



AUSTRALIAN CAPITAL TERRITORY

## Crimes (Amendment) Act 1995

No. 2 of 1995

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### An Act to amend the *Crimes Act 1900*

[Notified in ACT Gazette S115: 19 June 1995]

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

#### Short title

1. This Act may be cited as the *Crimes (Amendment) Act 1995*.

#### Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

#### Principal Act

3. In this Act, “Principal Act” means the *Crimes Act 1900*.<sup>1</sup>

#### Insertion

4. After section 3 of the Principal Act the following section is inserted:

#### Territorial application of the criminal law of the Territory

- “3A. (1) An offence against a law of the Territory is committed if—
- (a) all elements necessary to constitute the offence (disregarding any territorial considerations) exist; and

- (b) a territorial nexus exists between the Territory and at least 1 element of the offence.

“(2) A territorial nexus exists between the Territory and an element of an offence if—

- (a) the element is or includes an event occurring in the Territory; or
- (b) the element is or includes an event that occurs outside the Territory but while the person alleged to have committed the offence is in the Territory.

“(3) The territorial nexus referred to in paragraph (1) (b) (in this section called the ‘necessary territorial nexus’) shall be presumed to exist, but the presumption is rebuttable in accordance with subsection (4).

“(4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court shall proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of a jury trial, the jury, is satisfied on the balance of probabilities that the necessary territorial nexus does not exist, it shall, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.

“(5) If the court, or, in the case of a jury trial, the jury, would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of mental illness), the court or jury shall make or return a finding of not guilty.

“(6) The issue of whether the necessary territorial nexus exists shall, if raised before the trial, be reserved for consideration at the trial.

“(7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the Territory if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the Territory exists).

“(8) This section applies to offences committed before or after the commencement of this section but does not apply to an offence if—

- (a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence;
- (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication

excludes the requirement for a territorial nexus between the Territory and an element of the offence; or

- (c) proceedings are pending at the commencement of this section in relation to the offence.

“(9) This section is in addition to and does not derogate from any other basis on which the courts of the Territory may exercise criminal jurisdiction.

“(10) If a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person is, for the purposes of this section, to be taken to be charged with each offence.

“(11) In this section—

‘event’ means any act, omission, occurrence, circumstance or state of affairs (not including intention, knowledge or any other state of mind);

‘trial’ includes a special hearing conducted in accordance with section 428I.”.

### **Interpretation**

5. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “the Crimes Act”.

### **Substitution**

6. Section 11 of the Principal Act is repealed and the following section substituted:

#### **No time limit on criminal responsibility for homicide**

“11. (1) Any rule of law that a death which occurs more than a year and a day after the injury which caused it is to be conclusively presumed not to have been caused by the injury, is abolished.

“(2) This section does not apply in respect of an injury received before the commencement of this section.”.

### **Sexual intercourse with a young person**

7. Section 92E of the Principal Act is amended—

- (a) by omitting from subsection (2) “of or above the age of 10 years but”; and

- (b) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) at the time of the alleged offence—

- (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
- (ii) the defendant was not more than 2 years older;”.

**Acts of indecency with young persons**

**8.** Section 92K of the Principal Act is amended—

- (a) by omitting from subsection (2) “of or above the age of 10 years but”; and
- (b) by omitting paragraph (3) (b) and substituting the following paragraph:
  - “(b) at the time of the alleged offence—
    - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
    - (ii) the defendant was not more than 2 years older;”.

**Incest and similar offences**

**9.** Section 92L of the Principal Act is amended by omitting from subsection (2) “of or above the age of 10 years but”.

**Alternative verdicts**

**10.** Section 92S of the Principal Act is amended by adding at the end the following subsection:

“(5) Where, on the trial of a person for an offence against subsection 92E (1), 92K (1) or 92L (1), the jury—

- (a) is not satisfied that the person in relation to whom the offence is alleged to have been committed was under 10 years of age when the offence is alleged to have been committed; but
- (b) is satisfied that the accused is guilty of an offence against subsection 92E (2), 92K (2) or 92L (2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against subsection 92E (2), 92K (2) or 92L (2), respectively.”.

**Further amendments**

**11.** The Principal Act is amended as set out in the Schedule.

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## SCHEDULE

Section 11

### FURTHER AMENDMENTS

#### **Subsection 556A (4)—**

Omit “section five hundred and fifty-six D of the Crimes Act”, substitute “section 556D”.

#### **Subsection 556D (1)—**

Omit “section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act”, substitute “section 556A or 556B”.

#### **Subsection 556D (2)—**

Omit “section five hundred and fifty-six A or five hundred and fifty-six B of the Crimes Act”, substitute “section 556A or 556B”.

#### **Subsection 556D (4)—**

Omit “section five hundred and fifty-six A of this Act”, substitute “section 556A”.

#### **Subsection 556E (1)—**

Omit “subsection (8) of section five hundred and fifty-six C of the Crimes Act”, substitute “subsection 556C (8),”.

#### **Subsection 556E (2)—**

Omit “subsection (5) of section five hundred and fifty-six A of the Crimes Act or under subsection (8) of section five hundred and fifty-six C of the Crimes Act”, substitute “subsection 556A (5) or 556C (8)”.

#### **Schedule 5—Form 1**

- (a) Omit (from the heading) “Crimes Act, 1900”, substitute “*Crimes Act 1900*”.
- (b) Omit “Crimes Act, 1900 of the State of New South Wales in its application in the Territory”, substitute “*Crimes Act 1900*”.

#### **Schedule 5—Form 2**

- (a) Omit (from the heading) “Crimes Act, 1900”, substitute “*Crimes Act 1900*”.
- (b) Omit “Crimes Act, 1900 of the State of New South Wales in its application in the Territory”, substitute “*Crimes Act 1900*”.

**NOTE****Principal Act**

1. Reprinted as at 31 January 1994. See also Acts Nos. 38, 46, 75, 84, 86, 97 and 98, 1994.

*[Presentation speech made in Assembly on 11 May 1995]*