



Australian Capital Territory

Crimes Amendment Act 2008

A2008-6

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Australian Capital Territory

Crimes Amendment Act 2008

A2008-6

An Act to amend the *Crimes Act 1900*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes Amendment Act 2008*.

2 Commencement

This Act 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)).

Part 2 Children and Young People Act 1999

3 Legislation amended—pt 2

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

4 Meaning of *under restraint* New section 77 (4) to (8)

insert

- (4) Also, for this division, a young person is not *under restraint* if—
- (a) the young person is 16 years old or older; and
 - (b) a police officer suspects on reasonable grounds that the young person has committed 1 of the following offences:
 - (i) the *Crimes Act 1900*, section 120 (Defacing premises—strict liability);
 - (ii) the *Crimes Act 1900*, section 393A (Urinating in public place);
 - (iii) the *Crimes Act 1900*, section 394 (2) (Noise abatement directions);
 - (iv) the *Liquor Act 1975*, section 139 (1) (Consumption of liquor in certain public places); and
 - (c) the young person is in the company of the police officer for investigating whether to serve an infringement notice for the offence on the young person.

Note 1 A police officer may serve an infringement notice for an offence on a person if the officer believes on reasonable grounds that the person has committed the offence (see the *Magistrates Court Act 1930*, s 120).

Note 2 The *Magistrates Court (Crimes Infringement Notices) Regulation 2008* provides that an infringement notice under the *Magistrates Court Act 1930* may be issued for offences against the *Crimes Act 1900*, s 120, s 393A and s 394 (2).

Note 3 The *Magistrates Court (Liquor Infringement Notices) Regulation 2008* provides that an infringement notice under the *Magistrates Court Act 1930* may be issued for an offence against the *Liquor Act 1975*, s 139 (1).

- (5) Also, for this division, a young person is not ***under restraint*** if—
- (a) the young person is 16 years old or older; and
 - (b) an inspector under the *Liquor Act 1975* suspects on reasonable grounds that the young person has committed an offence against the *Liquor Act 1975*, section 139 (1); and
 - (c) the young person is in the company of the inspector for investigating whether to serve an infringement notice for the offence on the young person.
- (6) Also, for this division, a young person is not ***under restraint*** if—
- (a) the young person is 16 years old or older; and
 - (b) an authorised person under the *Litter Act 2004* suspects on reasonable grounds that the young person has committed an offence against the *Crimes Act 1900*, section 120; and
 - (c) the young person is in the company of the authorised person for investigating whether to serve an infringement notice for the offence on the young person.
- (7) Despite subsection (4), a young person is ***under restraint*** if—
- (a) the police officer decides not to serve an infringement notice for the offence on the young person; and
 - (b) the young person is in the company of the police officer for the further investigation of the offence.

(8) In this section:

infringement notice—see the *Magistrates Court Act 1930*, section 117.

**5 Enforcement of payment of fines etc
Section 102 (4)**

omit everything before paragraph (a), substitute

(4) The registrar may, by warrant, commit a young person to an institution or State institution in a stated State or Territory if—

Part 3 Crimes Act 1900

6 Legislation amended—pt 3

This part amends the *Crimes Act 1900*.

**7 Offences against Act—application of Criminal Code etc
Section 7A, note 1, new dot points**

insert

- s 119 (Defacing premises)
- s 120 (Defacing premises—strict liability)
- s 393A (Urinating in public place)
- s 394 (Noise abatement directions)

8 Section 119*substitute***119 Defacing premises**

- (1) A person commits an offence if the person—
- (a) affixes a placard or paper, or makes a mark with chalk, paint or any other material on private premises; and
 - (b) does not have the consent of—
 - (i) if the premises are occupied—the occupier or person in charge of the premises; or
 - (ii) if the premises are not occupied—the owner or person in charge of the premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person unlawfully affixes a placard or paper, or makes a mark with chalk, paint or any other material, on public property.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) In this section:

public property means—

- (a) a public road; or
- (b) a bus shelter; or
- (c) any other property of the Territory or Commonwealth or of an authority or body under a law of the Territory or the Commonwealth.

public road—see the *Roads and Public Places Act 1937*, dictionary.

120 Defacing premises—strict liability

- (1) A person commits an offence if the person—
- (a) makes a mark with chalk, paint or any other material on private premises; and
 - (b) does not have the consent of—
 - (i) if the premises are occupied—the occupier or person in charge of the premises; or
 - (ii) if the premises are not occupied—the owner or person in charge of the premises.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person unlawfully makes a mark with chalk, paint or any other material, on public property.

Maximum penalty: 10 penalty units.

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

- (4) In this section:

public property—see section 119 (3).

9 New section 393A

insert

393A Urinating in public place

- (1) A person commits an offence if the person urinates in a public place (other than in a toilet).

Maximum penalty: 10 penalty units.

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

Note Circumstances of sudden and extraordinary emergency is a defence in relation to the offence. See the *Criminal Code 2002*, s 41.

**10 Noise abatement directions
Section 394 (2) and (3)**

substitute

- (2) A person commits an offence if the person—
- (a) is given a direction under subsection (1) (a); and
 - (b) fails to comply with the direction.
- Maximum penalty: 10 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.

- (3A) A person commits an offence if the person—
- (a) is given a direction under subsection (1) (a); and
 - (b) causes or allows any offensive noise to be emitted from the premises within the 6-hour period after the direction was given.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3B) A person commits an offence if the person—
- (a) is given a direction under subsection (1) (b); and
 - (b) the person—
 - (i) fails to comply with the direction; or
 - (ii) makes, or contributes to the making of, any offensive noise emitted from the premises within the 6-hour period after the direction was given.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

11 Section 394 (5) and (6)

omit

subsection (2) or (3)

substitute

subsection (2), (3A) or (3B)

**12 Offence notices
Section 441**

omit

Part 4 Liquor Act 1975

13 Legislation amended—pt 4

This part amends the *Liquor Act 1975*.

14 New section 5

insert

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 139 (Consumption of liquor in certain public places).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

15 Consumption of liquor in certain public places Section 139 (1) and (2)

substitute

- (1) A person must not consume liquor in a prescribed public place.
Maximum penalty: 5 penalty units.
- (2) A person commits an offence if the person—
 - (a) possesses an open container of liquor in a prescribed public place; and

(b) intends to consume the liquor in the place.

Maximum penalty: 2 penalty units.

(2A) An offence against subsection (1) is a strict liability offence.

16 **Liquor**
Section 159 (5)

omit

section 139

substitute

section 139 (2)

Part 5 Magistrates Court Act 1930

17 Legislation amended—pt 5

This part amends the *Magistrates Court Act 1930*.

18 Service of infringement notices New section 120 (1A)

insert

- (1A) A regulation may make provision in relation to when an authorised person is, or is not, taken to have reasonable grounds for a belief mentioned in subsection (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 12 February 2008.

2 Notification

Notified under the Legislation Act on 15 April 2008.

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 Amendment Bill 2008, which was passed by the Legislative Assembly on 1 April 2008.

Clerk of the Legislative Assembly

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