

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Serious and Organised Crime) Legislation Amendment Bill 2016

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Crimes (Serious and Organised Crime) Legislation Amendment Bill 2016

A Bill for

An Act to amend legislation in relation to serious and organised crime, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Serious and Organised Crime) Legislation*
4 *Amendment Act 2016*.

5 **2 Commencement**

6 (1) This Act (other than sections 7 and 8) commences on the day after
7 its notification day.

8 *Note* The naming and commencement provisions automatically commence on
9 the notification day (see [Legislation Act](#), s 75 (1)).

10 (2) Sections 7 and 8 commence on the later of—

11 (a) the day after this Act's notification day; and

12 (b) the commencement of the *Family Violence Act 2016*, section 3.

13 **3 Legislation amended**

14 This Act amends the following legislation:

- 15 • [Bail Act 1992](#)
- 16 • [Crimes Act 1900](#)
- 17 • [Crimes \(Assumed Identities\) Act 2009](#)
- 18 • [Crimes \(Child Sex Offenders\) Act 2005](#)
- 19 • [Crimes \(Sentence Administration\) Act 2005](#)
- 20 • [Crimes \(Sentencing\) Act 2005](#)
- 21 • [Magistrates Court \(Crimes Infringement Notices\)](#)
22 [Regulation 2008](#).

23 **4 Legislation repealed**

24 The [Crime Prevention Powers Act 1998](#) (A1998-21) is repealed.

Part 2 **Bail Act 1992****5** **Sections 42 to 43A**

after

on application under this division

insert

(other than under section 44 (Right of review of bail decisions—prosecution))

6 **New section 44**

insert

44 **Right of review of bail decisions—prosecution**

- (1) This section applies to a decision by a court in relation to bail for an accused person charged with a domestic violence offence or a serious offence.
- (2) The director of public prosecutions may apply to the Supreme Court for review of the decision if the director of public prosecutions considers that exceptional circumstances exist and that it is in the public interest to make the application.
- (3) An application must be made, and written notice of the application given to the accused person, within 24 hours after the decision is made.
- (4) However, an application may only be made if the director of public prosecutions gives the court that made the decision oral notice of the proposed application immediately after the decision is made.

- 1 (5) On giving notice under subsection (4), the operation of the decision
2 is stayed until the first of the following happens:
- 3 (a) the director of public prosecutions tells the court that made the
4 decision that an application will not be made;
- 5 (b) 24 hours have passed since notice was given under
6 subsection (4) and the director of public prosecutions has not—
- 7 (i) made an application; and
- 8 (ii) given written notice of the application to the accused
9 person;
- 10 (c) the Supreme Court makes a decision on the application;
- 11 (d) 72 hours have passed since notice was given under
12 subsection (4) and the Supreme Court has not made a decision
13 on the application.
- 14 (6) For subsection (5) (d), the period of 72 hours is worked out ignoring
15 any day when the Supreme Court is not open for business.
- 16 (7) In this section:
- 17 *domestic violence offence*—see the *Domestic Violence and*
18 *Protection Orders Act 2008*, section 13 (2).
- 19 *serious offence* means—
- 20 (a) an offence that involves causing harm, or threatening to cause
21 harm, to anyone, punishable by imprisonment for more than
22 10 years; or
- 23 (b) an offence under the *Criminal Code*, chapter 3 (Theft, fraud,
24 bribery and related offences), punishable by imprisonment for
25 more than 10 years; or

- 1 (c) an offence under the [Criminal Code](#), part 4.1 (Property damage
2 offences), punishable by imprisonment for more than 14 years;
3 or
4 (d) an offence under the [Criminal Code](#), chapter 6 (Serious drug
5 offences), punishable by imprisonment for more than 10 years.

6 **7 Section 44 (1)**

- 7 *omit*
8 domestic violence offence
9 *substitute*
10 family violence offence

11 **8 Section 44 (6), definition of *domestic violence offence***

- 12 *substitute*
13 *family violence offence*—see the *Family Violence Act 2016*,
14 dictionary.

15 **9 Review limited to bail conditions**
16 **Section 46 (5)**

- 17 *omit*
18 or section 43A
19 *substitute*
20 , section 43A or section 44

1 **Part 3 Crimes Act 1900**

2 **10 New part 9**

3 *insert*

4 **Part 9 Exclusion powers**

5 **174 Definitions—pt 9**

6 In this part:

7 *exclusion direction*—see section 175 (2).

8 *exclusion period*—see section 175 (2) (b).

9 *exclusion zone*—see section 175 (2) (a).

10 *public place* means—

11 (a) a street, road, public park or reserve; or

12 (b) a building, premises or other place that the public is entitled to
13 use or that is open to, or used by, the public, whether on
14 payment of money or otherwise.

15 **Example**

16 licensed premises under the *Liquor Act 2010*

17 *Note* An example is part of the Act, is not exhaustive and may extend,
18 but does not limit, the meaning of the provision in which it
19 appears (see [Legislation Act](#), s 126 and s 132).

-
- 1 **175 Exclusion direction**
- 2 (1) This section applies if a police officer reasonably believes that a
- 3 person (whether part of a group or not) has recently engaged in, is
- 4 engaged in, or is likely in the immediate future to engage in,
- 5 conduct—
- 6 (a) involving—
- 7 (i) violence towards, or intimidation of, a person; or
- 8 (ii) damage to property; or
- 9 (b) that would cause a reasonable person to fear for their safety.
- 10 (2) The police officer may give the person a direction (an *exclusion*
- 11 *direction*) to do any of the following:
- 12 (a) immediately leave an area specified by the officer
- 13 (an *exclusion zone*);
- 14 (b) remain outside the exclusion zone for a period, decided by the
- 15 officer (an *exclusion period*), of not more than 6 hours;
- 16 (c) leave the exclusion zone by a particular route, or in a particular
- 17 direction, decided by the officer.
- 18 **176 Exclusion zone**
- 19 (1) An exclusion zone may only include the following places:
- 20 (a) a public place;
- 21 (b) a place, other than a public place, prescribed by regulation.
- 22 (2) An exclusion zone may be described by reference to landmarks or
- 23 other identifiable boundaries of the zone, or distances from a fixed
- 24 point.

- 1 **177 Exclusion direction—information to be given**
- 2 (1) A police officer who gives a person an exclusion direction must tell,
3 or make reasonable efforts to tell, the person the following:
- 4 (a) that the person has been given an exclusion direction;
- 5 (b) the reason for the direction;
- 6 (c) the exclusion zone to which the direction applies;
- 7 (d) that the person must not remain in the zone;
- 8 (e) the exclusion period, if any;
- 9 (f) the route or direction, if any, that the person must take to leave
10 the zone;
- 11 (g) that it is an offence to fail to comply with the direction;
- 12 (h) the time and date the direction ends.
- 13 (2) If an exclusion direction is given to 2 or more people at the same
14 time, the police officer giving the direction—
- 15 (a) may tell, or make reasonable efforts to tell, the group generally
16 the information mentioned in subsection (1); and
- 17 (b) in that case, need not give the information to each person
18 individually.

-
- 1 **178 Exclusion direction—information to be recorded**
- 2 As soon as practicable after giving a person an exclusion direction, a
- 3 police officer must make a record of the following:
- 4 (a) the date and time the direction was given;
- 5 (b) the name of the person, or if the name of the person is not
- 6 known—
- 7 (i) a detailed description of the person; or
- 8 (ii) if it is not reasonably practicable to give a detailed
- 9 description of the person because the person is part of a
- 10 group of people—a detailed description of the group;
- 11 (c) the reason for giving the direction;
- 12 (d) the exclusion zone to which the direction applies;
- 13 (e) the exclusion period, if any;
- 14 (f) the route or direction, if any, that the person must to take to
- 15 leave the zone;
- 16 (g) the time and date the direction ends.
- 17 **179 Failing to comply with exclusion direction**
- 18 (1) A person commits an offence if the person—
- 19 (a) is given an exclusion direction; and
- 20 (b) fails to comply with the direction.
- 21 Maximum penalty: 2 penalty units.
- 22 (2) Subsection (1) does not apply if the person has a reasonable excuse.
- 23 *Note* The defendant has an evidential burden in relation to the matters
- 24 mentioned in s (2) (see [Criminal Code](#), s 58).
- 25 (3) An offence against this section is a strict liability offence.

1 **11 Dictionary, new definitions**

2
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insert

exclusion direction, for part 9 (Exclusion powers)—see section 175 (2).

exclusion period, for part 9 (Exclusion powers)—see section 175 (2) (b).

exclusion zone, for part 9 (Exclusion powers)—see section 175 (2) (a).

public place, for part 9 (Exclusion powers)—see section 174.

1 **Part 4** **Crimes (Assumed Identities)**
2 **Act 2009**

3 **12 Making entries in register of births, deaths or marriages**
4 **Section 16 (6)**

5 *omit*

6 **13 Cancellation of authority affecting entry in register of**
7 **births, deaths or marriages**
8 **Section 17 (1) (a)**

9 *after*

10 law enforcement agency

11 *insert*

12 or intelligence agency

13 **14 Cancellation of evidence of assumed identity**
14 **Section 22 (2)**

15 *after*

16 law enforcement agency

17 *insert*

18 or intelligence agency

19 **15 Dictionary, new definition of *intelligence agency***

20 *insert*

21 ***intelligence agency*** means—

22 (a) the Australian Secret Intelligence Service; or

23 (b) the Australian Security Intelligence Organisation.

1 **Part 5** **Crimes (Child Sex Offenders)**
2 **Act 2005**

3 **16** **Section 11**

4 *substitute*

5 **11** **Who is a *prescribed corresponding offender*?**

6 (1) In this Act:

7 *prescribed corresponding offender* means—

8 (a) a person who—

9 (i) has been convicted of an offence, or is subject to an order
10 corresponding, or substantially corresponding, to a
11 non-conviction order under the *Crimes (Sentencing)*
12 *Act 2005*, in a foreign jurisdiction in relation to an
13 offence; and

14 (ii) has been required, at any time (whether before or after
15 the commencement of this Act), to report to the
16 corresponding registrar of the foreign jurisdiction in
17 relation to the offence; and

18 (iii) would, if the person were currently in the foreign
19 jurisdiction, be required to report to the corresponding
20 registrar of the jurisdiction in relation to the offence; or

21 (b) a person prescribed by regulation.

22 *Note* Power to make a statutory instrument (including a regulation)
23 includes power to make different provision in relation to different
24 matters or different classes of matters (see *Legislation Act*, s 48).

25 (2) However, a person is not a *prescribed corresponding offender* if the
26 chief police officer decides the person should not be a prescribed
27 corresponding offender under section 11A.

- 1 **11A Chief police officer to decide if certain people prescribed**
2 **corresponding offenders**
- 3 (1) This section applies to a prescribed corresponding offender under
4 section 11 (1) (a) because the person is subject to an order
5 corresponding, or substantially corresponding, to a non-conviction
6 order under the *Crimes (Sentencing) Act 2005* in a foreign
7 jurisdiction in relation to an offence.
- 8 (2) As soon as practicable after the person becomes a prescribed
9 corresponding offender (and not later than 28 days after information
10 about the person is included on the child sex offender register under
11 section 117), the chief police officer must decide whether the person
12 should be a prescribed corresponding offender.
- 13 *Note* A decision under s (2) is a reviewable decision (see s 132ZV), and the
14 chief police officer must give a reviewable decision notice to the person
15 (see s 132ZW).
- 16 (3) In making a decision under subsection (2), the chief police officer
17 must consider—
- 18 (a) the severity of the offence; and
19 (b) the age of the person at the time of the offence; and
20 (c) the level of harm to the victim and the community caused by
21 the offence; and
22 (d) the period for which the person was reporting to the
23 corresponding registrar of the foreign jurisdiction; and
24 (e) compliance by the person with any reporting and sentencing
25 obligations; and
26 (f) any attempts at rehabilitation by the person; and
27 (g) whether the person poses a risk to the lives or sexual safety of
28 1 or more people or of the community; and
29 (h) any other circumstances that the chief police officer considers
30 relevant.

Section 17

- 1 (4) If the chief police officer decides that a person should not be a
2 prescribed corresponding offender, the chief police officer must
3 remove the person from the child sex offender register.

4 **17 Reporting period for prescribed corresponding offenders**
5 **Section 94 (1)**

6 *substitute*

- 7 (1) Despite anything in this part, the reporting period for a prescribed
8 corresponding offender is the period the offender would be required
9 to report to the corresponding registrar of a foreign jurisdiction in
10 the circumstances described in section 11 (1) (a) (Who is a
11 *prescribed corresponding offender?*).

12 **18 Protected and unprotected registrable offender**
13 **declarations**
14 **Section 111 (2)**

15 *substitute*

- 16 *Note* A decision under s 111 is a reviewable decision (see s 132ZV), and the
17 chief police officer must give a reviewable decision notice to the person
18 (see s 132ZW).

19 **19 Sections 112 to 114**

20 *omit*

21 **20 When protected and unprotected registrable offender**
22 **declarations take effect**
23 **Section 115 (2) (b) and (c)**

24 *substitute*

- 25 (b) if the offender applies to the ACAT under chapter 5B for
26 review of a declaration—on the day the ACAT makes a
27 decision on the application.

1 **21 Order for removal of registrable offender who was young**
2 **offender at time of offence—application by offender**
3 **New section 122C (7A)**

4 *insert*

5 (7A) The chief police officer, or a person authorised by the chief police
6 officer, may, with the court's consent, appear and make submissions
7 about information on the child sex offender register that is relevant
8 to the matters the court must consider under subsection (10).

9 **22 New chapter 5B**

10 *insert*

11 **Chapter 5B Notification and review of**
12 **decisions**

13 **132ZV Meaning of *reviewable decision*—ch 5B**

14 In this chapter:

15 *reviewable decision* means a decision mentioned in schedule 3,
16 column 3 under a provision of this Act mentioned in column 2 in
17 relation to the decision.

18 **132ZW Reviewable decision notices**

19 If a person makes a reviewable decision, the person must give a
20 reviewable decision notice only to the person mentioned in
21 schedule 3, column 4 in relation to the decision.

22 *Note 1* The requirements for a reviewable decision notice are prescribed under
23 the *ACT Civil and Administrative Tribunal Act 2008*.

24 *Note 2* For how documents may be given, see the [Legislation Act](#), pt 19.5.

1 **132ZX Applications for review**

2 The person mentioned in schedule 3, column 4 in relation to a
3 reviewable decision may apply to the ACAT for review of the
4 decision.

5 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
6 *Act 2008* for the application, the form must be used.

7 **23 New schedule 3**

8 *insert*

9 **Schedule 3 Reviewable decisions**

10 (see ch 5B)

column 1 item	column 2 section	column 3 decision	column 4 person
1	11A (2)	person should be prescribed corresponding offender	prescribed corresponding offender
2	111	make unprotected registrable offender declaration	registrable offender

1 **Part 6** **Crimes (Sentence**
2 **Administration) Act 2005**

3 **24 Intensive correction order—core conditions**
4 **Section 42 (1) (e)**

5 *substitute*

6 (e) the offender—

7 (i) is on probation under the supervision of the
8 director-general; and

9 (ii) must comply with the director-general's reasonable
10 directions in relation to the probation;

11 **25 Section 42 (4), definition of *probation condition***

12 *omit*

13 **26 Curfew—directions**
14 **Section 58 (1) (a)**

15 *omit*

16 (the *curfew place*)

17 **27 New section 58 (1A)**

18 *insert*

19 (1A) The director-general may, at any time while a curfew condition is in
20 effect, direct the offender to remain at a different place for the
21 curfew if satisfied that each adult who is living at the place, or has
22 parental responsibility or guardianship for a person who is living at
23 the place, consents to the place being used for that purpose.

1 **28 New section 58 (6)**

2 *insert*

3 (6) In this section:

4 *curfew place* means—

5 (a) the place detailed in the curfew condition under
6 subsection (1) (a); or

7 (b) if the director-general directs the offender to remain at a
8 different place under subsection (1A)—the different place.

Part 7 Crimes (Sentencing) Act 2005**29 Non-association and place restriction orders—when may be made**
Section 23 (1)*omit*

personal violence offence

substitute

relevant offence

30 Section 23 (4), new definition of relevant offence*insert***relevant offence** means—

- (a) an offence under the [Criminal Code](#), part 4.1 (Property damage offences), punishable by imprisonment for 5 years or more; or
- (b) an offence under the [Criminal Code](#), chapter 6 (Serious drug offences); or
- (c) an offence under the [Criminal Code](#), chapter 7 (Administration of justice offences), punishable by imprisonment for 5 years or more; or
- (d) a personal violence offence; or
- (e) an offence prescribed by regulation.

Note A reference to an offence includes a reference to a related ancillary offence, eg attempt and conspiracy (see [Legislation Act](#), s 189).

1 **Part 8** **Magistrates Court (Crimes**
2 **Infringement Notices)**
3 **Regulation 2008**

4 **31** **Schedule 1, new item 1A**

5 *insert*

1A	180, except where individual is under 16 years old	2	60
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
