

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2014

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Crimes Legislation Amendment Bill 2014

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes Legislation Amendment Act 2014*.

4 **2 Commencement**

5 (1) This Act (other than section 32) commences on the day after its
6 notification day.

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

9 (2) Section 32 commences 3 months after this Act's notification day.

10 **3 Legislation amended**

11 This Act amends the following legislation:

- 12 • [Children and Young People Act 2008](#)
- 13 • [Crimes Act 1900](#)
- 14 • [Crimes \(Forensic Procedures\) Act 2000](#)
- 15 • [Crimes \(Sentence Administration\) Act 2005](#)
- 16 • [Crimes \(Sentencing\) Act 2005](#)
- 17 • [Crimes \(Surveillance Devices\) Act 2010](#)
- 18 • [Criminal Code 2002](#)
- 19 • [Firearms Act 1996](#)
- 20 • [Prohibited Weapons Act 1996](#).

1 **Part 2** **Children and Young People**
2 **Act 2008**

3 **4 Orders to bring young detainee before court etc**
4 **Section 102 (2), new note**

5 *insert*

6 *Note* A court may also order the director-general to bring a young detainee
7 before the court in a civil proceeding if the young detainee consents
8 (see s 876A).

9 **5 New section 876A**

10 *insert*

11 **876A Power of court to bring young detainee before it—civil**
12 **proceeding**

13 (1) For a civil proceeding, a court may order the director-general to
14 bring a young detainee in a detention place before the court, if the
15 young detainee consents, and to return the young detainee to the
16 detention place in accordance with the order.

17 (2) In this section:

18 *civil proceeding*—see the *Evidence Act 2011*, dictionary, part 1.

19 *court* includes the ACAT.

1 (b) did not know, and could not reasonably be expected to have
2 known, that the observing or capturing of visual data of the
3 other person was without consent.

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

6 (5) A person (the *offender*) commits an offence if—

7 (a) the offender observes with the aid of a device or captures
8 visual data of—

9 (i) another person’s genital or anal region; or

10 (ii) for a female or a transgender or intersex person who
11 identifies as a female—the breasts; and

12 **Example**

13 using a mobile phone to take photos of a woman’s underwear under her
14 skirt or down the front of her blouse

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

18 (b) a reasonable person would, in all the circumstances, consider
19 the observing or capturing of visual data to be an invasion of
20 privacy.

21 Maximum penalty: 200 penalty units, imprisonment for 2 years or
22 both.

23 (6) Strict liability applies to subsection (5) (b).

24 (7) It is a defence to a prosecution for an offence against subsection (5)
25 if the defendant proves that the defendant—

26 (a) believed on reasonable grounds that the other person consented
27 to the defendant observing or capturing visual data of the other
28 person’s genital or anal region or breasts; or

- 1 (b) did not know, and could not reasonably be expected to have
2 known, that the observing or capturing of visual data of the
3 other person's genital or anal region or breasts was without
4 consent.
- 5 *Note* The defendant has a legal burden in relation to the matters mentioned in
6 s (7) (see [Criminal Code](#), s 59).
- 7 (8) Subsections (1) and (5) do not apply to—
- 8 (a) an observation made by viewing data that was previously
9 captured; or
- 10 (b) an observation or capturing of visual data—
- 11 (i) by a law enforcement officer acting reasonably in the
12 performance of the officer's duty; or
- 13 (ii) by a licensed security provider acting reasonably in
14 carrying on a security activity authorised under the
15 security provider's licence; or
- 16 (iii) of a child or other person incapable of giving consent in
17 circumstances in which a reasonable person would regard
18 the observing or capturing of visual data as acceptable; or
- 19 **Example**
20 taking a photograph or movie of a naked newborn relative
- 21 (iv) for a scientific, medical or educational purpose; or
- 22 **Example**
23 a patient consents to her doctor taking an image of a mole on her
24 breast for the purpose of showing another doctor for a second
25 opinion about the mole
- 26 (v) by a person in the course of reasonably protecting
27 premises owned by the person; or
- 28 (vi) in circumstances or for a purpose prescribed by
29 regulation.

- 1 (9) Nothing in subsection (8) prevents a person being found guilty of an
2 offence under or because of the [Criminal Code](#), part 2.4 (Extensions
3 of criminal responsibility).
- 4 (10) In this section:
- 5 ***breasts***, of a female or a transgender or intersex person who
6 identifies as a female, means the person's breasts whether covered
7 by underwear or bare.
- 8 ***capture visual data***—a person ***captures visual data*** of another
9 person if the person captures moving or still images of the other
10 person by a camera or any other means in such a way that—
- 11 (a) a recording is made of the images; or
- 12 (b) the images are capable of being transmitted in real time with or
13 without retention or storage in a physical or electronic form; or
- 14 (c) the images are otherwise capable of being distributed.
- 15 ***device*** does not include spectacles, contact lenses or a similar device
16 when used by someone with impaired sight to overcome the
17 impairment.
- 18 ***genital or anal region***, of a person, means the person's genital or
19 anal region whether covered by underwear or bare.
- 20 ***law enforcement officer*** means—
- 21 (a) a police officer; or
- 22 (b) a member of the staff of the Australian Crime Commission
23 established by the [Australian Crime Commission Act 2002](#)
24 (Cwlth).
- 25 ***licensed security provider*** means a person who holds a licence
26 under the [Security Industry Act 2003](#).
- 27 ***security activity***—see the [Security Industry Act 2003](#), section 7.

1 **Part 4** **Crimes (Forensic Procedures)**
2 **Act 2000**

3 **8 Interview friend**
4 **Section 16 (1)**

5 *substitute*

- 6 (1) This section applies to a suspect, serious offender or volunteer who
7 is—
8 (a) a child; or
9 (b) an incapable person; or
10 (c) an Aboriginal or Torres Strait Islander person.

11 **9 Securing the presence of suspects at hearings—suspect**
12 **not in custody**
13 **Section 37 (1)**

14 *substitute*

- 15 (1) If the suspect is not in custody, the Magistrates Court may, on the
16 application of a police officer, issue—
17 (a) a summons for the appearance of the suspect at the hearing of
18 the application; or
19 (b) a warrant for the arrest of the suspect to bring the suspect
20 before the court for the hearing of the application.

21 **10 Section 37 (3) and (4)**

22 *omit*

23 magistrate

24 *substitute*

25 Magistrates Court

- 1 **11 Procedure at hearing of application for order**
2 **Section 38 (3)**
- 3 *omit*
4 or incapable person
5 *substitute*
6 , incapable person or Aboriginal or Torres Strait Islander person
- 7 **12 Action to be taken on making of orders**
8 **Section 39 (1) (d)**
- 9 *omit*
10 or incapable person
11 *substitute*
12 , incapable person or Aboriginal or Torres Strait Islander person
- 13 **13 Applications for interim orders**
14 **Section 42 (5)**
- 15 *omit*
16 or incapable person
17 *substitute*
18 , incapable person or Aboriginal or Torres Strait Islander person

1 **14 Rules for carrying out forensic procedures—transgender**
2 **and intersex people**
3 **Section 49B (3)**

4 *omit*
5 or incapable person
6 *substitute*
7 , incapable person or Aboriginal or Torres Strait Islander person

8 **15 Section 54**

9 *substitute*

10 **54 Sex of person carrying out or helping carry out forensic**
11 **procedures**

- 12 (1) If a forensic procedure is to be carried out on a relevant person, the
13 person carrying it out, and anyone asked under section 55 to help
14 carry it out, must, if practicable, be of the same sex as the relevant
15 person.
- 16 (2) Subsection (1) does not apply—
- 17 (a) to the taking of a handprint, fingerprint, footprint or toeprint; or
18 (b) to any other non-intimate forensic procedure that may be
19 carried out without—
- 20 (i) touching the relevant person; or
21 (ii) requiring the relevant person to remove any clothing
22 (other than his or her overcoat, coat, jacket, gloves,
23 socks, shoes and hat); or
- 24 (c) if the relevant person consents to a person other than a person
25 of the same sex as the relevant person carrying out, or helping
26 to carry out, the forensic procedure.

- 1 (3) If the person on whom a forensic procedure is to be carried out is a
2 volunteer—
- 3 (a) the volunteer may ask that a person other than a person of the
4 same sex as the volunteer carry out, or help carry out, the
5 procedure; and
- 6 (b) if practicable, any such request must be complied with, despite
7 subsection (1).
- 8 (4) However, if the relevant person is a child—
- 9 (a) the person carrying out the forensic procedure must ask the
10 child, before the procedure is carried out, if the child wants a
11 person of a particular sex to carry out, or help carry out, the
12 procedure; and
- 13 (b) if the child asks for a person of a particular sex to carry out, or
14 help carry out, the forensic procedure, a person of that sex
15 must, if practicable, carry out, or help carry out, the procedure.

16 **16 Presence of interview friend or lawyer while forensic**
17 **procedure is carried out**
18 **Section 57 (1) and (3)**

- 19 *omit*
- 20 or incapable person
- 21 *substitute*
- 22 , incapable person or Aboriginal or Torres Strait Islander person

1 **17 Securing the presence of serious offender at hearing—**
2 **offender in custody**
3 **Section 77A (2)**

4 *omit*

5 A magistrate

6 *substitute*

7 The Magistrates Court

8 **18 Securing the presence of serious offender at hearing—**
9 **offender not in custody**
10 **Section 77B (2)**

11 *omit*

12 A magistrate

13 *substitute*

14 The Magistrates Court

15 **19 Section 77B (4) and (5)**

16 *omit*

17 magistrate

18 *substitute*

19 Magistrates Court

- 1 **20 Procedure at hearing of application for order**
2 **Section 77C (3)**
- 3 *omit*
4 or incapable person
5 *substitute*
6 , incapable person or Aboriginal or Torres Strait Islander person
- 7 **21 Section 77C (5)**
- 8 *omit*
9 magistrate
10 *substitute*
11 court
- 12 **22 Section 77C (6)**
- 13 *omit*
14 A magistrate
15 *substitute*
16 The court
- 17 **23 Powers of lawyers and interview friends**
18 **Section 103 (1) (b)**
- 19 *omit*
20 or incapable person
21 *substitute*
22 , incapable person or Aboriginal or Torres Strait Islander person

1 **24** **Obligation of investigating police officers relating to**
2 **electronic recordings**
3 **Section 104 (2) (b)**

4 *omit*

5 or incapable person

6 *substitute*

7 , incapable person or Aboriginal or Torres Strait Islander person

8 **25** **Dictionary, new definition of *Aboriginal or Torres Strait***
9 ***Islander person***

10 *insert*

11 ***Aboriginal or Torres Strait Islander person*** means a person who—

12 (a) is a descendant of an Aboriginal person or Torres Strait
13 Islander person; and

14 (b) identifies as an Aboriginal person or Torres Strait Islander
15 person.

1 **Part 5**

2 **Crimes (Sentence
Administration) Act 2005**

3 **26 Board may reject parole application without inquiry**
4 **Section 122 (2), new example**

5 *before the examples, insert*

6 **Example of when board might be satisfied application is frivolous, vexatious**
7 **or misconceived**

8 The board previously rejected an application because the offender's proposed
9 accommodation after release was unsuitable. The offender's later application
10 proposes the same unsuitable accommodation without including new information
11 or new reasons.

1 **Part 6 Crimes (Sentencing) Act 2005**

2 **27 Victim impact statements—form and contents**
3 **New section 51 (5A)**

4 *insert*

5 (5A) The statement may contain photographs, drawings or other images.

6 **28 Meaning of *supervision condition***
7 **Section 133U (2), definition of *director-general*,**
8 **paragraph (b)**

9 *substitute*

10 (b) in any other case—the director-general responsible, under the
11 [Crimes \(Sentence Administration\) Act 2005](#), for the
12 administration of the good behaviour order to which the
13 direction relates.

14 **29 Meaning of *accommodation order***
15 **Section 133Y (2), definition of *director-general*,**
16 **paragraph (b)**

17 *substitute*

18 (b) in any other case—the director-general responsible, under the
19 [Crimes \(Sentence Administration\) Act 2005](#), for the young
20 offender to whom the direction relates.

1 (ii) a device that is intended to be used for the purpose or
2 apparent purpose of smoking, or drawing or inhaling
3 smoke or fumes from, a controlled drug, but that requires
4 an adjustment or modification to be used for that purpose;
5 and

6 (b) includes a device commonly known as—

7 (i) a hash pipe; or

8 (ii) an ice pipe; or

9 (iii) a bong.

10 **occupier**, of retail or wholesale outlet, means a person having the
11 management or control, or otherwise being in charge, of the outlet.

12 **retail outlet** means premises where goods are for sale by retail.

13 **wholesale outlet** means premises where goods are available for sale
14 exclusively by wholesale.

1 **Part 9 Firearms Act 1996**

2 **33 Authority to possess and use firearms temporarily**
3 **New section 14 (2) (ba)**

4 *insert*

5 (ba) the person is at least the age prescribed by regulation for
6 section 85 (Minors firearms licences—applications); and

7 **34 Section 14 (2) (c) (ii)**

8 *omit*

9 a registered user of the firearm

10 *substitute*

11 authorised under subsection (2A) to possess or use the firearm

12 **35 New section 14 (2A)**

13 *insert*

14 (2A) A person is authorised to possess or use a firearm if—

15 (a) the person is an authorised instructor for an approved club; and

16 (b) the firearm is owned by the approved club; and

17 (c) the person has possession or use of the firearm for the purpose
18 of giving instruction.

19 **36 Unregulated firearms—forfeiture**
20 **Section 30 (2)**

21 *omit*

22 director-general

23 *substitute*

24 registrar

1 **37 Authority conferred by licence—additional matters**
2 **New section 53 (2A) and (2B)**

3 *insert*

4 (2A) A licence that authorises the licensee to have possession or use of a
5 registered firearm also authorises the licensee to use the registered
6 firearm at an approved shooting range for 1 or more of the following
7 purposes:

8 (a) to test the firearm;

9 (b) to adjust the sights on the firearm;

10 (c) to develop and refine self-loaded ammunition;

11 (d) to receive instruction and certification in the use of the firearm
12 for an employment-related purpose.

13 **Example—employment-related purpose**

14 a person with an employee licence under the *Security Industry Act 2003*
15 wanting to maintain that licence

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

19 (2B) For subsection (2A), a licensee need not be a member of the
20 shooting club that operates the approved shooting range.

21 **38 Return or forfeiture of things seized**
22 **Section 217 (4)**

23 *omit*

24 director-general

25 *substitute*

26 registrar

1 **Part 10 Prohibited Weapons Act 1996**

2 **39 Evidentiary provisions**
3 **New section 17 (2)**

4 *insert*

5 (2) The registrar may delegate the registrar's functions under
6 subsection (1) to a police officer.

7 *Note 1* For the making of delegations and the exercise of delegated functions,
8 see the [Legislation Act](#), pt 19.4.

9 *Note 2* In particular, the delegation must be in writing (see [Legislation Act](#),
10 s 232).

11 *Note 3* A certificate signed by a delegate of the registrar is taken to have been
12 signed by the registrar (see [Legislation Act](#), s 239 (4)).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 November 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

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

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