



AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Act (No. 2) 1997

No. 23 of 1997

An Act to amend the *Crimes Act 1900*

[Notified in ACT Gazette S136: 29 May 1997]

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

Short title

1. This Act may be cited as the *Crimes (Amendment) Act (No. 2) 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

- (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

- (3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Crimes Act 1900*.¹

Interpretation

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘child’—

- (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
 - (i) who normally or regularly resides with the person; or
 - (ii) of whom the person is a guardian;

‘de facto spouse’, in relation to a person, means a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person as that person’s husband or wife although not legally married to the first-mentioned person;

‘domestic violence offence’ means—

- (a) an offence against a provision of this Act specified in column 1 of Schedule 2 or an attempt to commit such an offence;
- (b) an offence against section 27 of the *Domestic Violence Act 1986*; or
- (c) an offence against section 129 of the *Motor Traffic Act 1936*;

committed by a person so as to cause physical or emotional harm to—

- (d) a spouse of the person;
- (e) a child of the person or of a spouse of the person;
- (f) a relative; or
- (g) a household member;

‘household member’, in relation to a person, means a person who normally resides, or was normally resident, in the same household as the first-mentioned person (other than as a tenant or boarder);

‘relative’, in relation to a person—

- (a) means—
 - (i) the father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of the person;

- (ii) the son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of the person;
 - (iii) the brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law of the person;
 - (iv) the uncle, aunt, uncle-in-law or aunt-in-law of the person;
 - (v) the nephew or niece of the person; or
 - (vi) the cousin of the person;
- (b) includes a person who would have been a relative of a kind referred to in paragraph (a) if the first-mentioned person had been legally married to his or her de facto spouse; and
- (c) includes a former relative of a kind referred to in paragraph (a) or (b);

‘spouse’ includes former spouse, de facto spouse and former de facto spouse;”.

Seizure of firearms—warrants and emergencies

5. Section 349D of the Principal Act is amended—

- (a) by inserting in subsection (1) “, any ammunition for a firearm and any licence to possess or use a firearm” after “firearm”;
- (b) by omitting from subsection (1) “its” and substituting “the”;
- (c) by inserting in subsection (2) “, ammunition or licence” after “firearm” (first occurring);
- (d) by inserting in paragraphs (2) (a) and (b) “, ammunition or licence” after “firearm”;
- (e) by inserting in subsection (2A) “, ammunition or licence” after “firearm”;
- (f) by omitting from subsection (2A) “firearms of that type” and substituting “any firearm, ammunition or licence”;
- (g) by omitting from subsection (2B) “weapon” and substituting “firearm, ammunition or licence”;
- (h) by omitting from subsection (2B) all the words after “firearm” and substituting “, ammunition or licence shall be returned to the licensee”; and
- (j) by inserting in subsection (2C) “, ammunition or licence” after “firearm” (wherever occurring).

Insertion

6. After section 349D of the Principal Act the following section is inserted in Division 1A of Part X:

Seizure of firearms—protection and restraining orders

“349DA. (1) For the purpose of executing an order under subsection 14A (2) or (3) of the *Domestic Violence Act 1986* or subsection 206D (2) or (4) of the *Magistrates Court Act 1930*, a police officer may—

- (a) enter premises at which the respondent named in the order is reasonably believed to be a resident or temporarily accommodated; and
- (b) seize any firearm, any ammunition for a firearm and any licence to possess or use a firearm—
 - (i) in or on those premises; or
 - (ii) in or on a motor vehicle under the control of a person who ordinarily lives on those premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises.

“(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

- (a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or
- (b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

“(3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use such force as is reasonably necessary for the purpose.

“(4) Subsection (3) does not authorise a search at any time during the period commencing at 9 p.m. on a day and ending at 6 a.m. on the following day unless the police officer is satisfied that—

- (a) it would not be practicable to conduct the search at another time; or
- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of the firearm, ammunition or licence.

“(5) Where—

- (a) a firearm, ammunition or licence has been seized under subsection (1) for the purpose of executing an order under subsection 206D (2) or (4) of the *Magistrates Court Act 1930*; and
- (b) the licence has not been cancelled under subsection 206D (1) or suspended under subsection 206D (3) of that Act;

the firearm, ammunition or licence shall be returned to the licensee if—

- (c) the licensee produces to the Registrar of Firearms a certificate of the Registrar of the Magistrates Court to the effect that the order is no longer in force;
- (d) the Registrar of Firearms is not aware of any other Court orders in force requiring the seizure of the firearm, ammunition or licence; and
- (e) the Registrar of Firearms is not otherwise entitled under the *Firearms Act 1996* to be in possession of the firearm, ammunition or licence.

“(6) Where a firearm is seized under subsection (1) and is not returned to the licensee in accordance with subsection (5), for the purposes of section 116 of the *Firearms Act 1996*, the firearm shall be taken to have been seized by a police officer in accordance with that Act.

“(7) An expression that is used in this section and in the *Firearms Act 1996* has, in this section, the same meaning as in that Act.”.

Power of arrest without warrant by police officers

7. Section 349W of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

“(1A) A police officer may, without warrant, arrest a person for a domestic violence offence if the police officer believes on reasonable grounds that the person has committed or is committing the offence.”;

- (b) by inserting in paragraph (2) (a) “or (1A)” after “subsection (1)”; and
- (c) by inserting in subparagraph (2) (b) (ii) “in the case of a person arrested under subsection (1)—” before “holding”.

Announcement before entry

- 8.** Section 349ZZA of the Principal Act is amended—
- (a) by inserting in subsection (1) “, for the purpose of executing an order mentioned in subsection 349DA (1)” after “warrant”; and
 - (b) by omitting from paragraph (2) (b) “or the arrest” and substituting “, order or arrest”.

Insertion

- 9.** After the First Schedule to the Principal Act, the Schedule set out in the Schedule to this Act is inserted.
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SCHEDULE

Section 9

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

SCHEDULE 2

Section 4

**DOMESTIC VIOLENCE OFFENCES UNDER THE
CRIMES ACT 1900**

Column 1 Provision	Column 2 Description of offence
12	Murder
15	Manslaughter
19	Intentionally inflicting grievous bodily harm
20	Recklessly inflicting grievous bodily harm
21	Wounding
22	Assault with intent to commit certain indictable offences
23	Intentionally or recklessly inflicting actual bodily harm
24	Assault occasioning actual bodily harm
25	Unlawfully or negligently causing grievous bodily harm
26	Common assault
27	Acts endangering human life
28	Acts endangering the health, safety or physical well-being of another person
29	Culpable driving of a motor vehicle
30	Threatening to kill
31	Threatening to inflict grievous bodily harm
32 (1) (a)	Making a demand with a threat to kill or inflict grievous bodily harm
32 (2) (a)	Making a demand with a threat to endanger health, safety or physical well-being
33	Possession of an object with intent to use it to kill or cause grievous bodily harm
34	Forcible confinement or imprisonment
34A	Stalking
36	Abduction of a young person
37	Kidnapping
92A	Inflicting grievous bodily harm on a person with intent to engage in sexual intercourse
92B	Inflicting actual bodily harm on a person with intent to engage in sexual intercourse
92C	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse

SCHEDULE—continued

Column 1 Provision	Column 2 Description of offence
92D	Sexual intercourse without consent
92E	Sexual intercourse with a young person
92F	Inflicting grievous bodily harm with intent to commit an act of indecency
92G	Inflicting actual bodily harm with intent to commit an act of indecency
92H	Unlawful assault or threatening to inflict grievous or actual bodily harm with intent to commit an act of indecency
92J	Committing an act of indecency without consent
92K	Committing an act of indecency upon or in the presence of a young person
92L	Incest or similar offences
92M	Abducting or detaining a person with intent to engage in sexual intercourse
128	Destroying or damaging property
129	Destroying or damaging property by means of fire or explosive
133	Possession of an article with intent to use it to destroy property
145 (1) (a)	Being armed with a weapon or instrument with intent to commit an offence
146	Forcible entry on to land in a manner likely to cause a breach of the peace
493	Possession of an offensive weapon or disabling substance in a public place in circumstances likely to cause alarm
494	Possession of an offensive weapon or disabling substance in circumstances indicating intent to use the weapon or substance

NOTE

Principal Act

1. Reprinted as at 30 November 1996. See also Act No. 74, 1996; No. 10, 1997.

[Presentation speech made in Assembly on 10 April 1997]