



Australian Capital Territory

Crimes Legislation Amendment Act 2009

A2009-24

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

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Australian Capital Territory

Crimes Legislation Amendment Act 2009

A2009-24

An Act to amend legislation in relation to criminal proceedings

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

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2009*.

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)).

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

4 Legislation repealed

The following regulations are repealed:

- *Crimes (Transitional Provisions) Regulation 2009* (SL2009-21)
- *Magistrates Court (Transitional Provisions) Regulation 2009* (SL2009-20).

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Bail Act 1992

[1.1] Section 25 (9), new definition of *chief executive*

insert

chief executive means—

- (a) if section 25A applies in relation to the accused person—the responsible chief executive decided under that section; or
- (b) in any other case—the chief executive responsible for this Act.

[1.2] New section 25A (3) and (4)

insert

- (3) If the responsible chief executive for matters relating to the supervision of an accused person is the chief executive responsible for the *Children and Young People Act 2008*, the accused person must be supervised as a person under 18 years old.
- (4) If the responsible chief executive for matters relating to the supervision of an accused person is the chief executive responsible for this Act, the accused person must be supervised as an adult.

Part 1.2 Court Procedures Act 2004

[1.3] Section 71 (5) (b)

omit

the offence

substitute

an offence

[1.4] Section 71 (7), new definition of *victim*

insert

victim, of an offence—see the *Crimes (Sentencing) Act 2005*, section 47.

[1.5] Section 72 (4), new definition of *victim*

insert

victim, of an offence—see the *Crimes (Sentencing) Act 2005*, section 47.

Part 1.3 Crimes Act 1900

[1.6] Section 375A (4), examples and note

omit

[1.7] New section 600 (2) and (3)

insert

- (2) That part, as in force immediately before the amendments commence, continues to apply to the proceeding.

- (3) For subsection (1), the hearing in a proceeding for an offence has started if—
- (a) the defendant has pleaded guilty to the charge and the court has accepted the plea; or
 - (b) the defendant has pleaded not guilty to the charge, or is taken to have pleaded not guilty to the charge under section 375 (6) and the court has begun to take oral or written evidence in the proceeding (other than in relation to bail or any other interlocutory matter).

Part 1.4 **Crimes (Sentence Administration) Act 2005**

[1.8] Section 95 (1)

omit

(other than a young offender)

[1.9] New section 95 (3)

insert

- (3) In this section:

offender—

- (a) includes a young offender for whom the chief executive responsible for this Act is responsible in accordance with a decision under section 320F; but
- (b) does not include any other young offender.

[1.10] Section 96 (1)

omit

(other than a young offender)

[1.11] New section 96 (3)

insert

(3) In this section:

offender—

- (a) includes a young offender for whom the chief executive responsible for this Act is responsible in accordance with a decision under section 320F; but
- (b) does not include any other young offender.

[1.12] Section 102 (4) and note

substitute

(4) In this section:

offender—

- (a) includes a young offender for whom the chief executive responsible for this Act is responsible in accordance with a decision under section 320F; but
- (b) does not include any other young offender.

Note For other young offenders, see s 320G (Young offenders—breach of good behaviour obligations).

[1.13] Section 320F (2)

substitute

- (2) The chief executive responsible for this Act and the chief executive responsible for the *Children and Young People Act 2008* must decide which of them is to be the administering chief executive for the person.
- (3) If the administering chief executive is the chief executive responsible for this Act, the person is dealt with under this Act in the same way as an adult offender.

- (4) If the administering chief executive is the chief executive responsible for the *Children and Young People Act 2008*, the person continues to be dealt with under this Act as a young offender.

[1.14] Section 320G (3), new definition of *young offender*

insert

young offender does not include a young offender for whom the chief executive responsible for this Act is responsible in accordance with a decision under section 320F.

Note Section 102 (Corrections officers to report breach of good behaviour obligations) applies to these young offenders (see s 102 (4)).

Part 1.5 Crimes (Sentencing) Act 2005

[1.15] Section 133M (2) (a), note

substitute

Note An education and training condition must not be included in the order unless the young offender is convicted or found guilty of the offence (see s 133P).

[1.16] Section 133P heading

substitute

133P Education and training conditions—for young offenders convicted or found guilty

[1.17] Section 133Z heading

substitute

133Z Accommodation orders—for young offenders convicted or found guilty

Part 1.6 Criminal Code 2002

[1.18] Section 10 (1), definition of *default application date*

omit

1 July 2009

substitute

1 July 2013

Part 1.7 Criminal Code Regulation 2005

[1.19] Section 4A

omit

Part 1.8 Evidence (Miscellaneous Provisions) Act 1991

[1.20] Section 38C (1) (c) (ii)

omit

disability

substitute

vulnerability

[1.21] Section 38D

substitute

38D Examination of witness by self-represented accused person—procedure

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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).

- (2) This section also applies to a child or witness with a disability (the *witness*) giving evidence for the prosecution in a sexual or violent offence proceeding.

- (3) The witness must not be examined personally by the accused person but may be examined instead by—
- (a) the accused person’s legal representative; or
 - (b) if the accused person does not have a legal representative—a person appointed by the court.
- (4) If the accused person does not have a legal representative, the court must, as soon as practicable, tell the person—
- (a) about the terms of subsection (3); and
 - (b) that the person may not adduce evidence from another witness in relation to a fact in issue to contradict the evidence of the witness in relation to the fact if the fact in the other witness’s evidence intended to contradict the witness’s evidence has not been put to the witness in cross-examination.
- (5) A person appointed by the court for subsection (3) (b) may ask the witness only the questions that the accused person asks the person to put to the witness, and must not independently give the accused person legal or other advice.
- Note 1* If the court considers a question to be harassing, intimidating etc, the court must disallow it or tell the witness that it need not be answered (see *Evidence Act 1995* (Cwlth), s 41 (Improper questions)).
- Note 2* If the court considers a question to be indecent or scandalous, the court may disallow it unless the question relates to a fact in issue in the proceeding or to matters necessary to be known to determine an issue of fact in the proceeding (see *Evidence Act 1971*, s 59 (Scandalous and insulting questions)).
- (6) If the accused person does not have a legal representative, the court may, if it considers it is in the interests of justice, do 1 or more of the following:
- (a) adjourn the proceeding to enable the person to obtain a legal representative to conduct the examination;

- (b) make—
 - (i) an order that the person obtain legal representation; and
 - (ii) any other order the court considers necessary to secure legal representation for the person.
- (7) If the proceeding is a trial by jury, the court must tell the jury that—
 - (a) the accused person may not examine the witness personally; and
 - (b) obtaining, or being provided with, legal representation to examine the witness, or having the accused person's questions put to the witness by a person appointed by the court, is a usual practice; and
 - (c) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the examination is not conducted personally by the accused person.
- (8) In this section:
examine includes cross-examine and re-examine.

[1.22] Section 38E (1) (c) (ii)

omit

disability

substitute

vulnerability

[1.23] Section 39 (1) (c) (ii)

omit

disability

substitute

vulnerability

[1.24] Section 40M (2)

substitute

- (2) For this section, a person has **authority** in relation to an audiovisual recording only if the person possesses the recording, or does something with the recording, in connection with—
- (a) the investigation of, or a proceeding for, an offence in relation to which the recording is prepared; or
 - (b) a re-hearing, re-trial or appeal in relation to the proceeding; or
 - (c) another proceeding in which the recording is or may be admitted in evidence under section 40V.

[1.25] Section 40Q heading

substitute

40Q Witness may give evidence at pre-trial hearing

[1.26] New section 40Q (1A)

before subsection (1), insert

- (1A) A witness may give evidence at a pre-trial hearing.

[1.27] Section 40Q (1)

omit

A witness must give the witness's evidence at a pre-trial hearing

substitute

The evidence must be given

[1.28] Section 40Q (4)

after

for all purposes

insert

(other than subsection (3))

[1.29] Section 40T (6)

after

for all purposes

insert

(other than section 40S (4))

[1.30] Section 42 (1) (c) (ii)

omit

disability

substitute

vulnerability

[1.31] Section 43 (4)

after

for all purposes

insert

(other than section 40F (3))

[1.32] Section 81D (1)

omit

disability

substitute

vulnerability

[1.33] New section 150 (2) and (3)

insert

- (2) This Act, as in force immediately before the amendments commence, continues to apply to the proceeding.
- (3) For subsection (1), the hearing of a proceeding has started if the court has begun to take oral or written evidence in the proceeding (other than in relation to bail or any other interlocutory matter).

Part 1.9 Magistrates Court Act 1930

[1.34] Section 90AA (3) (b)

omit

[1.35] Section 90AA (8)

omit

another sexual offence

substitute

another offence

[1.36] Section 94 (a) and (b), except notes

substitute

- (a) if the court is satisfied, having regard to all the evidence before it, that there is no reasonable prospect that the person would be found guilty of an indictable offence—if the person is in custody in relation to the offence, immediately order that the person be released from custody in relation to the offence; or
- (b) if the court is not satisfied as mentioned in paragraph (a)—commit the person for trial.

[1.37] Section 97 (a)

omit

the offence

substitute

an indictable offence

[1.38] Section 110 (2)

omit

[1.39] New section 110 (8) and (9)

insert

- (8) The court must not sentence a defendant to imprisonment for an offence if the court has heard and decided the case under subsection (1) (a) in the absence of the defendant.
- (9) The court must set aside an order made in hearing and deciding a case under subsection (1) (a) if—
 - (a) the defendant applies under the rules to have the order set aside; and
 - (b) the court is satisfied on reasonable grounds that the defendant—
 - (i) did not know the hearing date; or
 - (ii) did not understand that the court could proceed to hear and decide the case in the defendant's absence if the defendant failed to appear; or
 - (iii) otherwise had a reasonable excuse for failing to appear.

[1.40] Section 451

substitute

451 Application of certain other amendments

- (1) The amendments of part 3.5 (Proceedings for indictable offences) made by the *Crimes Legislation Amendment Act 2008* do not apply in relation to a proceeding if the court has begun to take oral or written evidence in the proceeding before the amendments commence.
- (2) Part 3.5, as in force immediately before the amendments mentioned in subsection (1) commence, continues to apply in relation to the proceeding.

- (3) The amendments of part 3.10 (Criminal appeals) made by the *Crimes Legislation Amendment Act 2008* do not apply to a proceeding on an appeal if the proceeding has started before the amendments commence.
- (4) Part 3.10, as in force immediately before the amendments mentioned in subsection (3) commence, continues to apply to the proceeding.

451A Admissibility of certain written statements made before commencement day

- (1) In this section:
commencement day means the day the *Crimes Legislation Amendment Act 2008*, part 1.11 (Magistrates Court Act 1930) commences.
- (2) A written statement is not inadmissible only because it does not comply with section 90AA (3) if it—
 - (a) was made before the commencement day; and
 - (b) contains words to the effect of the endorsement set out in section 90AA (3) (a).
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

[1.41] Chapter 12

omit

Part 1.10 Supreme Court Act 1933

[1.42] New section 68G

in part 8, insert

68G Alternative verdict—summary offence

- (1) This section applies if, on the trial of a person for an indictable offence against a territory law—
 - (a) the person is found not guilty of the offence but guilty of another offence that, under that law, is an alternative offence; and
 - (b) the alternative offence is a summary offence.
- (2) The court may sentence or otherwise deal with the person for the alternative offence.
- (3) In sentencing or otherwise dealing with the person, the court has the same functions as the Magistrates Court.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 June 2009.

2 Notification

Notified under the Legislation Act on 3 September 2009.

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 Legislation Amendment Bill 2009, which was passed by the Legislative Assembly on 20 August 2009.

Clerk of the Legislative Assembly

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