



Australian Capital Territory

Crimes Legislation Amendment Act 2015 (No 2)

A2015-36

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J2014-636

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Australian Capital Territory

Crimes Legislation Amendment Act 2015 (No 2)

A2015-36

An Act to amend legislation about crimes, 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 Legislation Amendment Act 2015 (No 2)*.

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

This Act amends the following legislation:

- *Bail Act 1992*
- *Crimes Act 1900*
- *Crimes (Forensic Procedures) Act 2000*
- *Crimes (Sentencing) Regulation 2006*
- *Magistrates Court (Security Industry Infringement Notices) Regulation 2003*.

Part 2 Bail Act 1992

4 Offences against Customs Act 1901 (Cwlth) Schedule 1, part 1.5, item 3

omit

5 Schedule 1, new part 1.6

insert

Part 1.6 Offences against Criminal Code (Cwlth)

column 1 item	column 2 provision	column 3 description of offence
1	307.1	importing and exporting commercial quantities of border controlled drugs or border controlled plants
2	307.2	importing and exporting marketable quantities of border controlled drugs or border controlled plants
3	307.3	importing and exporting border controlled drugs or border controlled plants
4	307.5	possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants
5	307.6	possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants
6	307.8	possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported
7	307.9	possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported

Part 2 Bail Act 1992

Section 5

column 1 item	column 2 provision	column 3 description of offence
8	307.11	importing and exporting commercial quantities of border controlled precursors
9	307.12	importing and exporting marketable quantities of border controlled precursors
10	307.13	importing and exporting border controlled precursors

Part 3 Crimes Act 1900

6 Definitions for pt 10 Section 185, new definitions

insert

identification material, in relation to a person—

- (a) means—
- (i) a print of the person's hands, fingers, feet or toes; or
 - (ii) a recording of the person's voice; or
 - (iii) a sample of the person's handwriting; or
 - (iv) a photograph (including a video recording) of the person;
but
- (b) does not include a video recording for the purposes of a caution given to a person or a record of interview with the person.

Note Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).

impaired state, for a person, includes a state in which the person has difficulty communicating, or understanding the person's immediate circumstances, or making informed decisions.

Examples

- 1 a person who has a physical disability that prevents the person from speaking or writing
- 2 a person who is sedated
- 3 a person who is affected by drugs or alcohol

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).

take, identification material, includes requesting another person to take the material.

7 Section 230*substitute***230 Identification material—person at least 18 years old**

- (1) A police officer may take identification material from a person who is at least 18 years old, not in police custody for an offence, and not in an impaired state, only if the person consents in writing.
- (2) A police officer may take identification material from a person who is at least 18 years old, not in police custody for an offence, and in an impaired state, only if—
 - (a) a magistrate orders that the material be taken from the person; and
 - (b) the material is taken—
 - (i) with a parent or guardian, or the domestic partner, of the person present if—
 - (A) it is practicable for a parent or guardian, or the domestic partner, of the person to be present; and
 - (B) the person does not object to the parent, guardian or domestic partner being present; or
 - (ii) if it is not practicable for, or the person objects to, the parent, guardian or domestic partner of the person being present when the material is taken—with another person present (other than a police officer) who is capable of representing the interests of the person and who, as far as practicable in the circumstances, is acceptable to the person.

- (3) A police officer may take identification material from a person who is at least 18 years old and in police custody for an offence only if—
- (a) the officer is an officer of or above the rank of sergeant, or is the officer in charge of a police station at which the person is in custody; and
 - (b) any of the following apply:
 - (i) if the person is not in an impaired state—the person consents, in writing, to the material being taken;
 - (ii) the material is limited to a print of the person’s fingers or a photograph of the person (or both);
 - (iii) either—
 - (A) the officer believes on reasonable grounds that taking the material is necessary to identify the person, or identify the person as having committed the offence for which the person is in police custody; or
 - (B) the officer suspects on reasonable grounds that the person has committed another offence and that the material is likely to identify the person as having committed the other offence.

Note Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).

- (4) A police officer (the *applicant*) may apply to a magistrate for an order allowing identification material to be taken from a person under subsection (2) if either of the following apply (the *grounds for the application*):
- (a) the applicant believes on reasonable grounds that taking the material is necessary to identify the person;

- (b) the applicant suspects on reasonable grounds that taking the material is necessary to identify the person as having committed a stated offence.
- (5) The application must be made—
- (a) in person; or
 - (b) if it is not practicable for the applicant to make the application in person—by telephone, fax, email or any other means of communication.
- (6) The application must—
- (a) be in writing; and
 - (b) be sworn on oath; and
- Note* **Oath** includes affirmation and *swear* an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).
- (c) state—
 - (i) the name, age and home address of the person from whom identification material would be taken (if known); and
 - (ii) the material that would be taken; and
 - (iii) the facts in support of the application; and
 - (iv) the grounds for the application; and
 - (v) the nature of the person’s impairment; and
 - (vi) any other information requested by the magistrate; and
 - (d) include any other information prescribed by regulation.

- (7) A magistrate must not make an order allowing identification material to be taken from a person under this section unless the magistrate is satisfied that the information is reasonably necessary to identify the person, or identify the person as having committed the stated offence.
- (8) A police officer may use force that is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (9) If a police officer is required to use force to take identification material from a person under this section (the *forceful taking*), the police officer must ensure that the forceful taking is recorded by a video recording.

230A Identification material—person under 18 years old

- (1) A police officer may take identification material from a person who is under 18 years old and not in police custody for an offence, or under 16 years old and in police custody for an offence, only if a magistrate orders that the material may be taken from the person.
- (2) A police officer may take identification material from a person who is at least 16 years old but under 18 years old, and in police custody for an offence, only if—
 - (a) the officer is an officer of or above the rank of sergeant, or is the officer in charge of a police station at which the person is in custody; and
 - (b) the offence was allegedly committed by the person at a time when the person was at least 16 years old; and
 - (c) either—
 - (i) the officer believes on reasonable grounds that taking the material is necessary to identify the person, or identify the person as having committed the offence for which the person is in police custody; or

- (ii) the officer suspects on reasonable grounds that the person has committed another offence and that the material is likely to identify the person as having committed the other offence; and
- (d) either—
 - (i) the person is not in an impaired state; or
 - (ii) if the person is in an impaired state—a magistrate orders that the material may be taken from the person.
- (3) Before taking identification material from a person who is not in an impaired state, a police officer must tell the person—
 - (a) that the information is about to be taken from the person in accordance with this section; and
 - (b) if the material is being taken for the purpose of identifying the person—that the material is being taken to identify the person; and
 - (c) if the material is being taken for the purpose of identifying the person as having committed an offence—
 - (i) the offence allegedly committed by the person; and
 - (ii) that the identification material may be used in evidence in proceedings in relation to the offence; and
 - (d) if subsection (1) applies—whether a magistrate has ordered that the material may be taken.

- (4) A police officer (the *applicant*) may apply to a magistrate for an order allowing identification material to be taken from a person under 18 years old if any of the following apply (the *grounds for the application*):
- (a) if the person is in police custody—
 - (i) the applicant believes on reasonable grounds that taking the material is necessary to identify the person, or identify the person as having committed the offence for which the person is in police custody; or
 - (ii) the applicant suspects on reasonable grounds that the person has committed another offence and that the material is likely to identify the person as having committed the other offence;
 - (b) if the person is not in police custody—
 - (i) the applicant believes on reasonable grounds that taking the material is necessary to identify the person; or
 - (ii) the applicant suspects on reasonable grounds that taking the material is necessary to identify the person as having committed a stated offence.
- (5) The application must be made—
- (a) in person; or
 - (b) if it is not practicable for the applicant to make the application in person—by telephone, fax, email or any other means of communication.
- (6) The application must—
- (a) be in writing; and
 - (b) be sworn on oath; and

Note **Oath** includes affirmation and *swear* an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

(c) state—

- (i) the name, age and home address of the person from whom identification material would be taken (if known); and
- (ii) the material that would be taken; and
- (iii) the facts in support of the application; and
- (iv) the grounds for the application; and
- (v) if the person is in an impaired state—the nature of the person's impairment; and
- (vi) any other information requested by the magistrate; and

(d) include any other information prescribed by regulation.

- (7) A magistrate must not make an order allowing identification material to be taken from a person under this section unless the magistrate is satisfied that the information is reasonably necessary to identify the person, or identify the person as having committed the offence for which the person is in custody, the other offence or the stated offence.
- (8) Before giving an explanation mentioned in subsection (3) to a person, or taking identification material from a person in accordance with this section, a police officer involved with giving the explanation or taking the material must—
- (a) allow someone with parental responsibility for the person to be present when the explanation is given or the material is taken if—
 - (i) it is practicable for a person with parental responsibility to be present; and
 - (ii) the person does not object to the person with parental responsibility being present; or

- (b) if it is not practicable for, or the person objects to, someone with parental responsibility for the person being present when the explanation is given or the material is taken—
- (i) allow an interview friend for the person to be present when the explanation is given or the material is taken; and
 - (ii) as soon as practicable after the explanation is given or the material is taken, take reasonable steps to tell someone with parental responsibility for the person about the action taken.
- (9) A police officer may use force that is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (10) If a police officer is required to use force to take identification material from a person under this section (the *forceful taking*), the police officer must ensure that the forceful taking is recorded by a video recording.
- (11) In this section:
- interview friend*, for a person, means an adult chosen by, or acceptable to, the person, other than someone with parental responsibility for the person.
- parental responsibility*, for a person, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.

**8 Destruction of identification material
Section 231 (1) (a) and (2)**

after

section 230

insert

or section 230A

9 Section 232 heading

substitute

232 Offence—refusing to allow fingerprint or photo to be taken

**10 Laws relating to taking forensic samples not affected
Section 247**

omit

as defined in section 230

11 Dictionary, new definitions

insert

identification material, in relation to a person, for part 10 (Criminal investigation)—see section 185.

impaired state, for a person, for part 10 (Criminal investigation)—see section 185.

take, identification material, for part 10 (Criminal investigation)—see section 185.

Part 4 Crimes (Forensic Procedures) Act 2000

12 Part 2.1 heading

substitute

Part 2.1 Preliminary

13 Meaning of *volunteer* Section 10 (b) and note

substitute

- (b) if the person is a child—whose parent or guardian, on the child’s behalf, volunteers to a police officer that the child undergo the forensic procedure; or
- (c) if the person is an incapable person—whose parent, guardian or close associate, on the incapable person’s behalf, volunteers to a police officer that the incapable person undergo the forensic procedure.

14 New section 14A

insert

14A Meaning of *close associate*

- (1) In this Act:

close associate, for an incapable person—

- (a) includes the following:

- (i) the incapable person’s domestic partner;

Note **Domestic partner**—see the [Legislation Act](#), s 169 (1).

- (ii) a carer of the incapable person;
 - (iii) a relative or friend of the incapable person; but
- (b) does not include the following:
- (i) a child;
 - (ii) a person who appears to have impaired decision-making capacity.

(2) In this section:

carer, of an incapable person, means a person who gives, or arranges for the giving of, care and support to the incapable person in a domestic context but does not receive payment or reward for the care and support.

friend, of an incapable person, means someone other than a relative who—

- (a) is in a close personal relationship with the person; and
- (b) has frequent contact with the person; and
- (c) has a genuine personal interest in the person's welfare; and
- (d) does not receive payment or reward for the contact.

payment, for a carer, does not include a carer's pension (however described).

relative, of an incapable person, means a son, daughter, son-in-law, daughter-in-law, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law or grandparent of the person who—

- (a) has frequent contact with the person; and
- (b) has a genuine personal interest in the person's welfare; and
- (c) does not receive payment or reward for the contact.

15 **Meaning of *incapable person***
Section 15

omit

incapable of

substitute

incapable, or temporarily incapable, of

16 **Section 15, new examples**

insert

Examples—temporarily incapable

1 a person who is sedated

2 a person who is affected by drugs or alcohol

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).

17 **Interview friend**
New section 16 (2) (ba)

insert

(ba) if the person is an incapable person—a close associate of the person; or

18 **Section 16 (2) (c)**

omit

(a) and (b)

substitute

(a) to (ba)

19 New section 17

in part 2.1, insert

17 Police officer to ask if person is Aboriginal or Torres Strait Islander person

Before a police officer asks a suspect to consent to a forensic procedure under this Act, the police officer must ask the suspect if the suspect is an Aboriginal or Torres Strait Islander person.

20 New section 24A

insert

24A Aboriginal or Torres Strait Islander suspects

- (1) This section applies if a person is an Aboriginal or Torres Strait Islander person.
- (2) The police officer must not ask the suspect to consent to a forensic procedure unless—
 - (a) an interview friend is present; or
 - (b) the suspect has expressly and voluntarily waived the suspect's right to have an interview friend present.
- (3) In addition to the matters mentioned in section 24, the police officer must—
 - (a) inform the suspect that the Aboriginal legal service will be notified that the suspect will be asked to consent to a forensic procedure; and
 - (b) as soon as practicable, notify the Aboriginal legal service.
- (4) Subsection (3) does not apply if the suspect—
 - (a) has arranged for a lawyer to be present; or
 - (b) expressly waives the suspect's right to have a lawyer present.

- (5) After notifying the Aboriginal legal service under subsection (3), the police officer must allow the suspect to communicate, or attempt to communicate with the interview friend or lawyer in private, unless—
- (a) the suspect is under arrest; and
 - (b) the officer believes on reasonable grounds that the suspect may attempt to destroy or contaminate any evidence that may be obtained by carrying out the forensic procedure.

Note Section 107 states that the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds.

- (6) An interview friend (other than a lawyer) of the suspect may be excluded from the presence of the officer and the suspect if the interview friend unreasonably interferes with or obstructs the officer in performing a function under this part.
- (7) In this section:

Aboriginal legal service means the Aboriginal Legal Service (NSW/ACT) Limited (ACN 118 431 066).

**21 Presence of interview friend or lawyer while forensic procedure is carried out
New section 57 (1A)**

insert

- (1A) Subsection (1) does not apply if an Aboriginal or Torres Strait Islander person (other than an Aboriginal or Torres Strait Islander person who is a child or an incapable person) expressly and voluntarily waives the person's right to have an interview friend or lawyer present.

22 Section 79*substitute***79 Carrying out of forensic procedures on volunteers**

- (1) A person is authorised to carry out a forensic procedure on a volunteer—
- (a) if the volunteer is not a child or incapable person—with the informed consent of the volunteer given in accordance with section 80; or
 - (b) if the volunteer is a child or incapable person and the parent or guardian of the volunteer can be contacted—
 - (i) with the informed consent of the parent or guardian of the volunteer given in accordance with section 80 or by order of a magistrate under section 83 (Circumstances in which magistrate may order carrying out of forensic procedure on child or incapable person); and
 - (ii) after the person has informed the volunteer that, even though consent has been given or an order made, if the volunteer objects to or resists the carrying out of the forensic procedure it will not be carried out; or
 - (c) if the volunteer is an incapable person and the parent or guardian of the volunteer cannot be contacted—
 - (i) with the informed consent of a close associate of the volunteer given in accordance with section 80 or by order of a magistrate under section 83; and
 - (ii) after the person has informed the volunteer that, even though consent has been given or an order made, if the volunteer objects to or resists the carrying out of the forensic procedure it will not be carried out; and

- (iii) if the forensic procedure is a non-intimate forensic procedure only.
- (2) This section does not authorise a person to carry out a forensic procedure on a child or incapable person who objects to or resists the carrying out of the forensic procedure.
- (3) A person is authorised under this section to carry out a forensic procedure under this part only in accordance with part 2.6.

23 Section 80 heading

substitute

80 Informed consent of volunteer or parent, guardian or close associate of volunteer**24 Section 80**

omit

parent or guardian

substitute

parent, guardian or close associate

**25 Consent to retention of forensic material taken etc
Section 80A**

omit

parent or guardian

substitute

parent, guardian or close associate

**26 Recording of giving of information etc
Section 81**

omit

parent or guardian

substitute

parent, guardian or close associate

**27 Withdrawal of consent or end of agreed retention period
Section 82**

omit

parent or guardian

substitute

parent, guardian or close associate

**28 Circumstances in which magistrate may order carrying
out of forensic procedure on child or incapable person
Section 83 (1)**

substitute

- (1) A magistrate may order the carrying out of a forensic procedure on a child or incapable person if—
- (a) consent to the carrying out of the forensic procedure cannot reasonably be obtained from—
 - (i) if the person is a child—the parent or guardian of the child; or
 - (ii) if the person is an incapable person—the parent, guardian or close associate of the incapable person; or

- (b) the parent or guardian of the child or the parent, guardian or close associate of the incapable person refuses consent to the carrying out of the forensic procedure and the magistrate is satisfied that there are reasonable grounds to believe—
- (i) the parent, guardian or incapable person is a suspect; and
 - (ii) the forensic procedure is likely to produce evidence tending to confirm or disprove that the parent, guardian or close associate committed an offence.

29 Section 83 (2) (d), note

omit

s 79 (1) (b) (ii) and (2)

substitute

s 79

30 Section 83 (2) (e)

omit

child or

substitute

child or parent, guardian or close associate of the

**31 Retention of forensic material etc by order of magistrate
Section 84**

omit

parent or guardian

substitute

parent, guardian or close associate

32 Definitions—Act
Section 94, definition of *volunteers (unlimited purposes)*
index

omit

parents or guardians

substitute

parents, guardians or close associates

33 Section 94, definition of *volunteers (unlimited purposes)*
index

omit

parent or guardian

substitute

parent, guardian or close associate

34 Dictionary, note 2

insert

- domestic partner (see s 169)

35 Dictionary, new definition of *close associate*

insert

close associate, for an incapable person—see section 14A.

36 Dictionary, definition of *forensic order*, paragraph (d)

omit

by order of magistrate after parent or guardian of child or incapable person withdraws consent

substitute

etc by order of magistrate

37 Dictionary, definition of *informed consent*, paragraph (c)

omit

parent or guardian

substitute

parent, guardian or close associate

Part 5 Crimes (Sentencing) Regulation 2006

38 Section 1A

substitute

1A Offence in relation to which victim may make statement— Act, s 48 (b)

The [Act](#), part 4.3 (Victim impact statements) applies in relation to an offence against the following:

- (a) the [Road Transport \(Safety and Traffic Management\) Act 1999](#), section 6 (Negligent driving) if the driving occasions grievous bodily harm;
- (b) the [Work Health and Safety Act 2011](#), section 32 (Failure to comply with health and safety duty—category 2), if as a result of exposure to a risk of death, serious injury or illness, an individual dies, is seriously injured or develops an illness.

Part 6

Magistrates Court (Security Industry Infringement Notices) Regulation 2003

39 Contents of infringement notices—identifying authorised person Section 10 (a) and (b)

substitute

- (a) for an authorised person who is a police officer—the police officer’s service number; or
- (b) for an authorised person who is authorised by the commissioner for fair trading under the *Fair Trading (Australian Consumer Law) Act 1992*, section 36—
 - (i) the person’s full name, or surname and initials; or
 - (ii) any unique number given to the person by the administering authority for this regulation.

40 Contents of reminder notices—identifying authorised person Section 11 (a) and (b)

substitute

- (a) for an authorised person who is a police officer—the police officer’s service number; or
- (b) for an authorised person who is authorised by the commissioner for fair trading under the *Fair Trading (Australian Consumer Law) Act 1992*, section 36—
 - (i) the person’s full name, or surname and initials; or
 - (ii) any unique number given to the person by the administering authority for this regulation.

41 Section 12*substitute***12 Authorised people for infringement notice offences**

- (1) An authorised person may serve the following:
 - (a) an infringement notice for an infringement notice offence against the [Security Act](#);
 - (b) a reminder notice for an infringement notice offence against the [Security Act](#).
- (2) In this section:
authorised person means—
 - (a) a police officer; or
 - (b) a person authorised by the commissioner for fair trading under the [Fair Trading \(Australian Consumer Law\) Act 1992](#), section 36.

Note **Police officer**—see the [Legislation Act](#), dictionary, pt 1.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 13 August 2015.

2 Notification

Notified under the [Legislation Act](#) on 1 October 2015.

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 2015 (No 2), which originated in the Legislative Assembly as the Crimes Legislation Amendment Bill 2015 and was passed by the Assembly on 22 September 2015.

Acting Clerk of the Legislative Assembly

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