



Australian Capital Territory

# Crimes Legislation Amendment Act 2015

A2015-3

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Australian Capital Territory

# Crimes Legislation Amendment Act 2015

**A2015-3**

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An Act to amend legislation about crimes, and for other purposes

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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 2015*.

### 2 Commencement

- (1) This Act (other than section 32) 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) Section 32 commences 3 months after this Act's notification day.

### 3 Legislation amended

This Act amends the following legislation:

- [Children and Young People Act 2008](#)
- [Crimes Act 1900](#)
- [Crimes \(Forensic Procedures\) Act 2000](#)
- [Crimes \(Sentence Administration\) Act 2005](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Crimes \(Surveillance Devices\) Act 2010](#)
- [Criminal Code 2002](#)
- [Firearms Act 1996](#)
- [Prohibited Weapons Act 1996](#).

## Part 2 Children and Young People Act 2008

### 4 Orders to bring young detainee before court etc Section 102 (2), new note

*insert*

*Note* A court may also order the director-general to bring a young detainee before the court in a civil proceeding if the young detainee consents (see s 876A).

### 5 New section 876A

*insert*

#### 876A Power of court to bring young detainee before it—civil proceeding

- (1) For a civil proceeding, a court may order the director-general to bring a young detainee in a detention place before the court, if the young detainee consents, and to return the young detainee to the detention place in accordance with the order.
- (2) In this section:

*civil proceeding*—see the *Evidence Act 2011*, dictionary, part 1.

*court* includes the ACAT.

## Part 3 Crimes Act 1900

### 6 Offences against Act—application of Criminal Code etc Section 7A, note 1

*insert*

- s 61B (Intimate observations or capturing visual data etc)

### 7 New section 61B

*insert*

#### 61B Intimate observations or capturing visual data etc

- (1) A person (the *offender*) commits an offence if—
  - (a) the offender—
    - (i) observes another person with the aid of a device; or
    - (ii) captures visual data of another person; and
  - (b) a reasonable person would, in all the circumstances, consider the observing or capturing of visual data to be—
    - (i) an invasion of privacy; and
    - (ii) indecent.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Strict liability applies to subsection (1) (b) (i).
- (3) Absolute liability applies to subsection (1) (b) (ii).
- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant—
  - (a) believed on reasonable grounds that the other person consented to the defendant observing or capturing visual data of the other person; or



- (b) did not know, and could not reasonably be expected to have known, that the observing or capturing of visual data of the other person was without consent.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).

- (5) A person (the *offender*) commits an offence if—
- (a) the offender observes with the aid of a device or captures visual data of—
- (i) another person’s genital or anal region; or
- (ii) for a female or a transgender or intersex person who identifies as a female—the breasts; and

**Example**

using a mobile phone to take photos of a woman’s underwear under her skirt or down the front of her blouse

*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).

- (b) a reasonable person would, in all the circumstances, consider the observing or capturing of visual data to be an invasion of privacy.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (6) Strict liability applies to subsection (5) (b).
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant proves that the defendant—
- (a) believed on reasonable grounds that the other person consented to the defendant observing or capturing visual data of the other person’s genital or anal region or breasts; or

- (b) did not know, and could not reasonably be expected to have known, that the observing or capturing of visual data of the other person's genital or anal region or breasts was without consent.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (7) (see [Criminal Code](#), s 59).

- (8) Subsections (1) and (5) do not apply to—
    - (a) an observation made by viewing data that was previously captured; or
    - (b) an observation or capturing of visual data—
      - (i) by a law enforcement officer acting reasonably in the performance of the officer's duty; or
      - (ii) by a licensed security provider acting reasonably in carrying on a security activity authorised under the security provider's licence; or
      - (iii) of a child or other person incapable of giving consent in circumstances in which a reasonable person would regard the observing or capturing of visual data as acceptable; or
- Example**  
taking a photograph or movie of a naked newborn relative
- (iv) for a scientific, medical or educational purpose; or
- Example**  
a patient consents to her doctor taking an image of a mole on her breast for the purpose of showing another doctor for a second opinion about the mole
- (v) by a person in the course of reasonably protecting premises owned by the person; or
  - (vi) in circumstances or for a purpose prescribed by regulation.

(9) Nothing in subsection (8) prevents a person being found guilty of an offence under or because of the [Criminal Code](#), part 2.4 (Extensions of criminal responsibility).

(10) In this section:

***breasts***, of a female or a transgender or intersex person who identifies as a female, means the person's breasts whether covered by underwear or bare.

***capture visual data***—a person ***captures visual data*** of another person if the person captures moving or still images of the other person by a camera or any other means in such a way that—

- (a) a recording is made of the images; or
- (b) the images are capable of being transmitted in real time with or without retention or storage in a physical or electronic form; or
- (c) the images are otherwise capable of being distributed.

***device*** does not include spectacles, contact lenses or a similar device when used by someone with impaired sight to overcome the impairment.

***genital or anal region***, of a person, means the person's genital or anal region whether covered by underwear or bare.

***law enforcement officer*** means—

- (a) a police officer; or
- (b) a member of the staff of the Australian Crime Commission established by the [Australian Crime Commission Act 2002](#) (Cwlth).

***licensed security provider*** means a person who holds a licence under the [Security Industry Act 2003](#).

***security activity***—see the [Security Industry Act 2003](#), section 7.

## Part 4 Crimes (Forensic Procedures) Act 2000

### 8 Interview friend Section 16 (1)

*substitute*

- (1) This section applies to a suspect, serious offender or volunteer who is—
  - (a) a child; or
  - (b) an incapable person; or
  - (c) an Aboriginal or Torres Strait Islander person.

### 9 Securing the presence of suspects at hearings—suspect not in custody Section 37 (1)

*substitute*

- (1) If the suspect is not in custody, the Magistrates Court may, on the application of a police officer, issue—
  - (a) a summons for the appearance of the suspect at the hearing of the application; or
  - (b) a warrant for the arrest of the suspect to bring the suspect before the court for the hearing of the application.

### 10 Section 37 (3) and (4)

*omit*

magistrate

*substitute*

Magistrates Court

**11 Procedure at hearing of application for order  
Section 38 (3)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**12 Action to be taken on making of orders  
Section 39 (1) (d)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**13 Applications for interim orders  
Section 42 (5)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**14 Rules for carrying out forensic procedures—transgender and intersex people  
Section 49B (3)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**15 Section 54**

*substitute*

**54 Sex of person carrying out or helping carry out forensic procedures**

- (1) If a forensic procedure is to be carried out on a relevant person, the person carrying it out, and anyone asked under section 55 to help carry it out, must, if practicable, be of the same sex as the relevant person.
- (2) Subsection (1) does not apply—
  - (a) to the taking of a handprint, fingerprint, footprint or toeprint; or
  - (b) to any other non-intimate forensic procedure that may be carried out without—
    - (i) touching the relevant person; or
    - (ii) requiring the relevant person to remove any clothing (other than his or her overcoat, coat, jacket, gloves, socks, shoes and hat); or
  - (c) if the relevant person consents to a person other than a person of the same sex as the relevant person carrying out, or helping to carry out, the forensic procedure.

- (3) If the person on whom a forensic procedure is to be carried out is a volunteer—
- (a) the volunteer may ask that a person other than a person of the same sex as the volunteer carry out, or help carry out, the procedure; and
  - (b) if practicable, any such request must be complied with, despite subsection (1).
- (4) However, if the relevant person is a child—
- (a) the person carrying out the forensic procedure must ask the child, before the procedure is carried out, if the child wants a person of a particular sex to carry out, or help carry out, the procedure; and
  - (b) if the child asks for a person of a particular sex to carry out, or help carry out, the forensic procedure, a person of that sex must, if practicable, carry out, or help carry out, the procedure.

**16 Presence of interview friend or lawyer while forensic procedure is carried out  
Section 57 (1) and (3)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**17 Securing the presence of serious offender at hearing—  
offender in custody  
Section 77A (2)**

*omit*

A magistrate

*substitute*

The Magistrates Court

**18 Securing the presence of serious offender at hearing—  
offender not in custody  
Section 77B (2)**

*omit*

A magistrate

*substitute*

The Magistrates Court

**19 Section 77B (4) and (5)**

*omit*

magistrate

*substitute*

Magistrates Court



**20 Procedure at hearing of application for order  
Section 77C (3)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**21 Section 77C (5)**

*omit*

magistrate

*substitute*

court

**22 Section 77C (6)**

*omit*

A magistrate

*substitute*

The court

**23 Powers of lawyers and interview friends  
Section 103 (1) (b)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**24** **Obligation of investigating police officers relating to electronic recordings**  
**Section 104 (2) (b)**

*omit*

or incapable person

*substitute*

, incapable person or Aboriginal or Torres Strait Islander person

**25** **Dictionary, new definition of *Aboriginal or Torres Strait Islander person***

*insert*

***Aboriginal or Torres Strait Islander person*** means a person who—

- (a) is a descendant of an Aboriginal person or Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or Torres Strait Islander person.

**Part 5****Crimes (Sentence  
Administration) Act 2005****26 Board may reject parole application without inquiry  
Section 122 (2), new example**

*before the examples, insert*

**Example of when board might be satisfied application is frivolous, vexatious or misconceived**

The board previously rejected an application because the offender's proposed accommodation after release was unsuitable. The offender's later application proposes the same unsuitable accommodation without including new information or new reasons.

## Part 6 Crimes (Sentencing) Act 2005

### 27 Victim impact statements—form and contents New section 51 (5A)

*insert*

- (5A) The statement may contain photographs, drawings or other images.

### 28 Meaning of *supervision condition* Section 133U (2), definition of *director-general*, paragraph (b)

*substitute*

- (b) in any other case—the director-general responsible, under the [Crimes \(Sentence Administration\) Act 2005](#), for the administration of the good behaviour order to which the direction relates.

### 29 Meaning of *accommodation order* Section 133Y (2), definition of *director-general*, paragraph (b)

*substitute*

- (b) in any other case—the director-general responsible, under the [Crimes \(Sentence Administration\) Act 2005](#), for the young offender to whom the direction relates.

## Part 7 Crimes (Surveillance Devices) Act 2010

### 30 What must a retrieval warrant contain? New section 22 (4)

*insert*

- (4) Unless sooner executed or revoked, a retrieval warrant remains in force for the period stated in the warrant.

## Part 8 Criminal Code 2002

### 31 False statement by officer of body Section 351 (1) (a)

*omit*

particular; or

*substitute*

particular; and

### 32 New part 6.4A

*insert*

## Part 6.4A Display of drug pipes

### 621A Display of drug pipes

- (1) An occupier of a retail or wholesale outlet commits an offence if the occupier displays to customers at the outlet a drug pipe within, or adjacent to, the outlet.

Maximum penalty: 50 penalty units.

- (2) In this section:

***drug pipe***—

- (a) means—

- (i) a device, or components that together make a device, for the purpose or apparent purpose of smoking, or drawing or inhaling smoke or fumes from, a controlled drug; or

- (ii) a device that is intended to be used for the purpose or apparent purpose of smoking, or drawing or inhaling smoke or fumes from, a controlled drug, but that requires an adjustment or modification to be used for that purpose; and
- (b) includes a device commonly known as—
  - (i) a hash pipe; or
  - (ii) an ice pipe; or
  - (iii) a bong.

***occupier***, of retail or wholesale outlet, means a person having the management or control, or otherwise being in charge, of the outlet.

***retail outlet*** means premises where goods are for sale by retail.

***wholesale outlet*** means premises where goods are available for sale exclusively by wholesale.

## Part 9 Firearms Act 1996

### **33 Authority to possess and use firearms temporarily New section 14 (2) (ba)**

*insert*

- (ba) the person is at least the age prescribed by regulation for section 85 (Minors firearms licences—applications); and

### **34 Section 14 (2) (c) (ii)**

*omit*

a registered user of the firearm

*substitute*

authorised under subsection (2A) to possess or use the firearm

### **35 New section 14 (2A)**

*insert*

- (2A) A person is authorised to possess or use a firearm if—
- (a) the person is an authorised instructor for an approved club; and
  - (b) the firearm is owned by the approved club; and
  - (c) the person has possession or use of the firearm for the purpose of giving instruction.

### **36 Unregulated firearms—forfeiture Section 30 (2)**

*omit*

director-general

*substitute*

registrar



**37 Authority conferred by licence—additional matters  
New section 53 (2A) and (2B)**

*insert*

- (2A) A licence that authorises the licensee to have possession or use of a registered firearm also authorises the licensee to use the registered firearm at an approved shooting range for 1 or more of the following purposes:
- (a) to test the firearm;
  - (b) to adjust the sights on the firearm;
  - (c) to develop and refine self-loaded ammunition;
  - (d) to receive instruction and certification in the use of the firearm for an employment-related purpose.

**Example—employment-related purpose**

a person with an employee licence under the *Security Industry Act 2003* wanting to maintain that licence

*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).

- (2B) For subsection (2A), a licensee need not be a member of the shooting club that operates the approved shooting range.

**38 Return or forfeiture of things seized  
Section 217 (4)**

*omit*

director-general

*substitute*

registrar

## Part 10 Prohibited Weapons Act 1996

### 39 Evidentiary provisions New section 17 (2)

*insert*

- (2) The registrar may delegate the registrar's functions under subsection (1) to a police officer.

*Note 1* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

*Note 2* In particular, the delegation must be in writing (see [Legislation Act](#), s 232).

*Note 3* A certificate signed by a delegate of the registrar is taken to have been signed by the registrar (see [Legislation Act](#), s 239 (4)).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 27 November 2014.

**2 Notification**

Notified under the [Legislation Act](#) on 2 March 2015.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Crimes Legislation Amendment Bill 2015, which originated in the Legislative Assembly as the Crimes Legislation Amendment Bill 2014 and was passed by the Assembly on 17 February 2015.

Clerk of the Legislative Assembly

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