



Australian Capital Territory

Crimes Legislation Amendment Act 2001

No 63 of 2001

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Australian Capital Territory

Crimes Legislation Amendment Act 2001

No 63 of 2001

An Act to amend Acts relating to the criminal law, and for other purposes

[Notified in ACT Gazette S66: 10 September 2001]

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

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2001*.

2 Commencement

- (1) Part 11 (Supreme Court Act 1933) commences on a day fixed by the Minister by notice in the Gazette.
- (2) The remaining provisions commence on a day fixed by the Minister by notice in the Gazette.
- (3) The *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to the commencement of part 11 under subsection (1).

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision mentioned in s (2) has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79). However, this does not apply to the commencement of pt 11 (see s (3)).

Part 2 Children and Young People Act 1999

3 Act amended in pt 2

This part amends the *Children and Young People Act 1999*.

4 Definitions for div 2 Section 76, definition of *authorised officer*

substitute

authorised officer means—

- (a) the chief police officer; or
- (b) a police officer exercising the functions of a superintendent or sergeant; or
- (c) another police officer authorised in writing by the chief police officer.

5 Identifying material New section 84 (3A) and (3B)

insert

- (3A) However, if a young person is in lawful custody for an offence allegedly committed while the young person was 16 or 17 years old, an authorised officer or police officer may take prints of the young person's fingers or photographs of the young person, or cause them to be taken, without a magistrate's approval.
- (3B) Subsection (3A) does not apply if—
 - (a) there are reasonable grounds for the authorised officer or police officer concerned to believe that the young person does not have sufficient mental capacity to understand what is being done to him or her; and

- (b) the young person has not been arrested and charged with the offence.

6 Section 84 (7)

substitute

- (7) Identifying material of a young person may only be taken under this section in the presence of—
 - (a) a person with parental responsibility for the young person; or
 - (b) if a person with parental responsibility for the young person is unavailable, or is unacceptable to the young person—someone else (other than a police officer within the meaning of section 76) who can represent the interests of the young person and who is, as far as is practicable in the circumstances, acceptable to the young person.
- (8) If identifying material of a young person is taken under this section otherwise than in the presence of a person with parental responsibility for the young person, the authorised officer or police officer concerned must, as soon as practicable, take all reasonable steps to tell a person with parental responsibility for the young person about the action taken.

7 Section 84

renumber subsections when Act next republished under Legislation Act 2001

8 New section 84A

insert

84A Destruction of identifying material

- (1) Identifying material taken under section 84 must be destroyed as soon as practicable if—
 - (a) 1 year has elapsed since the material was taken; and

- (b) a proceeding has not been begun in relation to an offence to which the material relates or, if such a proceeding has been begun, the proceeding has been discontinued.
- (2) If identifying material of a young person has been taken under section 84 and—
- (a) the young person is found to have committed an offence to which the identifying material relates, but no conviction is recorded; or
- (b) the young person is acquitted of an offence to which the identifying material relates and—
- (i) no appeal is made against the acquittal; or
- (ii) an appeal is made against the acquittal, but the acquittal is confirmed or the appeal is withdrawn;
- the identifying material must be destroyed as soon as practicable, unless an investigation or proceeding in relation to another offence to which the material relates is pending.
- (3) On application by a police officer, a magistrate may, if satisfied that there are special reasons for doing so in relation to particular identifying material, extend—
- (a) the period of 1 year mentioned in subsection (1); or
- (b) that period as previously extended under this subsection.
- (4) In this section:
- identifying material*—see section 84 (1).

Part 3 **Crime Prevention Powers Act 1998**

9 Act amended in pt 3

This part amends the *Crime Prevention Powers Act 1998*.

10 Section 4

substitute

4 Move-on powers

- (1) This section applies if there are reasonable grounds for a police officer to believe that a person in a public place has engaged, or is likely to engage, in violent conduct in that place.
- (2) The police officer may direct the person to leave the vicinity of the public place.
- (3) The direction may be made subject to either or both of the following conditions:
 - (a) if the police officer has reasonable grounds for believing that the person is likely to engage in violent conduct while, or immediately after, leaving the vicinity by a particular route—that the person leave the vicinity by a different route (whether the route is stated or unstated);
 - (b) that the person not return to the vicinity for a stated period of not longer than 6 hours.
- (4) A person must not, without reasonable excuse, contravene a direction (including a condition of a direction) given to the person under subsection (2).

Maximum penalty: 2 penalty units.

- (5) This section does not apply in relation to a person who, whether in the company of other people 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.

Part 4 Crimes Act 1900

11 Act amended in pt 4

This part amends the *Crimes Act 1900*.

12 Section 102

substitute

102 Burglary

- (1) A person commits an offence if the person enters or remains in a building as a trespasser with intent—
- (a) to steal anything in the building; or
 - (b) to commit an offence involving an assault on anyone in the building; or
 - (c) to commit an offence involving damage to the building or any property in the building if the offence is punishable by imprisonment for 5 years or longer.

Maximum penalty: Imprisonment for 14 years.

- (2) In this section:

building includes—

- (a) any part of a building; or
- (b) a vehicle or vessel in or on which someone lives, whether or not the vehicle or vessel is occupied at the particular time.

13 New section 107A

insert

107A Valueless cheques

- (1) A person commits an offence if the person obtains any goods, services, other property, credit, benefit or advantage, or discharges any debt or liability, by passing a cheque that is not paid on presentation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) In the prosecution of a person for an offence against this section, the prosecution must establish beyond reasonable doubt that the defendant—
- (a) did not have reasonable grounds for believing that the cheque would be paid in full on presentation; or
 - (b) had an intention to defraud.
- (3) The fact that, when the cheque was passed, there were some funds to the credit of the account on which the cheque was drawn is not itself a defence.

14 New section 349AC

after section 349AB, insert

349AC Application of Cwlth Crimes Act, pt 1C

- (1) The Commonwealth Crimes Act, part 1C (Investigation of Commonwealth offences) and the schedule (Form of explanation under section 23V) apply to summary offences in the same way as they apply to indictable offences.

Note The Cwlth Crimes Act provisions apply to indictable offences against ACT laws if the investigating officer is a police officer (see s 23A (6) of that Act).

- (2) However, the provisions of the Commonwealth Crimes Act mentioned in subsection (1) do not apply to—
- (a) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*; or
 - (b) an infringement notice offence for the *Road Transport (General) Act 1999*, if the police officer concerned—
 - (i) intends to serve an infringement notice under that Act for the offence on the offender concerned; or
 - (ii) intends to take no further action against the offender concerned in relation to the offence.
- (3) Also, the following provisions of the Commonwealth Crimes Act only apply under subsection (1) if the person being interviewed or questioned is under arrest (within the meaning of that Act, section 23B (Definitions), as applied by subsection (1)) for a summary offence:
- (a) section 23K (Persons under 18);
 - (b) section 23V (Tape recording of confessions and admissions).

15 Part 10, division 3, heading

substitute

Division 3 Powers to stop and search**16 New sections 349SA and 349SB**

before section 349T, insert

349SA Stopping, searching and detaining people

- (1) This section applies if a police officer suspects, on reasonable grounds, that—

- (a) a person is carrying, or otherwise has in his or her possession, a thing (the *relevant thing*) relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained; and
 - (b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) If this section applies, the police officer may—
- (a) stop and detain the person; and
 - (b) conduct a frisk search or ordinary search of the person for the relevant thing; and
 - (c) seize the thing if the officer finds it.
- (3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the officer may seize the material if the officer suspects, on reasonable grounds, that—
- (a) it is necessary to seize it to prevent its concealment, loss or destruction; and
 - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) A frisk search under this section may only be carried out by a person of the same sex as the person being searched.
- (5) As soon as possible after exercising a power under subsection (2), the police officer must make a written record of—
- (a) the date, time and place of exercising the power; and
 - (b) details of its exercise; and
 - (c) any details of the person known to the police officer; and
 - (d) the grounds for suspecting the relevant matter mentioned in subsection (1).

- (6) The police officer must exercise his or her powers under this section subject to section 349SB.

**349SB How a police officer exercises a power under
 s 349SA**

In exercising a power under section 349SA in relation to a person, a police officer must not detain the person for longer than is necessary and reasonable to conduct a frisk search or ordinary search of the person.

**17 Searches without warrant in emergency situations
 Section 349T, heading**

substitute

349T Stopping, searching and detaining conveyances

18 Section 349T (1) (a)

after

offence

insert

or a thing stolen or otherwise unlawfully obtained,

**19 Power of arrest without warrant by police officers
 Section 349W (1) and (1A)**

omit

believes

substitute

suspects

20 Section 349W (2) (a)

omit

(1A)

substitute

(2)

21 Section 349W (2) (b)

omit

believe

substitute

suspect

22 Section 349W (3)

omit

believes

substitute

suspects

23 Section 349W (1) to (3)

renumber as section 349W (1) to (4)

**24 Arrest of prisoner unlawfully at large
Section 349Y (1)**

omit

believes

substitute

suspects

25 Arrest without warrant for offences committed outside the Territory
Section 349ZB (2)

omit

believes

substitute

suspects

26 Power to enter premises to arrest offender
Section 349ZE (2) (b)

substitute

(b) the offence is an indictable offence or relevant summary offence; and

27 Section 349ZE (4)

substitute

(4) In this section:

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, where people ordinarily sleep at night.

relevant summary offence means—

(a) an offence against any of the following sections of this Act:

- section 99A (Minor theft)
- section 493 (Possession of offensive weapons)
- section 494 (Possession of offensive weapon with intent); or

(b) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed blood alcohol concentration exceeded).

**28 Power to conduct frisk search of arrested person
Section 349ZH**

omit

A police officer

substitute

- (1) A police officer

29 New section 349ZH (2) and (3)

insert

- (2) The police officer may arrange for another police officer to conduct the frisk search if, having regard to section 349ZZ (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.
- (3) The other police officer is authorised—
- (a) to conduct the frisk search; and
 - (b) to seize any seizable items found as a result of the search.

**30 Power to conduct ordinary search of arrested person
Section 349ZJ**

omit

If

substitute

- (1) If

31 New section 349ZJ (2) and (3)

insert

- (2) The police officer may arrange for another police officer to conduct the ordinary search if, having regard to section 349ZZ (Conduct of

ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.

- (3) The other police officer is authorised—
- (a) to conduct the ordinary search; and
 - (b) to seize anything mentioned in subsection (1) found as a result of the search.

32 Taking fingerprints, recordings, samples of handwriting or photographs
Section 349ZP (3)

substitute

- (3) If a person is in lawful custody for an offence, a police officer of the rank of sergeant or higher, or for the time being in charge of a police station, may take identification material from the person, or cause identification material from the person to be taken, if any 1 or more of the following paragraphs apply:
- (a) the identification material is prints of the person's fingers or photographs of the person;
 - (b) the person consents in writing;
 - (c) the police officer believes on reasonable grounds that it is necessary to do so to—
 - (i) establish who the person is; or
 - (ii) identify the person as the person who committed the offence; or
 - (iii) provide evidence of, or relating to, the offence;
 - (d) the police officer suspects on reasonable grounds that the person has committed another offence and the identification material is to be taken for the purpose of identifying the person

as the person who committed the other offence or of providing evidence of, or relating to, the other offence.

**33 Return of knife or thing which is seized
Section 349ZZD (1) and (2)**

omit

section 349T

substitute

section 349SA (Stopping, searching and detaining people) or section 349T (Stopping, searching and detaining conveyances)

34 Section 349ZZD (1A), (1) and (2)

renumber as section 349ZZD (1), (2) and (3)

**35 Magistrates Court may permit a thing to be retained
Section 349ZZE (1)**

omit

section 349T

substitute

section 349SA (Stopping, searching and detaining people) or section 349T (Stopping, searching and detaining conveyances)

**36 Provision of interpreters in the investigation of summary offences
Section 354**

omit

**37 Executive or judge may direct inquiry
Section 475**

omit

**38 Indecent exposure
Section 546B**

omit

is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000

substitute

commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

**39 Noise abatement directions
Section 546C (1)**

omit

member of the police force

substitute

police officer

40 New section 546C (5) to (9)

insert

- (5) If a police officer believes on reasonable grounds that a person has committed an offence against subsection (2) or (3), the officer may seize anything (other than an animal) that the officer suspects on reasonable grounds was used in, or in connection with, committing the offence.
- (6) However, the police officer may seize the thing under subsection (5) only if the police officer has told the person, before the offence against subsection (2) or (3) was committed, that failure to comply with the direction, or resumption of conduct contrary to the direction within 6 hours after the direction was given, may lead to the thing being seized.

- (7) If a police officer seizes anything under subsection (5), the officer must give the occupier of the premises, or the person from whom the thing was seized, a written notice that—
- (a) describes the thing seized; and
 - (b) states the police station where the thing will be taken; and
 - (c) states that the thing may be claimed from that police station not earlier than 48 hours after the seizure.
- (8) If a police officer seizes anything under subsection (5), then, not earlier than 48 hours after the seizure, the occupier of the premises from which the thing was seized, or the owner of the thing, is entitled to its return from the police station where the thing has been taken if the person produces the notice under subsection (7) or anything else that provides satisfactory proof that the person is entitled to its possession.
- (9) However, if—
- (a) a person is charged with an offence against this section; and
 - (b) the chief police officer or director of public prosecutions believes, on reasonable grounds, that something seized by a police officer under subsection (5) may provide evidence of the offence;

no-one is entitled to its return until the prosecution for the offence has been finally decided.

41 Section 546C (5)

renumber as section 546C (10)

42 New part 17

after part 15A, insert

Part 17 Inquiries into convictions**Division 17.1 Preliminary****557A Definitions for pt 17**

In this part:

Full Court means the Supreme Court constituted by a Full Court.

inquiry means an inquiry under this part into a person's conviction for an offence (whether summarily or on indictment).

registrar means the registrar of the Supreme Court.

relevant proceeding, in relation to an offence, means a prosecution or other proceeding in relation to the offence, including an appeal in relation to the finding of a court in relation to the offence.

Division 17.2 How to start an inquiry**557B Grounds for ordering inquiry**

- (1) An inquiry may be ordered under this part into the conviction of a person for an offence only if—
 - (a) there is a doubt or question about whether the person is guilty of the offence; and
 - (b) the doubt or question relates to—
 - (i) any evidence admitted in a relevant proceeding; or
 - (ii) any material fact that was not admitted in evidence in a relevant proceeding; and
 - (c) the doubt or question could not have been properly addressed in a relevant proceeding; and

- (d) there is a significant risk that the conviction is unsafe because of the doubt or question; and
- (e) the doubt or question cannot now be properly addressed in an appeal against the conviction; and
- (f) if an application is made to the Supreme Court for an inquiry in relation to the conviction—an application has not previously been made to the court for an inquiry in relation to the doubt or question; and
- (g) it is in the interests of justice for the doubt or question to be considered at an inquiry.

Example (paragraphs (a) to (e))

John has been convicted of murder. Expert evidence that blood found on John's jacket shortly after the murder was almost certain to be the victim's blood was the main evidence connecting John with the murder.

Later DNA testing, by a method developed after all proceedings in relation to the conviction had been finalised (and the time for making any appeal had lapsed), shows that the blood is almost certainly *not* the victim's blood. This gives rise to a doubt or question about the blood evidence that could not have been (and cannot now be) properly addressed in any relevant proceeding in relation to the murder, and a significant risk that the conviction is unsafe.

- (2) The inquiry is limited to matters stated in the order for the inquiry.
- (3) If the inquiry is ordered by the Supreme Court, the court may set limits on the inquiry under subsection (2) despite anything in the application for the inquiry.

557C Executive order for inquiry

The Executive may order an inquiry on its own initiative.

557D Supreme Court order for inquiry

- (1) The Supreme Court may order an inquiry on application by the convicted person, or by someone else on the convicted person's behalf.

- (2) The registrar must give a copy of an application for an inquiry to the Attorney-General.
- (3) The Supreme Court may consider a written submission by the Attorney-General or the director of public prosecutions (or both) in relation to the application.
- (4) Proceedings on an application are not judicial proceedings.
- (5) If the Supreme Court orders an inquiry, the registrar must give a copy of the order to the Attorney-General.

557E Rights and duties in relation to orders for inquiry

- (1) This division does not create a right to the order of an inquiry, and does not create a duty to order an inquiry.
- (2) Without limiting subsection (1), there is no right of appeal in relation to a decision whether to order an inquiry.

Division 17.3 Inquiry procedure

557F Application of Inquiries Act

The *Inquiries Act 1991* applies to an inquiry, subject to this division.

557G Appointment of board of inquiry

- (1) If an inquiry is ordered, the Executive must appoint a board of inquiry under the *Inquiries Act 1991*.
- (2) The inquiry must be stated in the appointment to be in relation to the matter stated in the order, and in relation to no other matter.
- (3) The board of inquiry must be constituted by a judge of the Supreme Court or a magistrate.
- (4) A judge or magistrate who has been involved in any way (whether as judge or magistrate, or in another capacity) in a relevant proceeding in relation to the offence, or in any investigation in

relation to the acts or omissions alleged to constitute the offence, must not be appointed to constitute the board of inquiry.

557H Report by board

- (1) After finishing an inquiry, the board must give a copy of a written report of the inquiry to the registrar.
- (2) Together with the report, the board must give to the registrar, for safe-keeping, any documents or things held by the board for the purpose of the inquiry.
- (3) Even if the board does not comply with subsection (2), the Supreme Court may exercise its powers under division 17.4 in relation to the report.
- (4) The *Inquiries Act 1991*, sections 14 (Reports of boards) and 14A (Tabling of reports) do not apply to the inquiry.

Division 17.4 Supreme Court orders following inquiry report

557I Publication of report

- (1) The registrar must give a copy of the report of a board of inquiry appointed under division 17.3 to the Attorney-General and the convicted person, together with a copy of any order under this section.
- (2) The Supreme Court may make an order that the report, or particular parts of the report—
 - (a) must not be disclosed to anyone else by—
 - (i) the Territory; or
 - (ii) the convicted person (except to obtain legal advice or representation); or
 - (iii) someone else who obtains a copy of the report; or

- (b) may be disclosed only to particular people or on stated conditions (for example, a condition requiring the consent of the court).
- (3) The Supreme Court may make an order under this section only if it considers that it is in the interests of justice, having regard to the public interest and the interests of the convicted person.
- (4) An order under this section may be enforced in the same way as any other order of the Supreme Court.

557J Action on report by Supreme Court

- (1) The Full Court must consider the report of a board into an inquiry.
- (2) Having regard to the report, the Full Court must, by order—
 - (a) confirm the conviction; or
 - (b) confirm the conviction and recommend that the Executive pardon the convicted person or remit the convicted person's sentence under section 557 (Grant of pardon) or 558 (Remission of penalties); or
 - (c) quash the conviction; or
 - (d) quash the conviction and order a new trial.
- (3) The registrar must give a copy of the order, together with any reasons given for the order, to the Attorney-General and the convicted person.
- (4) This section does not give the convicted person a right to an order of the Full Court mentioned in subsection (2) (b) or (d), or to an Executive pardon or remission.

557K Nature of Supreme Court proceedings

- (1) In considering whether to make an order under this part about a report, the Supreme Court—

- (a) may have regard only to matters stated in the report, or to documents or things given to the registrar with the report; and
 - (b) must not hear submissions from anyone.
- (2) The consideration of whether to make an order under this part is not a judicial proceeding.

Division 17.5 Application to earlier convictions

557L Inquiries about earlier convictions

This part applies in relation to a conviction for an offence even if the conviction happened before the commencement of this part.

43 Crimes Act—renumbering

renumber provisions when Act next republished under Legislation Act 2001

Part 5 Crimes (Forensic Procedures) Act 2000

44 Act amended in pt 5

This part amends the *Crimes (Forensic Procedures) Act 2000*.

45 New section 94

substitute

94 Definitions relating to DNA database system

In this Act:

corresponding DNA index means an index of DNA profiles established, kept or maintained under a law, or a provision of a law, of the Commonwealth or a State, whether or not the law or provision is a corresponding law.

Note ***State*** includes the Northern Territory (see *Legislation Act 2001*, dict).

corresponding statistical index means an index of information obtained from the analysis of forensic material that is established, kept or maintained under a law, or a provision of a law, of the Commonwealth or a State, whether or not the law or provision is a corresponding law.

crime scene index means—

- (a) an index of DNA profiles derived from forensic material found—
 - (i) at any place (whether in or outside Australia) where a serious offence was, or is reasonably suspected of having been, committed; or
 - (ii) on or within the body of the victim, or a person reasonably suspected of being a victim, of a serious offence; or

- (iii) on anything worn or carried by the victim when a serious offence was, or is reasonably suspected of having been, committed; or
 - (iv) on or within the body of anyone, on anything, or at any place, associated with the commission of a serious offence; or
- (b) a corresponding DNA index prescribed under the regulations for this definition.

DNA database system means a database (whether in computerised or other form and however described) containing—

- (a) the following indexes of DNA profiles:
- (i) a crime scene index;
 - (ii) a missing persons index;
 - (iii) an unknown deceased persons index;
 - (iv) a serious offenders index;
 - (v) a volunteers (unlimited purposes) index;
 - (vi) a volunteers (limited purposes) index;
 - (vii) a suspects index;
- and information that may be used to identify the person from whose forensic material each DNA profile was derived; and
- (b) a statistical index; and
- (c) any other index prescribed under the regulations.

missing persons index means—

- (a) an index of DNA profiles derived from forensic material of—
- (i) persons who are missing; and

- (ii) volunteers who are relatives by blood of missing persons;
or
- (b) a corresponding DNA index prescribed under the regulations for this definition.

serious offenders index means—

- (a) an index of DNA profiles derived from forensic material taken—
 - (i) under part 2.7 (Carrying out of certain forensic procedures after conviction of serious offenders) from serious offenders; or
 - (ii) under part 2.3 (Forensic procedures by consent of suspect), part 2.4 (Non-intimate forensic procedures on suspect by order of a police officer) or part 2.5 (Forensic procedures on suspect by order of a magistrate) from suspects who have been convicted of a serious offence; or
- (b) a corresponding DNA index prescribed under the regulations for this definition.

statistical index means—

- (a) an index of information that—
 - (i) is obtained from the analysis of forensic material taken from people under this Act; and
 - (ii) has been compiled for statistical purposes; and
 - (iii) cannot be used to discover the identity of people from whom the forensic material was taken; or
- (b) a corresponding statistical index prescribed under the regulations for this definition.

suspects index means—

- (a) an index of DNA profiles derived from forensic material taken from suspects under part 2.3 (Forensic procedures by consent

of suspect), part 2.4 (Non-intimate forensic procedures on suspect by order of a police officer) or part 2.5 (Forensic procedures on suspect by order of a magistrate); or

- (b) a corresponding DNA index prescribed under the regulations for this definition.

unknown deceased persons index means—

- (a) an index of DNA profiles derived from forensic material of dead people whose identities are unknown; or
- (b) a corresponding DNA index prescribed under the regulations for this definition.

volunteers (limited purposes) index means—

- (a) an index of DNA profiles derived from forensic material taken under part 2.8 (Carrying out of forensic procedures on volunteers and certain other people) from volunteers who (or whose parents or guardians) have been informed that information obtained will be used only for the purpose of a criminal investigation or any other purpose for which the DNA system may be used under this part; or
- (b) a corresponding DNA index prescribed under the regulations for this definition.

volunteers (unlimited purposes) index means—

- (a) an index of DNA profiles derived from material taken—
 - (i) under part 2.8 (Carrying out of forensic procedures on volunteers and certain other people) from volunteers who (or whose parents or guardians) have been informed under section 80 (2) (c) (Informed consent of volunteer or parent or guardian of volunteer) that information obtained may be used for the purpose of a criminal investigation or any other purpose for which the DNA database system may be used; or
 - (ii) from dead people whose identity is known; or

- (b) a corresponding DNA index prescribed under the regulations for this definition.

**46 Supply of forensic material for purposes of DNA database
Section 95 (1) (a)**

substitute

- (a) the person's conduct causes the supply of forensic material taken from anyone under this Act (or under a law of another jurisdiction prescribed for this subsection) to anyone for prohibited analysis; and

47 Section 95 (3)

substitute

- (3) In this section:

excluded forensic material means forensic material—

- (a) found at a crime scene; or
- (b) taken from a suspect in relation to a serious offence under part 2.3 (Forensic procedures by consent of suspect), part 2.4 (Non-intimate forensic procedures on suspect by order of a police officer) or part 2.5 (Forensic procedures on suspect by order of a magistrate); or
- (c) taken from a serious offender or volunteer under part 2.7 (Carrying out of certain forensic procedures after conviction of serious offenders) or part 2.8 (Carrying out of forensic procedures on volunteers and certain other people); or
- (d) taken from the body of a dead person; or
- (e) that is from the body of a missing person; or
- (f) taken from a volunteer who is a relative by blood of a dead or missing person; or

- (g) taken under a law of another jurisdiction prescribed for this definition.

law, of another jurisdiction, means a law, or a provision of a law, of the Commonwealth or a State, whether or not the law is a corresponding law.

prohibited analysis means analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system when the forensic material is required to be destroyed by this Act or a law of another jurisdiction prescribed for this definition.

48 Definitions relating to interstate enforcement
Section 100, definitions of *corresponding law* and *DNA database*

substitute

corresponding law means a law, or a provision of a law, of the Commonwealth or a State that is prescribed under the regulations for this definition, whether or not the law corresponds, or substantially corresponds, to this Act.

DNA database means—

- (a) for the Territory—the DNA database system; or
- (b) for another participating jurisdiction—a database (whether in computerised or other form and however described) established, kept or maintained under a corresponding law.

Part 6 Interpretation Act 1967

49 Act amended in pt 6

This part amends the *Interpretation Act 1967*.

50 Application of certain sections of Commonwealth Crimes Act to Territory Acts Section 33G

omit

21,

51 New section 33H

insert

33H When must prosecutions begin?

- (1) A prosecution for any of the following offences against a law of the Territory may be begun at any time:
 - (a) an offence by an individual punishable by imprisonment, on a first conviction, for longer than 6 months;
 - (b) an offence by a corporation punishable, on a first conviction, by a fine of more than 150 penalty units;
 - (c) an aiding and abetting offence by an individual in relation to an offence by a corporation punishable, on a first conviction, by a fine of more than 150 penalty units;
 - (d) an offence against the *Crimes Act 1900*, section 99A (Minor theft).
- (2) A prosecution for any other offence against a law of the Territory may only be begun within—
 - (a) 1 year after the day of commission of the offence; or

- (b) if a law of the Territory provides for another period—that period.
- (3) However, if a coroner's inquest or inquiry, or an inquiry under the *Inquiries Act 1991* or the *Royal Commissions Act 1991*, is held into a matter that relates to an offence mentioned in subsection (2), a prosecution for the offence may be begun within 1 year after the day when—
 - (a) the coroner's report is made; or
 - (b) the report of the board of inquiry or royal commission is given to the Chief Minister.
- (4) In this section:
aiding and abetting offence means—
 - (a) an offence arising under the *Crimes Act 1900*, section 345 (Aiding and abetting); or
 - (b) another offence against a law of the Territory dealing with aiding and abetting.

Part 7 Intoxicated Persons (Care and Protection) Act 1994

52 Act amended in pt 7

This part amends the *Intoxicated Persons (Care and Protection) Act 1994*.

53 Interpretation Section 3 (1), definition of *intoxicated*

substitute

intoxicated means apparently under the influence of alcohol, another drug or substance, or a combination of alcohol, drugs or substances.

Examples of substances

- 1 Glue
- 2 Petrol
- 3 Another solvent

54 Detention of intoxicated persons New section 4 (2)

insert

- (2) The police officer may take the person into custody only if the officer is satisfied that there is no other reasonable alternative for the person's care and protection.

55 Section 4 (5)

omit

(4)

substitute

(5)

56 Section 4 (2) to (5)

renumber as section 4 (3) to (6)

Part 8 Magistrates Court Act 1930

57 Act amended in pt 8

This part amends the *Magistrates Court Act 1930*.

58 Limitation of proceedings Section 31

omit

Part 9 Road Transport (Safety and Traffic Management) Act 1999

59 Act amended in pt 9

This part amends the *Road Transport (Safety and Traffic Management) Act 1999*.

60 Surrender and forfeiture of traffic offence evasion articles Section 10 (1)

omit

believes

substitute

suspects

61 New section 10 (2) and (3)

insert

- (2) If subsection (1) (b) applies in relation to a police officer, the officer may—
- (a) stop and detain the vehicle; and
 - (b) search the vehicle for the traffic offence evasion article; and
 - (c) seize the article if the officer finds it in or on the vehicle.
- (3) In exercising a power under subsection (2) in relation to a vehicle, a police officer—
- (a) may use such assistance as is necessary; and
 - (b) must search the vehicle in a public place or somewhere else to which members of the public have ready access; and

- (c) must not detain the vehicle for longer than is necessary and reasonable to search it; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the vehicle by forcing open a part of the vehicle unless—
 - (i) someone apparently in charge of the vehicle has been given a reasonable opportunity to open that part; or
 - (ii) it is not possible to give anyone apparently in charge of the vehicle a reasonable opportunity to open that part.

62 Section 10 (2)

omit everything before paragraph (a), substitute

- (4) If subsection (1) applies in relation to a police officer or authorised person, the police officer or authorised person may—

63 Section 10 (2) (a)

omit

the person

substitute

the person mentioned in subsection (1)

64 New section 10 (5)

insert

- (5) Subsection (4) does not limit the powers of a police officer under subsection (3).

65 Section 10 (3)

omit

subsection (2)

substitute

subsection (4)

66 Section 10 (3)

renumber as section 10 (6)

67 Section 10 (4)

omit

subsection (3)

substitute

subsection (6)

68 Section 10 (4) to (6)

renumber as section 10 (7) to (9)

Part 10 Road Transport (Offences) Regulations 2001

69 Regulation amended in pt 10

This part amends the *Road Transport (Offences) Regulations 2001*.

70 Short descriptions, penalties and demerit points Schedule 1, part 1.12, item 15, column 2

omit

10 (3)

substitute

10 (6)

Part 11 Supreme Court Act 1933

71 Act amended in pt 11

This part amends the *Supreme Court Act 1933*.

72 Appellate jurisdiction New section 37E (2) (aa)

insert

(aa) orders to review under section 37R (Order to review acquittal);

73 Section 37E (2)

renumber paragraphs when Act next republished under Legislation Act 2001

Endnote

Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 15 June 2001]

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