

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Legislation Amendment Bill 2017 (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 56	3
5	Possessing child exploitation material Section 65 (3)	7
6	Section 66 heading	7

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	Page
7	Section 66 (1) 8
8	Section 66 (2) 9
9	Section 66 (4) 9
10	Section 66 (5) 9
11	Section 66 (6), definition of <i>using electronic means</i> 9
Part 3 Crimes (Sentencing) Act 2005	
12	Combination sentences—offences punishable by imprisonment Section 29 (1) (d), new note 10
13	Section 29 (1), example 1, 1st dot point 10
14	Combination sentences—start and end Section 31 (c), example, dot points 10
15	New section 31 (2) 10
16	Sentencing—irrelevant considerations New section 34 (2) (d) and examples 11
Part 4 Criminal Code 2002	
17	Incitement New section 47 (1A) 12
18	Section 47 (4) 12
Part 5 Magistrates Court Act 1930	
19	Childrens Court Section 287 (1) 13
20	Chief Magistrate to arrange business of Childrens Court Section 290 (2) (a) 13
21	Childrens Court Magistrate to hear all matters Section 291 (1) 13
22	Section 291 (2) 13
23	Childrens Court Magistrate Section 291A (1) and (2) 14
24	Section 291A (3) 14
25	Section 291A (4) 14
26	Acting Childrens Court Magistrate Section 291B (1) 15
27	Section 291B (1) (b) 15

Contents

	Page
28	Section 291B (2) 15
29	Assignment of other magistrates for Childrens Court matters Section 291C (1) 15
30	Section 291C (2) (d) 16
31	Completion of part-heard matters Section 291D (1) (b) (i) 16
32	New part 4A.4 16
33	Definitions—ch 4C Section 291L 17
34	Directions about procedure Section 309, note 17
35	Dictionary, definition of <i>Aboriginal or Torres Strait Islander offender</i> 17
36	Dictionary, definition of <i>circle sentencing</i> 17

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Crimes Legislation Amendment Bill 2017 (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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes Legislation Amendment Act 2017 (No 2)*.

4 **2 Commencement**

5 (1) This Act (other than sections 32 to 36) commences on the day after
6 its notification day.

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

9 (2) Sections 32 to 36 commence on 1 September 2018.

10 **3 Legislation amended**

11 This Act amends the following legislation:

- 12 • [Crimes Act 1900](#)
- 13 • [Crimes \(Sentencing\) Act 2005](#)
- 14 • [Criminal Code 2002](#)
- 15 • [Magistrates Court Act 1930](#).

Part 2 **Crimes Act 1900****4** **Section 56***substitute***56** **Maintaining sexual relationship with young person or person under special care**

- (1) A person who is an adult and who maintains a sexual relationship with a young person or a person under the special care of the adult is guilty of an offence.

Maximum penalty: imprisonment for 25 years.

- (2) For subsection (1), an adult maintains a sexual relationship with a young person or a person under the special care of the adult if on 2 or more occasions and over any period the adult engages in a sexual act with that person.

- (3) For subsection (2)—

(a) the period, or any part of the period, may be before the amendment day; and

(b) 1 or more of the sexual acts may have occurred before the amendment day.

- (4) For a person to be convicted of an offence against subsection (1), the trier of fact must be satisfied beyond reasonable doubt that a sexual relationship existed.

- (5) However, in a proceeding for an offence against subsection (1), there is no requirement for—

(a) the prosecution to allege the particulars of a sexual act that would be necessary if the act were charged as a separate offence; or

- 1 (b) the trier of fact to be satisfied of the particulars of a sexual act
2 that it would need to be satisfied of if the act were charged as a
3 separate offence if the trier of fact is satisfied the nature and
4 character of a person's conduct was consistent with a sexual
5 act; or
- 6 (c) if the trier of fact is a jury—members of the jury to agree on
7 which sexual acts constitute the sexual relationship.
- 8 (6) In a proceeding for an offence against subsection (1), the
9 prosecution is required to allege the particulars of the period of the
10 sexual relationship.
- 11 (7) For an offence against this section that occurred wholly or in part
12 before the amendment day, when imposing a sentence a court must
13 consider the maximum penalty before the amendment day for—
- 14 (a) an offence against this section; and
- 15 (b) an offence constituted by a sexual act alleged to constitute the
16 sexual relationship.
- 17 (8) A person may be charged on a single indictment with, and convicted
18 of and punished for, both—
- 19 (a) an offence against subsection (1); and
- 20 (b) 1 or more sexual offences committed by the person against the
21 same young person or person under the special care of the
22 person during the alleged period of the sexual relationship.
- 23 (9) Except as provided by subsection (8), a person cannot be convicted
24 of an offence—
- 25 (a) against subsection (1) if the person has already been convicted
26 or acquitted of an offence constituted by 1 or more of the
27 sexual acts alleged to constitute the sexual relationship; or

- 1 (b) constituted by a sexual act in relation to a young person or
2 person under the special care of the person if the sexual act is
3 alleged to have occurred during the period for which the person
4 has already been convicted or acquitted of an offence against
5 subsection (1) in relation to the young person or person under
6 their special care.
- 7 (10) For subsection (9), a person is taken not to have been convicted of
8 an offence if the conviction is quashed or set aside.
- 9 (11) The [Criminal Code](#), chapter 2 (other than the immediately applied
10 provisions) does not apply to an offence against this section.
- 11 (12) In this section:
- 12 ***amendment day*** means the day the *Crimes Legislation Amendment*
13 *Act 2017 (No 2)*, section 5 commenced.
- 14 ***employer***, of a person, includes someone authorised to—
- 15 (a) decide or vary the terms of the person’s employment; or
- 16 (b) end the person’s employment.
- 17 ***foster carer***—see the [Children and Young People Act 2008](#),
18 section 518 (2).
- 19 ***health service***—see the [Human Rights Commission Act 2005](#),
20 section 7.
- 21 ***health service provider***—see section 55A (5).
- 22 ***sexual act***—
- 23 (a) means—
- 24 (i) an act that constitutes an offence against this part; or
- 25 (ii) conduct substantially similar to an act that constitutes an
26 offence against this part; or

- 1 (iii) an attempt to commit an act that constitutes an offence
2 against this part; or
- 3 (iv) an act that, if particulars of the time when or place where
4 the act took place were sufficiently particularised, would
5 constitute an offence against this part; but
- 6 (b) does not include an act referred to in—
- 7 (i) section 55 (2) (Sexual intercourse with young person) if
8 the person who committed the act establishes the matters
9 referred to in section 55 (3) that would be a defence if the
10 person had been charged with an offence against
11 section 55 (2); or
- 12 (ii) section 61 (2) (Act of indecency with young people) if
13 the person who committed the act establishes the matters
14 referred to in section 61 (3) that would be a defence if the
15 person had been charged with an offence against
16 section 61 (2).
- 17 ***special care***—a person is under the ***special care*** of an adult if—
- 18 (a) the person is not yet an adult; and
- 19 (b) the adult—
- 20 (i) is a parent, grandparent, step-parent, foster carer or legal
21 guardian of the person; or
- 22 (ii) is the domestic partner of a parent, grandparent,
23 step-parent, guardian or foster carer of the person; or
- 24 (iii) is a teacher at a school, or an adult with responsibility for
25 students at a school, and the person is a student at the
26 school; or
- 27 (iv) has an established personal relationship with the person
28 in relation to the provision of religious, sporting, musical
29 or other instruction to the person; or

- 1 (v) is the person's employer; or
2 (vi) provides professional counselling to the person; or
3 (vii) is a health service provider and the person is the adult's
4 patient; or
5 (viii) is a custodial officer and the person is a young detainee in
6 the officer's care, custody or control; or
7 (ix) if the person has impaired decision-making ability—is a
8 carer for the younger person.

9 *young detainee*—see the *Children and Young People Act 2008*,
10 section 95.

11 *young person* means a person who is under the age of 16 years.

12 **5 Possessing child exploitation material**
13 **Section 65 (3)**

14 *omit*

15 child pornography

16 *substitute*

17 child exploitation material

18 **6 Section 66 heading**

19 *substitute*

20 **66 Grooming and depraving young people**

7 Section 66 (1)

substitute

(1) A person must not—

- (a) in person or by any other means, encourage a young person to commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature; or

Example

showing a young person indecent material online or on a mobile phone

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

- (b) engage in conduct with a young person with the intention of making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature; or

- (c) engage in conduct with a person who has a relationship with a young person with the intention of making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Maximum penalty:

- (a) for a 1st offence against a person under 10 years—imprisonment for 9 years; or
- (b) for a 1st offence against a young person 10 years or older—imprisonment for 7 years; or
- (c) for a 2nd or subsequent offence against a person under 10 years—imprisonment for 12 years; or
- (d) for a 2nd or subsequent offence against a young person 10 years or older—imprisonment for 10 years.

1 (1A) The [Criminal Code](#), chapter 2 (other than the immediately applied
2 provisions) does not apply to an offence against subsection (1).

3 *Note* The [Criminal Code](#) does not apply to offences against this section that
4 were offences in force before 1 January 2003 unless the offence is
5 omitted and remade (see [Criminal Code](#), s 8).

6 **8 Section 66 (2)**

7 *omit*
8 , using electronic means,

9 **9 Section 66 (4)**

10 *omit everything after*
11 consented to
12 *substitute*
13 some or all of the defendant's conduct or actions.

14 **10 Section 66 (5)**

15 *omit*
16 to whom the suggestion was made, or the material was sent or made
17 available,

18 **11 Section 66 (6), definition of *using electronic means***

19 *omit*

1 **Part 3 Crimes (Sentencing) Act 2005**

2 **12 Combination sentences—offences punishable by**
3 **imprisonment**
4 **Section 29 (1) (d), new note**

5 *insert*

6 *Note* A good behaviour order may not be set to start at a time when the
7 offender may be serving full-time detention or be on parole (see
8 s 31 (2)).

9 **13 Section 29 (1), example 1, 1st dot point**

10 *substitute*

- 11 • an order for imprisonment for 1 year with no nonparole period

12 **14 Combination sentences—start and end**
13 **Section 31 (c), example, dot points**

14 *substitute*

- 15 • an order for imprisonment with a 3-year nonparole period
16 • a driver licence disqualification order, also stated to start whenever (if
17 at all) the offender is released on parole and to end at the end of the
18 5-year term of the sentence
19 • a good behaviour order and a place restriction order, stated to start
20 whenever (if at all) the offender's parole period ends and to end at the
21 end of the 5-year term of the sentence

22 **15 New section 31 (2)**

23 *insert*

24 (2) However, the court must not set the start of the period of any part of
25 the sentence that is a good behaviour order on a day when the
26 offender may be serving a period of full-time detention or may be
27 on parole.

1 **16 Sentencing—irrelevant considerations**
2 **New section 34 (2) (d) and examples**

3 *insert*

4 (d) for a sexual offence against a child—the offender has good
5 character, to the extent that the offender’s good character
6 enabled the offender to commit the offence.

7 **Examples—good character enabled offender to commit offence**

8 1 The offender’s good character was one reason the offender was
9 selected to supervise children on a camp. The offender began to
10 establish a relationship with children at the camp to obtain their
11 compliance in acts of a sexual nature.

12 2 A child’s parents trusted the offender to care for the child because of
13 the offender’s authority in their community. The offender held
14 authority in the community in part because of the offender’s good
15 character. The offender sexually abused the child including while the
16 child was in the offender’s care.

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

1 **Part 4** **Criminal Code 2002**

2 **17** **Incitement**
3 **New section 47 (1A)**

4 *insert*

5 (1A) A person also commits the offence of incitement if the person urges
6 another person to aid, abet, counsel, procure, be knowingly
7 concerned in or a party to, the commission of an offence (the
8 *offence incited*) by someone else.

9 **18** **Section 47 (4)**

10 *substitute*

11 (4) A person may be found guilty of the offence of incitement—
12 (a) even if it was impossible to commit the offence incited; and
13 (b) whether or not the offence incited was committed.

1 **Part 5** **Magistrates Court Act 1930**

2 **19** **Childrens Court**
3 **Section 287 (1)**

4 *omit*

5 the Childrens Court Magistrate

6 *substitute*

7 a Childrens Court Magistrate

8 **20** **Chief Magistrate to arrange business of Childrens Court**
9 **Section 290 (2) (a)**

10 *substitute*

11 (a) a magistrate who is to be a Childrens Court Magistrate; and

12 **21** **Childrens Court Magistrate to hear all matters**
13 **Section 291 (1)**

14 *omit*

15 The Childrens Court Magistrate

16 *substitute*

17 A Childrens Court Magistrate

18 **22** **Section 291 (2)**

19 *omit*

20 the Childrens Court Magistrate

21 *substitute*

22 a Childrens Court Magistrate

1 **23 Childrens Court Magistrate**
2 **Section 291A (1) and (2)**

3 *substitute*

4 (1) The Chief Magistrate—

5 (a) must declare 1 magistrate to be a Childrens Court Magistrate;
6 and

7 (b) may declare more than 1 magistrate to be a Childrens Court
8 Magistrate; and

9 (c) may declare that the Chief Magistrate is a Childrens Court
10 Magistrate.

11 (2) The declaration must state the period, of not longer than 2 years, for
12 which the magistrate is a Childrens Court Magistrate.

13 **24 Section 291A (3)**

14 *omit*

15 the Childrens Court Magistrate

16 *substitute*

17 a Childrens Court Magistrate

18 **25 Section 291A (4)**

19 *substitute*

20 (4) The Chief Magistrate—

21 (a) must revoke a declaration that a magistrate is a Childrens Court
22 Magistrate if asked by the magistrate; and

23 (b) may revoke a declaration that the Chief Magistrate is a
24 Childrens Court Magistrate at any time.

1 **26 Acting Childrens Court Magistrate**
2 **Section 291B (1)**

3 *omit 1st mention of*

4 Childrens Court Magistrate

5 *substitute*

6 a Childrens Court Magistrate

7 **27 Section 291B (1) (b)**

8 *substitute*

9 (b) there is no Childrens Court Magistrate able to exercise the
10 functions of a Childrens Court Magistrate (for example, due to
11 absence from duty or from the ACT).

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

15 **28 Section 291B (2)**

16 *omit*

17 Childrens Court Magistrate is the

18 *substitute*

19 a Childrens Court Magistrate is a

20 **29 Assignment of other magistrates for Childrens Court**
21 **matters**
22 **Section 291C (1)**

23 *omit*

24 the Childrens Court Magistrate

25 *substitute*

26 a Childrens Court Magistrate

- 1 **30 Section 291C (2) (d)**
- 2 *omit*
- 3 on the proposed assignment
- 4 *substitute*
- 5 who is unable to deal with the matter about the proposed assignment
- 6 **31 Completion of part-heard matters**
- 7 **Section 291D (1) (b) (i)**
- 8 *substitute*
- 9 (i) be a Childrens Court Magistrate; or
- 10 **32 New part 4A.4**
- 11 *insert*

12 **Part 4A.4 Warrumbul Court**

13 **291GA Warrumbul Court**

14 The Childrens Court is known as the Warrumbul Court when it is
15 sitting to provide circle sentencing.

16 **291GB Directions about procedure for Warrumbul Court**

- 17 (1) The Childrens Court may give a direction in relation to the
18 procedure to be followed in relation to circle sentencing for certain
19 Aboriginal or Torres Strait Islander offenders, and any other
20 relevant matter in relation to circle sentencing.
- 21 (2) To remove any doubt, a direction mentioned in subsection (1) is not
22 taken to limit the Childrens Court's discretion in sentencing an
23 offender.

- 1 (3) Nothing in this section limits the Childrens Court's power to give a
2 direction under section 309 (Directions about procedure).

3 **33 Definitions—ch 4C**
4 **Section 291L**

5 *omit*

6 **34 Directions about procedure**
7 **Section 309, note**

8 *substitute*

9 *Note* The Childrens Court and the Magistrates Court may make procedures to
10 be followed in relation to circle sentencing for certain Aboriginal or
11 Torres Strait Islander offenders (see s 291GB and s 291N).

12 **35 Dictionary, definition of *Aboriginal or Torres Strait***
13 ***Islander offender***

14 *substitute*

15 ***Aboriginal or Torres Strait Islander offender*** means an offender
16 who—

- 17 (a) is a descendant of an Aboriginal or Torres Strait Islander
18 person; and
19 (b) identifies as an Aboriginal or Torres Strait Islander person; and
20 (c) is accepted as an Aboriginal or Torres Strait Islander person by
21 an Aboriginal or Torres Strait Islander community.

22 **36 Dictionary, definition of *circle sentencing***

23 *substitute*

24 ***circle sentencing*** means the step in a sentencing proceeding for an
25 Aboriginal or Torres Strait Islander offender that includes members
26 of the Aboriginal or Torres Strait Islander community.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 November 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

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

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