



Australian Capital Territory

Crimes Legislation Amendment Act 2018

A2018-6

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Australian Capital Territory

Crimes Legislation Amendment Act 2018

A2018-6

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 2018*.

2 Commencement

- (1) This Act (other than sections 32 to 36) 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) Sections 32 to 36 commence on 1 September 2018.

3 Legislation amended

This Act amends the following legislation:

- [Crimes Act 1900](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Criminal Code 2002](#)
- [Magistrates Court Act 1930](#).

Part 2 Crimes Act 1900

4 Section 56

substitute

56 Maintaining sexual relationship with young person or person under special care

- (1) A person who is an adult and who maintains a sexual relationship with a young person or a person under the special care of the adult is guilty of an offence.

Maximum penalty: imprisonment for 25 years.

- (2) For subsection (1), an adult maintains a sexual relationship with a young person or a person under the special care of the adult if on 2 or more occasions and over any period the adult engages in a sexual act with that person.
- (3) For subsection (2)—
- (a) the period, or any part of the period, may be before the amendment day; and
 - (b) 1 or more of the sexual acts may have occurred before the amendment day.
- (4) For a person to be convicted of an offence against subsection (1), the trier of fact must be satisfied beyond reasonable doubt that a sexual relationship existed.
- (5) However, in a proceeding for an offence against subsection (1), there is no requirement for—
- (a) the prosecution to allege the particulars of a sexual act that would be necessary if the act were charged as a separate offence; or

- (b) the trier of fact to be satisfied of the particulars of a sexual act that it would need to be satisfied of if the act were charged as a separate offence if the trier of fact is satisfied the nature and character of a person's conduct was consistent with a sexual act; or
 - (c) if the trier of fact is a jury—members of the jury to agree on which sexual acts constitute the sexual relationship.
- (6) In a proceeding for an offence against subsection (1), the prosecution is required to allege the particulars of the period of the sexual relationship.
- (7) For an offence against this section that occurred wholly or in part before the amendment day, when imposing a sentence a court must consider the maximum penalty before the amendment day for—
 - (a) an offence against this section; and
 - (b) an offence constituted by a sexual act alleged to constitute the sexual relationship.
- (8) A person may be charged on a single indictment with, and convicted of and punished for, both—
 - (a) an offence against subsection (1); and
 - (b) 1 or more sexual offences committed by the person against the same young person or person under the special care of the person during the alleged period of the sexual relationship.
- (9) Except as provided by subsection (8), a person cannot be convicted of an offence—
 - (a) against subsection (1) if the person has already been convicted or acquitted of an offence constituted by 1 or more of the sexual acts alleged to constitute the sexual relationship; or

- (b) constituted by a sexual act in relation to a young person or person under the special care of the person if the sexual act is alleged to have occurred during the period for which the person has already been convicted or acquitted of an offence against subsection (1) in relation to the young person or person under their special care.
- (10) For subsection (9), a person is taken not to have been convicted of an offence if the conviction is quashed or set aside.
- (11) The [Criminal Code](#), chapter 2 (other than the immediately applied provisions) does not apply to an offence against this section.
- (12) For this section and to remove any doubt, any sexual act alleged to constitute a sexual relationship must constitute, or have constituted (if particulars of the time and place at which the act took place were sufficiently particularised), an offence at the time the act occurred.
- (13) In this section:

amendment day means the day the *Crimes Legislation Amendment Act 2018*, section 4 commenced.

employer, of a person, includes someone authorised to—

- (a) decide or vary the terms of the person's employment; or
- (b) end the person's employment.

foster carer—see the [Children and Young People Act 2008](#), section 518 (2).

health service—see the [Human Rights Commission Act 2005](#), section 7.

health service provider—see section 55A (5).

sexual act—

- (a) means—
- (i) an act that constitutes an offence against this part; or

- (ii) an act that constituted an offence against a sexual offence provision of this Act previously in force (a *historical offence*); or
 - (iii) an attempt to commit an act that constitutes or constituted an offence against this part or a historical offence; or
 - (iv) an act that, if particulars of the time when or place where the act took place were sufficiently particularised, would constitute or have constituted an offence against this part or a historical offence; but
- (b) does not include an act referred to in—
- (i) section 55 (2) (Sexual intercourse with young person) if the person who committed the act establishes the matters referred to in section 55 (3) that would be a defence if the person had been charged with an offence against section 55 (2); or
 - (ii) section 61 (2) (Act of indecency with young people) if the person who committed the act establishes the matters referred to in section 61 (3) that would be a defence if the person had been charged with an offence against section 61 (2).

special care—a person is under the *special care* of an adult if—

- (a) the person is not yet an adult; and
- (b) the adult—
 - (i) is a parent, grandparent, step-parent, foster carer or legal guardian of the person; or
 - (ii) is the domestic partner of a parent, grandparent, step-parent, guardian or foster carer of the person; or
 - (iii) is a teacher at a school, or an adult with responsibility for students at a school, and the person is a student at the school; or

- (iv) has an established personal relationship with the person in relation to the provision of religious, sporting, musical or other instruction to the person; or
- (v) is the person's employer; or
- (vi) provides professional counselling to the person; or
- (vii) is a health service provider and the person is the adult's patient; or
- (viii) is a custodial officer and the person is a young detainee in the officer's care, custody or control; or
- (ix) if the person has impaired decision-making ability—is a carer for the younger person.

young detainee—see the [Children and Young People Act 2008](#), section 95.

young person means a person who is under the age of 16 years.

5 Possessing child exploitation material Section 65 (3)

omit

child pornography

substitute

child exploitation material

6 Section 66 heading

substitute

66 Grooming and depraving young people

7 Section 66 (1)*substitute*

- (1) A person must not, without reasonable excuse—
- (a) in person or by any other means, encourage a young person to commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature; or

Example

showing a young person indecent material online or on a mobile phone

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) engage in conduct with a young person with the intention of making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature; or
- (c) engage in conduct with a person who has a relationship with a young person with the intention of making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Maximum penalty:

- (a) for a 1st offence against a person under 10 years—imprisonment for 9 years; or
- (b) for a 1st offence against a young person 10 years or older—imprisonment for 7 years; or
- (c) for a 2nd or subsequent offence against a person under 10 years—imprisonment for 12 years; or
- (d) for a 2nd or subsequent offence against a young person 10 years or older—imprisonment for 10 years.

(1A) The [Criminal Code](#), chapter 2 (other than the immediately applied provisions) does not apply to an offence against subsection (1).

Note The [Criminal Code](#) does not apply to offences against this section that were offences in force before 1 January 2003 unless the offence is omitted and remade (see [Criminal Code](#), s 8).

8 Section 66 (2)

omit

, using electronic means,

9 Section 66 (4)

omit everything after

consented to

substitute

some or all of the defendant's conduct or actions.

10 Section 66 (5)

omit

to whom the suggestion was made, or the material was sent or made available,

11 Section 66 (6), definition of *using electronic means*

omit

Part 3 Crimes (Sentencing) Act 2005

12 Combination sentences—offences punishable by imprisonment Section 29 (1) (d), new note

insert

Note A good behaviour order may not be set to start at a time when the offender may be serving full-time detention or be on parole (see s 31 (2)).

13 Section 29 (1), example 1, 1st dot point

substitute

- an order for imprisonment for 1 year with no nonparole period

14 Combination sentences—start and end Section 31 (c), example, dot points

substitute

- an order for imprisonment for 3 years with a 2-year nonparole period
- a good behaviour order for 2 years stated to start at the end of the sentence of imprisonment
- a place restriction order for 1 year stated to start at the end of the sentence of imprisonment

15 New section 31 (2)

insert

- (2) However, the court must not set the start of the period of any part of the sentence that is a good behaviour order on a day when the offender may be serving a period of full-time detention or may be on parole.

**16 Sentencing—irrelevant considerations
New section 34 (2) (d) and examples**

insert

- (d) for a sexual offence against a child—the offender has good character, to the extent that the offender’s good character enabled the offender to commit the offence.

Examples—good character enabled offender to commit offence

- 1 The offender’s good character was one reason the offender was selected to supervise children on a camp. The offender began to establish a relationship with children at the camp to obtain their compliance in acts of a sexual nature.
- 2 A child’s parents trusted the offender to care for the child because of the offender’s authority in their community. The offender held authority in the community in part because of the offender’s good character. The offender sexually abused the child including while the child was in the offender’s care.

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).

Part 4 Criminal Code 2002

17 Incitement New section 47 (1A)

insert

- (1A) A person also commits the offence of incitement if the person urges another person to aid, abet, counsel, procure, be knowingly concerned in or a party to, the commission of an offence (the *offence incited*) by someone else.

18 Section 47 (4)

substitute

- (4) A person may be found guilty of the offence of incitement—
- (a) even if it was impossible to commit the offence incited; and
 - (b) whether or not the offence incited was committed.

**23 Childrens Court Magistrate
Section 291A (1) and (2)**

substitute

- (1) The Chief Magistrate—
 - (a) must declare 1 magistrate to be a Childrens Court Magistrate; and
 - (b) may declare more than 1 magistrate to be a Childrens Court Magistrate; and
 - (c) may declare that the Chief Magistrate is a Childrens Court Magistrate.
- (2) The declaration must state the period, of not longer than 2 years, for which the magistrate is a Childrens Court Magistrate.

24 Section 291A (3)

omit

the Childrens Court Magistrate

substitute

a Childrens Court Magistrate

25 Section 291A (4)

substitute

- (4) The Chief Magistrate—
 - (a) must revoke a declaration that a magistrate is a Childrens Court Magistrate if asked by the magistrate; and
 - (b) may revoke a declaration that the Chief Magistrate is a Childrens Court Magistrate at any time.

**26 Acting Childrens Court Magistrate
Section 291B (1)**

omit 1st mention of

Childrens Court Magistrate

substitute

a Childrens Court Magistrate

27 Section 291B (1) (b)

substitute

- (b) there is no Childrens Court Magistrate able to exercise the functions of a Childrens Court Magistrate (for example, due to absence from duty or from the ACT).

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).

28 Section 291B (2)

omit

Childrens Court Magistrate is the

substitute

a Childrens Court Magistrate is a

**29 Assignment of other magistrates for Childrens Court
matters
Section 291C (1)**

omit

the Childrens Court Magistrate

substitute

a Childrens Court Magistrate

30 Section 291C (2) (d)

omit

on the proposed assignment

substitute

who is unable to deal with the matter about the proposed assignment

**31 Completion of part-heard matters
Section 291D (1) (b) (i)**

substitute

(i) be a Childrens Court Magistrate; or

32 New part 4A.4

insert

Part 4A.4 Warrumbul Court

291GA Warrumbul Court

The Childrens Court is known as the Warrumbul Court when it is sitting to provide circle sentencing.

291GB Directions about procedure for Warrumbul Court

- (1) The Childrens Court may give a direction in relation to the procedure to be followed in relation to circle sentencing for certain Aboriginal or Torres Strait Islander offenders, and any other relevant matter in relation to circle sentencing.
- (2) To remove any doubt, a direction mentioned in subsection (1) is not taken to limit the Childrens Court's discretion in sentencing an offender.

- (3) Nothing in this section limits the Childrens Court's power to give a direction under section 309 (Directions about procedure).

**33 Definitions—ch 4C
Section 291L**

omit

**34 Directions about procedure
Section 309, note**

substitute

Note The Childrens Court and the Magistrates Court may make procedures to be followed in relation to circle sentencing for certain Aboriginal or Torres Strait Islander offenders (see s 291GB and s 291N).

35 Dictionary, definition of *Aboriginal or Torres Strait Islander offender*

substitute

Aboriginal or Torres Strait Islander offender means an offender who—

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

36 Dictionary, definition of *circle sentencing*

substitute

circle sentencing means the step in a sentencing proceeding for an Aboriginal or Torres Strait Islander offender that includes members of the Aboriginal or Torres Strait Islander community.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 November 2017.

2 Notification

Notified under the [Legislation Act](#) on 1 March 2018.

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 2018, which originated in the Legislative Assembly as the Crimes Legislation Amendment Bill 2017 (No 2) and was passed by the Assembly on 20 February 2018.

Clerk of the Legislative Assembly

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