



Australian Capital Territory

Crimes Legislation Amendment Act 2021 (No 2)

A2021-18

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Australian Capital Territory

Crimes Legislation Amendment Act 2021 (No 2)

A2021-18

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 2021 (No 2)*.

2 Commencement

- (1) This Act (other than parts 4 and 6) 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) Parts 4 and 6 commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the following legislation:

- [Crimes \(Child Sex Offenders\) Act 2005](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Crimes \(Surveillance Devices\) Act 2010](#)
- [Inspector of Correctional Services Act 2017](#)
- [Listening Devices Act 1992](#)
- [Terrorism \(Extraordinary Temporary Powers\) Act 2006](#).

Part 2 Crimes (Child Sex Offenders) Act 2005

4 Registrable offender—exceptions New section 9 (1A)

insert

- (1A) A person is not a *registrable offender* only because the person has been sentenced for an offence mentioned in schedule 2, part 2.2, item 14A if the court considers, on application by the defence, that the person does not pose a risk to the lives or sexual safety of 1 or more children, or of children generally.

Note The offence mentioned in that item is against the *Criminal Code Act 1995* (Cwlth), s 273A.1 (Possession of child-like sex dolls etc).

5 Class 2 offences Schedule 2, part 2.2, new item 14A

insert

14A	<i>Criminal Code Act 1995</i> (Cwlth), section 273A.1	possession of child-like sex dolls etc	
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Part 3 Crimes (Sentencing) Act 2005

6 Sentencing—irrelevant considerations Section 34 (2)

substitute

- (2) In deciding how an offender should be sentenced for an offence, a court must not reduce the severity of a sentence it would otherwise have imposed because of an automatic forfeiture of property, a forfeiture order, or a penalty order under the [Confiscation of Criminal Assets Act 2003](#).

7 New section 34B

insert

34B Sentencing—family violence offences

- (1) In deciding how an offender should be sentenced for a family violence offence, a court must consider the nature of family violence and the context of the offending, including the following:
- (a) the matters mentioned in the preamble to the [Family Violence Act 2016](#);
 - (b) whether the offending occurred at the home of the victim, offender or another person;
 - (c) whether the offending occurred when a child was present;
 - (d) if the offence is a serious family violence offence—whether the offender has 1 or more other convictions for serious family violence offences.
- (2) A court must not reduce the severity of a sentence it would otherwise have imposed because—
- (a) the offence is a family violence offence; or

- (b) a family violence order under the *Family Violence Act 2016* or a protection order under the *Domestic Violence and Protection Orders Act 2008* (repealed) is in force against the offender in relation to the family violence offence.
- (3) In this section:
- family violence*—see the *Family Violence Act 2016*, dictionary.
- serious family violence offence* means a family violence offence that is punishable by imprisonment for 5 years or more.

8 New section 67A

insert

67A Nonparole periods—appeals

- (1) If, on appeal, a court sets aside or amends a sentence of imprisonment imposed on an offender—
- (a) any nonparole period to which the offender is subject is automatically cancelled; and
- (b) this part applies in relation to the setting of any new nonparole period for the offender.
- (2) Despite subsection (1) (b), section 65 (4) does not apply if a court amends a sentence of imprisonment on appeal and a nonparole period applied to the sentence before the appeal.

9 Amendment of start of sentences on setting aside or amending other sentences Section 74 (5)

omit

, or the nonparole period of a sentence,

Part 4 Crimes (Surveillance Devices) Act 2010

10 Purposes of Act New section 6 (e)

insert

- (e) to provide for the use of body-worn cameras by police officers in the course of their duties.

11 Relationship to other laws and matters Section 7 (1), except note

after

Act

insert

(other than part 5A)

12 New part 5A

insert

Part 5A Body-worn cameras

Note The *Surveillance Devices Act 2004* (Cwlth), pt 4 also contains provisions for the use of surveillance devices without a warrant.

43A Meaning of *body-worn camera*

For this Act, *body-worn camera* means a device that is—

- (a) capable of recording visual images and sound; and
- (b) usually worn on the body, whether or not the device is being worn when used; and
- (c) approved, in writing, by the chief police officer.

43B Use of body-worn cameras by police officers

- (1) A police officer may use a body-worn camera in the course of the officer's duties.
- (2) A police officer who is wearing a body-worn camera must use the camera when dealing with a member of the public in the course of the officer's duties.
- (3) Subsection (2) does not apply in circumstances in which the use of a body-worn camera—
 - (a) is not reasonably practicable; or
 - (b) could cause or increase a risk to a person's safety; or
 - (c) would unreasonably limit a person's privacy.
- (4) The use of a body-worn camera by a police officer under this section must be—
 - (a) overt; and
 - Examples—overt use**
 - 1 The camera is used or worn in a way that makes it visible to the person being recorded.
 - 2 A police officer in attendance tells the person being recorded that the camera is being used.
 - (b) in accordance with the guidelines under section 43C.
 - (5) However, the use need not be overt if—
 - (a) the camera is used when a police officer draws or uses a firearm or conducted electrical weapon; or
 - (b) overt use of the camera could cause or increase a risk to a person's safety.
 - (6) A police officer may also use a body-worn camera if the use is—
 - (a) incidental to the use of the camera under this section; or
 - (b) inadvertent.

(7) Parts 2 to 5 do not apply in relation to the use of a body-worn camera under this section.

(8) In this section:

conducted electrical weapon means a hand-held or other electrical device designed to administer an electric shock on contact.

43C Body-worn cameras—guidelines

(1) The chief police officer must make guidelines about the use of body-worn cameras by police officers under section 43B.

(2) The guidelines must include—

(a) requirements for the storage, use and disposal of a recording from a body-worn camera, and information about how a person may access a recording under any applicable laws; and

(b) guidance about the circumstances in which a body-worn camera may or must be used; and

(c) a statement about how human rights have been considered in making the guidelines.

(3) The guidelines may include any other relevant matters.

(4) The chief police officer must consult the director-general before making a guideline.

(5) A guideline is a disallowable instrument.

13 Dictionary, new definition of *body-worn camera*

insert

body-worn camera—see section 43A.

Part 5

Inspector of Correctional Services Act 2017

14 Functions—examination and review

Section 18 (1) (a)

substitute

- (a) must examine and review each correctional centre declared under the *Corrections Management Act 2007*, section 24 and each detention place declared under the *Children and Young People Act 2008*, section 142—
- (i) within 2 years after the day the centre or place was declared; and
 - (ii) at least once every subsequent 3 years; and

Part 6 Listening Devices Act 1992

15 Sections 4 (2) (a) and 5 (2) (f)

omit

of the Commonwealth

substitute

in force in the ACT

16 Dictionary, note 2

omit

- Commonwealth

Part 7 **Terrorism (Extraordinary
Temporary Powers) Act 2006**

17 **Expiry of Act etc
Section 101 (1)**

omit

15 years

substitute

16 years

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 June 2021.

2 Notification

Notified under the [Legislation Act](#) on 11 August 2021.

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 2021 (No 2), which originated in the Legislative Assembly as the Crimes Legislation Amendment Bill 2021 and was passed by the Legislative Assembly on 4 August 2021.

Clerk of the Legislative Assembly

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