



Australian Capital Territory

Crimes (Serious and Organised Crime) Legislation Amendment Act 2016

A2016-48

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Australian Capital Territory

Crimes (Serious and Organised Crime) Legislation Amendment Act 2016

A2016-48

An Act to amend legislation in relation to serious and organised crime, and for other purposes

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

J2015-788

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016*.

2 Commencement

- (1) This Act (other than part 2) commences on the day after its notification day.

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

- (2) Part 2 (other than sections 8 and 9) commences on 1 May 2017.
- (3) Sections 8 and 9 commence on the later of—
- (a) 1 May 2017; and
 - (b) the commencement of the *Family Violence Act 2016*, section 3.

3 Legislation amended

This Act amends the following legislation:

- [Bail Act 1992](#)
- [Crimes Act 1900](#)
- [Crimes \(Assumed Identities\) Act 2009](#)
- [Crimes \(Child Sex Offenders\) Act 2005](#)
- [Crimes \(Sentence Administration\) Act 2005](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Firearms Act 1996](#)
- [Magistrates Court \(Crimes Infringement Notices\) Regulation 2008](#).

4 Legislation repealed

The [Crime Prevention Powers Act 1998](#) (A1998-21) is repealed.

Part 2 Bail Act 1992

5 Sections 42 to 43A

after

on application under this division

insert

(other than under section 44 (Right of review of bail decisions—prosecution))

6 New section 44

insert

44 Right of review of bail decisions—prosecution

- (1) This section applies to a decision by a court in relation to bail for an accused person charged with a domestic violence offence or a serious offence.
- (2) The director of public prosecutions may apply to the Supreme Court for review of the decision if the director of public prosecutions considers that exceptional circumstances exist and that it is in the public interest to make the application.
- (3) An application must be made, and written notice of the application given to the accused person—
 - (a) within 2 hours after the decision is made; or
 - (b) if the decision is made between 4pm on a day and 8am the next day (**day 2**)—by 10am on day 2 (whether or not it is a working day).
- (4) However, an application may only be made if the director of public prosecutions gives the court that made the decision oral notice of the proposed application immediately after the decision is made.

- (5) On giving notice under subsection (4), the operation of the decision is stayed until the first of the following happens:
- (a) the director of public prosecutions tells the court that made the decision that an application will not be made;
 - (b) 24 hours have passed since notice was given under subsection (4) and the director of public prosecutions has not—
 - (i) made an application; and
 - (ii) given written notice of the application to the accused person;
 - (c) the Supreme Court makes a decision on the application;
 - (d) 48 hours have passed since notice was given under subsection (4) and the Supreme Court has not made a decision on the application.
- (6) In this section:
- domestic violence offence*—see the *Domestic Violence and Protection Orders Act 2008*, section 13 (2).
- serious offence* means—
- (a) an offence that involves causing harm, or threatening to cause harm, to anyone, punishable by imprisonment for more than 10 years; or
 - (b) an offence under the *Criminal Code*, chapter 3 (Theft, fraud, bribery and related offences), punishable by imprisonment for more than 10 years; or
 - (c) an offence under the *Criminal Code*, part 4.1 (Property damage offences), punishable by imprisonment for more than 14 years; or
 - (d) an offence under the *Criminal Code*, chapter 6 (Serious drug offences), punishable by imprisonment for more than 10 years.

7 New section 44A

insert

44A Review of s 44

- (1) The Minister must review the operation of section 44 as soon as practicable after the end of its 2nd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

8 Section 44 (1)

omit

domestic violence offence

substitute

family violence offence

9 Section 44 (6), definition of *domestic violence offence*

substitute

family violence offence—see the *Family Violence Act 2016*, dictionary.

**10 Review limited to bail conditions
Section 46 (5)**

omit

or section 43A

substitute

, section 43A or section 44

Part 3 Crimes Act 1900

11 New part 9

insert

Part 9 Exclusion powers

174 Definitions—pt 9

In this part:

exclusion direction—see section 175 (3).

exclusion period—see section 175 (3) (b).

exclusion zone—see section 175 (3) (a).

public place means—

- (a) a street, road, public park or reserve; or
- (b) a building, premises or other place that the public is entitled to use or that is open to, or used by, the public, whether on payment of money or otherwise.

Example

licensed premises under the [Liquor Act 2010](#)

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).

175 Exclusion direction

- (1) This section applies if a police officer reasonably believes that a person (whether part of a group or not) has recently engaged in, is engaged in, or is likely in the immediate future to engage in, conduct—
 - (a) involving—
 - (i) violence towards, or intimidation of, a person; or

- (ii) damage to property; or
 - (b) that would cause a reasonable person to fear for their safety.
- (2) However, this section does not apply to a person who (whether part of a group or not) is—
 - (a) picketing a place of employment; or
 - (b) demonstrating or protesting about a particular issue; or
 - (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.
- (3) The police officer may give the person a direction (an *exclusion direction*) to do any of the following:
 - (a) immediately leave an area specified by the officer (an *exclusion zone*);
 - (b) remain outside the exclusion zone for a period, decided by the officer (an *exclusion period*), of not more than 6 hours;
 - (c) leave the exclusion zone by a particular route, or in a particular direction, decided by the officer.

176 Exclusion zone

- (1) An exclusion zone may only include the following places:
 - (a) a public place;
 - (b) a place, other than a public place, prescribed by regulation.
- (2) An exclusion zone may be described by reference to landmarks or other identifiable boundaries of the zone, or distances from a fixed point.

177 Exclusion direction—information to be given

- (1) A police officer who gives a person an exclusion direction must tell, or make reasonable efforts to tell, the person the following:
 - (a) that the person has been given an exclusion direction;
 - (b) the reason for the direction;
 - (c) the exclusion zone to which the direction applies;
 - (d) that the person must not remain in the zone;
 - (e) the exclusion period, if any;
 - (f) the route or direction, if any, that the person must take to leave the zone;
 - (g) that it is an offence to fail to comply with the direction;
 - (h) the time and date the direction ends.
- (2) If an exclusion direction is given to 2 or more people at the same time, the police officer giving the direction—
 - (a) may tell, or make reasonable efforts to tell, the group generally the information mentioned in subsection (1); and
 - (b) in that case, need not give the information to each person individually.

178 Exclusion direction—information to be recorded

As soon as practicable after giving a person an exclusion direction, a police officer must make a record of the following:

- (a) the date and time the direction was given;
- (b) the name of the person, or if the name of the person is not known—
 - (i) a detailed description of the person; or

- (ii) if it is not reasonably practicable to give a detailed description of the person because the person is part of a group of people—a detailed description of the group;
- (c) the reason for giving the direction;
- (d) the exclusion zone to which the direction applies;
- (e) the exclusion period, if any;
- (f) the route or direction, if any, that the person must to take to leave the zone;
- (g) the time and date the direction ends.

179 Failing to comply with exclusion direction

- (1) A person commits an offence if the person—
 - (a) is given an exclusion direction; and
 - (b) fails to comply with the direction.

Maximum penalty: 2 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) An offence against this section is a strict liability offence.

12 Dictionary, new definitions

insert

exclusion direction, for part 9 (Exclusion powers)—see section 175 (3).

exclusion period, for part 9 (Exclusion powers)—see section 175 (3) (b).

exclusion zone, for part 9 (Exclusion powers)—see section 175 (3) (a).

public place, for part 9 (Exclusion powers)—see section 174.

Part 4 Crimes (Assumed Identities) Act 2009

13 Making entries in register of births, deaths or marriages Section 16 (6)

omit

14 Cancellation of authority affecting entry in register of births, deaths or marriages Section 17 (1) (a)

after

law enforcement agency

insert

or intelligence agency

15 Cancellation of evidence of assumed identity Section 22 (2)

after

law enforcement agency

insert

or intelligence agency

16 Dictionary, new definition of *intelligence agency*

insert

intelligence agency means—

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation.

Part 5 Crimes (Child Sex Offenders) Act 2005

17 Section 11

substitute

11 Who is a *prescribed corresponding offender*?

(1) In this Act:

prescribed corresponding offender means—

- (a) a person who—
 - (i) has been convicted of an offence, or is subject to an order corresponding, or substantially corresponding, to a non-conviction order under the *Crimes (Sentencing) Act 2005*, in a foreign jurisdiction in relation to an offence; and
 - (ii) has been required, at any time (whether before or after the commencement of this Act), to report to the corresponding registrar of the foreign jurisdiction in relation to the offence; and
 - (iii) would, if the person were currently in the foreign jurisdiction, be required to report to the corresponding registrar of the jurisdiction in relation to the offence; or
- (b) a person prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters (see *Legislation Act*, s 48).

(2) However, a person is not a *prescribed corresponding offender* if the chief police officer decides the person should not be a prescribed corresponding offender under section 11A.

11A Chief police officer to decide if certain people prescribed corresponding offenders

- (1) This section applies to a prescribed corresponding offender under section 11 (1) (a) because the person is subject to an order corresponding, or substantially corresponding, to a non-conviction order under the *Crimes (Sentencing) Act 2005* in a foreign jurisdiction in relation to an offence.
- (2) As soon as practicable after the person becomes a prescribed corresponding offender (and not later than 28 days after information about the person is included on the child sex offender register under section 117), the chief police officer must decide whether the person should be a prescribed corresponding offender.

Note A decision under s (2) is a reviewable decision (see s 132ZV), and the chief police officer must give a reviewable decision notice to the person (see s 132ZW).

- (3) In making a decision under subsection (2), the chief police officer must consider—
 - (a) the severity of the offence; and
 - (b) the age of the person at the time of the offence; and
 - (c) the level of harm to the victim and the community caused by the offence; and
 - (d) the period for which the person was reporting to the corresponding registrar of the foreign jurisdiction; and
 - (e) compliance by the person with any reporting and sentencing obligations; and
 - (f) any attempts at rehabilitation by the person; and
 - (g) whether the person poses a risk to the lives or sexual safety of 1 or more people or of the community; and
 - (h) any other circumstances that the chief police officer considers relevant.

- (4) If the chief police officer decides that a person should not be a prescribed corresponding offender, the chief police officer must remove the person from the child sex offender register.

**18 Reporting period for prescribed corresponding offenders
Section 94 (1)**

substitute

- (1) Despite anything in this part, the reporting period for a prescribed corresponding offender is the period the offender would be required to report to the corresponding registrar of a foreign jurisdiction in the circumstances described in section 11 (1) (a) (Who is a *prescribed corresponding offender?*).

**19 Protected and unprotected registrable offender
declarations
Section 111 (2)**

substitute

Note A decision under s 111 is a reviewable decision (see s 132ZV), and the chief police officer must give a reviewable decision notice to the person (see s 132ZW).

20 Sections 112 to 114

omit

**21 When protected and unprotected registrable offender
declarations take effect
Section 115 (2) (b) and (c)**

substitute

- (b) if the offender applies to the ACAT under chapter 5B for review of a declaration—on the day the ACAT makes a decision on the application.

**22 Order for removal of registrable offender who was young offender at time of offence—application by offender
New section 122C (7A)**

insert

- (7A) The chief police officer, or a person authorised by the chief police officer, may, with the court's consent, appear and make submissions about information on the child sex offender register that is relevant to the matters the court must consider under subsection (10).

23 New chapter 5B

insert

Chapter 5B Notification and review of decisions

132ZV Meaning of *reviewable decision*—ch 5B

In this chapter:

reviewable decision means a decision mentioned in schedule 3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

132ZW Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice only to the person mentioned in schedule 3, column 4 in relation to the decision.

Note 1 The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

Note 2 For how documents may be given, see the [Legislation Act](#), pt 19.5.

132ZX Applications for review

The person mentioned in schedule 3, column 4 in relation to a reviewable decision may apply to the ACAT for review of the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

24 New schedule 3

insert

Schedule 3 Reviewable decisions

(see ch 5B)

column 1 item	column 2 section	column 3 decision	column 4 person
1	11A (2)	person should be prescribed corresponding offender	prescribed corresponding offender
2	111	make unprotected registrable offender declaration	registrable offender

Part 6 Crimes (Sentence Administration) Act 2005

25 Intensive correction order—core conditions Section 42 (1) (e)

substitute

(e) the offender—

- (i) is on probation under the supervision of the director-general; and
- (ii) must comply with the director-general's reasonable directions in relation to the probation;

26 Section 42 (4), definition of *probation condition*

omit

27 Curfew—directions Section 58 (1) (a)

omit

(the *curfew place*)

28 New section 58 (1A)

insert

- (1A) The director-general may, at any time while a curfew condition is in effect, direct the offender to remain at a different place for the curfew if satisfied that each adult who is living at the place, or has parental responsibility or guardianship for a person who is living at the place, consents to the place being used for that purpose.

29 New section 58 (6)

insert

(6) In this section:

curfew place means—

- (a) the place detailed in the curfew condition under subsection (1) (a); or
- (b) if the director-general directs the offender to remain at a different place under subsection (1A)—the different place.

Part 7 Crimes (Sentencing) Act 2005

30 Non-association and place restriction orders—when may be made Section 23 (1)

omit

personal violence offence

substitute

relevant offence

31 Section 23 (4), new definition of *relevant offence*

insert

relevant offence means—

- (a) an offence under the [Criminal Code](#), part 4.1 (Property damage offences), punishable by imprisonment for 5 years or more; or
- (b) an offence under the [Criminal Code](#), chapter 6 (Serious drug offences); or
- (c) an offence under the [Criminal Code](#), chapter 7 (Administration of justice offences), punishable by imprisonment for 5 years or more; or
- (d) a personal violence offence; or
- (e) an offence prescribed by regulation.

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

Part 8 Firearms Act 1996

32 New section 23A

in part 3, insert

23A Application of Act to imitation firearms

- (1) This Act applies to an imitation firearm in the same way as it applies to a firearm, subject to the following:
 - (a) the registrar must not issue a licence for the possession or use of an imitation firearm (except to a firearms dealer);
 - (b) the registrar may issue a permit for the possession or use of an imitation firearm;
 - (c) an imitation firearm is not required to be registered.
- (2) For the application of this Act to an imitation firearm—
 - (a) an imitation firearm that is an imitation of a pistol is taken to be a pistol; and
 - (b) an imitation firearm that is an imitation of a prohibited firearm is taken to be a prohibited firearm.
- (3) In this Act:

imitation firearm—

 - (a) means something that, regardless of its colour, weight or composition or the presence or absence of any moveable parts, substantially duplicates in appearance a firearm but is not a firearm; and
 - (b) includes something that the registrar declares to be an imitation firearm under section 31.
- (4) However, *imitation firearm* does not include—
 - (a) something that is produced and identified as a children's toy;
or

- (b) something prescribed by regulation not to be an imitation firearm; or
- (c) something declared not to be an imitation firearm under section 31.

**33 Firearms declarations by registrar
Section 31 (1) (a)**

substitute

- (a) declare something to be a firearm or imitation firearm;

34 Section 31 (1) (c)

substitute

- (c) declare that something is not a firearm, imitation firearm or prohibited firearm.

**35 Offence—Unauthorised possession or use of prohibited firearms
Section 42 (b)**

before

firearms

insert

prohibited

**36 Prohibited firearms
Schedule 1, item 19**

substitute

19	a replica of any firearm (including a replica pistol, blank fire pistol, paintball marker, shortened firearm, machine gun or submachine gun) unless it is of a type approved by the registrar
----	---

37 Dictionary, new definition of *imitation firearm*

insert

imitation firearm—see section 23A.

Part 9 **Magistrates Court (Crimes
Infringement Notices)
Regulation 2008**

38 **Schedule 1, new item 1A**

insert

1A	180, except where individual is under 16 years old	2	60
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 23 August 2016.

3 Republications of amended laws

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

I certify that the above is a true copy of the Crimes (Serious and Organised Crime) Legislation Amendment Bill 2016, which was passed by the Legislative Assembly on 4 August 2016.

Clerk of the Legislative Assembly

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