 (1) (e) applies if a child and an adult are jointly charged with an offence.

9

10

- (2) Subsection (1) does not affect the operation of the *Court Procedures Act 2004*, part 7A (Procedural provisions—proceedings involving children or young people) in relation to the child.

11

12

1 **Part 10** **Prostitution Act 1992**

2 **43** **Schedule 1, new item 14A**

3 *insert*

14A	55A	sexual intercourse with young person under special care
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4 **44** **Schedule 1, new item 19A**

5 *insert*

19A	61A	act of indecency with young person under special care
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1 **Part 11** **Supreme Court Act 1933**

2 **45** **Schedule 2, part 2.2, new item 12A**

3 *insert*

12A	Crimes Act	55A	sexual intercourse with young person under special care
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4 **46** **Schedule 2, part 2.2, new item 18A**

5 *insert*

18A	Crimes Act	61A	act of indecency with young person under special care
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 November 2012.

2 Notification

Notified under the [Legislation Act](#) on 2012.

3 Republications of amended laws

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

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