

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes Amendment Bill 2008

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(Attorney-General)

Crimes Amendment Bill 2008

A Bill for

An Act to amend the *Crimes Act 1900*, 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 Amendment Act 2008*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

1 **Part 2** **Children and Young People Act**
2 **1999**

3 **3** **Legislation amended—pt 2**

4 This part amends the *Children and Young People Act 1999*.

5 **4** **Meaning of *under restraint***
6 **New section 77 (4) to (8)**

7 *insert*

- 8 (4) Also, for this division, a young person is not *under restraint* if—
- 9 (a) the young person is 16 years old or older; and
- 10 (b) a police officer suspects on reasonable grounds that the young
11 person has committed 1 of the following offences:
- 12 (i) the *Crimes Act 1900*, section 120 (Defacing premises—
13 strict liability);
- 14 (ii) the *Crimes Act 1900*, section 393A (Urinating in public
15 place);
- 16 (iii) the *Crimes Act 1900*, section 394 (2) (Noise abatement
17 directions);
- 18 (iv) the *Liquor Act 1975*, section 139 (1) (Consumption of
19 liquor in certain public places); and
- 20 (c) the young person is in the company of the police officer for
21 investigating whether to serve an infringement notice for the
22 offence on the young person.

23 *Note 1* A police officer may serve an infringement notice for an offence
24 on a person if the officer believes on reasonable grounds that the
25 person has committed the offence (see the *Magistrates Court*
26 *Act 1930*, s 120).

1 *Note 2* The *Magistrates Court (Crimes Infringement Notices)*
2 *Regulation 2008* provides that an infringement notice under the
3 *Magistrates Court Act 1930* may be issued for offences against
4 the *Crimes Act 1900*, s 120, s 393A and s 394 (2).

5 *Note 3* The *Magistrates Court (Liquor Infringement Notices)*
6 *Regulation 2008* provides that an infringement notice under the
7 *Magistrates Court Act 1930* may be issued for an offence against
8 the *Liquor Act 1975*, s 139 (1).

- 9 (5) Also, for this division, a young person is not ***under restraint*** if—
- 10 (a) the young person is 16 years old or older; and
- 11 (b) an inspector under the *Liquor Act 1975* suspects on reasonable
12 grounds that the young person has committed an offence
13 against the *Liquor Act 1975*, section 139 (1); and
- 14 (c) the young person is in the company of the inspector for
15 investigating whether to serve an infringement notice for the
16 offence on the young person.
- 17 (6) Also, for this division, a young person is not ***under restraint*** if—
- 18 (a) the young person is 16 years old or older; and
- 19 (b) an authorised person under the *Litter Act 2004* suspects on
20 reasonable grounds that the young person has committed an
21 offence against the *Crimes Act 1900*, section 120; and
- 22 (c) the young person is in the company of the authorised person
23 for investigating whether to serve an infringement notice for
24 the offence on the young person.
- 25 (7) Despite subsection (4), a young person is ***under restraint*** if—
- 26 (a) the police officer decides not to serve an infringement notice
27 for the offence on the young person; and
- 28 (b) the young person is in the company of the police officer for the
29 further investigation of the offence.

- 1 (8) In this section:
2 *infringement notice*—see the *Magistrates Court Act 1930*,
3 section 117.

1 **Part 3 Crimes Act 1900**

2 **5 Legislation amended—pt 3**

3 This part amends the *Crimes Act 1900*.

4 **6 Offences against Act—application of Criminal Code etc**
5 **Section 7A, note 1, new dot points**

6 *insert*

- 7 • s 119 (Defacing premises)
- 8 • s 120 (Defacing premises—strict liability)
- 9 • s 393A (Urinating in public place)
- 10 • s 394 (Noise abatement directions)

11 **7 Section 119**

12 *substitute*

13 **119 Defacing premises**

- 14 (1) A person commits an offence if the person—
- 15 (a) affixes a placard or paper, or makes a mark with chalk, paint or
- 16 any other material on private premises; and
- 17 (b) does not have the consent of—
- 18 (i) if the premises are occupied—the occupier or person in
- 19 charge of the premises; or
- 20 (ii) if the premises are not occupied—the owner or person in
- 21 charge of the premises.

22 Maximum penalty: 50 penalty units, imprisonment for 6 months or

23 both.

1 (2) A person commits an offence if the person unlawfully affixes a
2 placard or paper, or makes a mark with chalk, paint or any other
3 material, on public property.

4 Maximum penalty: 50 penalty units, imprisonment for 6 months or
5 both.

6 (3) In this section:

7 *public property* means—

8 (a) a public road; or

9 (b) a bus shelter; or

10 (c) any other property of the Territory or Commonwealth or of an
11 authority or body under a law of the Territory or the
12 Commonwealth.

13 *public road*—see the *Roads and Public Places Act 1937*, dictionary.

14 **120 Defacing premises—strict liability**

15 (1) A person commits an offence if the person—

16 (a) makes a mark with chalk, paint or any other material on private
17 premises; and

18 (b) does not have the consent of—

19 (i) if the premises are occupied—the occupier or person in
20 charge of the premises; or

21 (ii) if the premises are not occupied—the owner or person in
22 charge of the premises.

23 Maximum penalty: 10 penalty units.

1 (2) A person commits an offence if the person unlawfully makes a mark
2 with chalk, paint or any other material, on public property.

3 Maximum penalty: 10 penalty units.

4 (3) An offence against this section is a strict liability offence.

5 (4) In this section:

6 *public property*—see section 119 (3).

7 **8 New section 393A**

8 *insert*

9 **393A Urinating in public place**

10 (1) A person commits an offence if the person urinates in a public place
11 (other than in a toilet).

12 Maximum penalty: 10 penalty units.

13 (2) An offence against this section is a strict liability offence.

14 *Note* Circumstances of sudden and extraordinary emergency is a defence in
15 relation to the offence. See the *Criminal Code 2002*, s 41.

16 **9 Noise abatement directions**
17 **Section 394 (2) and (3)**

18 *substitute*

19 (2) A person commits an offence if the person—

20 (a) is given a direction under subsection (1) (a); and

21 (b) fails to comply with the direction.

22 Maximum penalty: 10 penalty units.

23 (3) An offence against subsection (2) is a strict liability offence.

1 (3A) A person commits an offence if the person—
2 (a) is given a direction under subsection (1) (a); and
3 (b) causes or allows any offensive noise to be emitted from the
4 premises within the 6-hour period after the direction was given.
5 Maximum penalty: 50 penalty units, imprisonment for 6 months or
6 both.

7 (3B) A person commits an offence if the person—
8 (a) is given a direction under subsection (1) (b); and
9 (b) the person—
10 (i) fails to comply with the direction; or
11 (ii) makes, or contributes to the making of, any offensive
12 noise emitted from the premises within the 6-hour period
13 after the direction was given.
14 Maximum penalty: 50 penalty units, imprisonment for 6 months or
15 both.

16 **10 Section 394 (5) and (6)**

17 *omit*
18 subsection (2) or (3)
19 *substitute*
20 subsection (2), (3A) or (3B)

21 **11 Offence notices**
22 **Section 441**

23 *omit*

1 **Part 4 Liquor Act 1975**

2 **12 Legislation amended—pt 4**

3 This part amends the *Liquor Act 1975*.

4 **13 New section 5**

5 *insert*

6 **5 Offences against Act—application of Criminal Code etc**

7 Other legislation applies in relation to offences against this Act.

8 *Note 1 Criminal Code*

9 The Criminal Code, ch 2 applies to the following offences against this
10 Act (see Code, pt 2.1):

- 11 • s 139 (Consumption of liquor in certain public places)

12 The chapter sets out the general principles of criminal responsibility
13 (including burdens of proof and general defences), and defines terms
14 used for offences to which the Code applies (eg *conduct*, *intention*,
15 *recklessness* and *strict liability*).

16 *Note 2 Penalty units*

17 The Legislation Act, s 133 deals with the meaning of offence penalties
18 that are expressed in penalty units.

19 **14 Consumption of liquor in certain public places**
20 **Section 139 (1) and (2)**

21 *substitute*

22 (1) A person must not consume liquor in a prescribed public place.

23 Maximum penalty: 5 penalty units.

- 1 (2) A person commits an offence if the person—
- 2 (a) possesses an open container of liquor in a prescribed public
- 3 place; and
- 4 (b) intends to consume the liquor in the place.
- 5 Maximum penalty: 2 penalty units.
- 6 (2A) An offence against subsection (1) is a strict liability offence.

7 **15 Liquor**

8 **Section 159 (5)**

- 9 *omit*
- 10 section 139
- 11 *substitute*
- 12 section 139 (2)

1 **Part 5 Magistrates Court Act 1930**

2 **16 Legislation amended—pt 5**

3 This part amends the *Magistrates Court Act 1930*.

4 **17 Service of infringement notices**
5 **New section 120 (1A)**

6 *insert*

7 (1A) A regulation may make provision in relation to when an authorised
8 person is, or is not, taken to have reasonable grounds for a belief
9 mentioned in subsection (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

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