



# **Crimes Amendment (Age Determination) Act 2001**

**No. 37, 2001**



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**An Act to amend the *Crimes Act 1914* to facilitate the determination of the age of persons suspected of committing, or charged with, Commonwealth offences, and for related purposes**

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the determination of the age of persons suspected of  
committing, or charged with, Commonwealth  
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[Assented to 7 May 2001]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Crimes Amendment (Age  
Determination) Act 2001*.

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## **2 Commencement**

This Act commences on the 28th day after the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Determining a person's age**

### *Crimes Act 1914*

#### **1 After Division 4 of Part 1AA**

Insert:

#### **Division 4A—Determining a person's age**

##### **Subdivision A—Preliminary**

##### **3ZQA Definitions**

(1) In this Division:

***age determination information*** means a photograph (including an X-ray photograph) or any other record or information relating to a person that is obtained by carrying out a prescribed procedure.

***appropriately qualified***, in relation to the carrying out of a prescribed procedure, means:

- (a) having suitable professional qualifications or experience to carry out the prescribed procedure; or
- (b) qualified under the regulations to carry out the prescribed procedure.

***Commonwealth offence*** means an offence against a law of the Commonwealth, other than an offence that is a service offence for the purposes of the *Defence Force Discipline Act 1982*.

***investigating official*** means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory; or
- (c) a person who holds an office the functions of which include the investigation of Commonwealth offences and who is empowered by a law of the Commonwealth because of the holding of that office to make arrests in respect of such offences.

**prescribed procedure** means a procedure specified by regulations made for the purposes of subsection (2) to be a prescribed procedure for determining a person's age.

- (2) The regulations may specify a particular procedure, which may include the taking of an X-ray of a part of a person's body, to be a prescribed procedure for determining a person's age.
- (3) A procedure prescribed for the purposes of subsection (2):
  - (a) may involve the operation of particular equipment that is specified for the purpose; and
  - (b) must require that equipment to be operated by an appropriately qualified person.
- (4) Before the Governor-General makes a regulation for the purposes of subsection (2), the Minister must consult with the Minister responsible for the administration of the *Therapeutic Goods Act 1989*.

## **Subdivision B—Determination of age during investigation**

### **3ZQB Circumstances where investigating official may seek authority to carry out a prescribed procedure**

- (1) If:
  - (a) an investigating official suspects, on reasonable grounds, that a person may have committed a Commonwealth offence; and
  - (b) it is necessary to determine whether or not the person is, or was, at the time of the alleged commission of the offence, under 18 because that question is relevant to the rules governing the person's detention, the investigation of the offence or the institution of criminal proceedings;  
the investigating official may, whether or not the person is in custody at the time, arrange for the carrying out of a prescribed procedure in respect of the person only if:
    - (c) the investigating official obtains, in accordance with section 3ZQC, the requisite consents to the carrying out of the procedure in respect of the person; or
    - (d) a magistrate orders, on application by the investigating official, the carrying out of the procedure in respect of the person.



- (2) An application to a magistrate by an investigating official for the purposes of paragraph (1)(d) may be made:
  - (a) in person; or
  - (b) by telephone, telex, fax or other electronic means.
- (3) In deciding whether to make such an order on application by an investigating official, the magistrate must be satisfied that:
  - (a) there are reasonable grounds for the suspicion that the person has committed a Commonwealth offence; and
  - (b) there is uncertainty as to whether or not the person is, or was, at the time of the alleged commission of the offence, under 18; and
  - (c) the uncertainty will need to be resolved in order to determine the application of the rules governing the person's detention, the investigation of the offence or the institution of criminal proceedings.

### **3ZQC Obtaining of consents for the carrying out of a prescribed procedure**

- (1) For the purposes of paragraph 3ZQB(1)(c), an investigating official is taken to have obtained the requisite consents to the carrying out of a prescribed procedure in respect of a person if the following persons agree in writing to the carrying out of the procedure:
  - (a) the person in respect of whom it is sought to carry out the procedure;
  - (b) either:
    - (i) a parent or guardian of the person; or
    - (ii) if a parent or guardian is not available or is not acceptable to the person—an independent adult person (other than an investigating official involved in the investigation of the person) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (2) Before seeking the consents referred to in subsection (1), an investigating official must first inform each of the persons from whom such a consent is being sought, in a language in which the person is able to communicate with reasonable fluency:

- (a) the purpose and reasons for which the prescribed procedure is to be carried out; and
  - (b) the nature of the procedure; and
  - (c) if the procedure involves the operation of particular equipment—the nature of that equipment; and
  - (d) that the information obtained from the carrying out of the procedure could affect the manner of dealing with the person on whom the procedure is to be carried out; and
  - (e) the known risks (if any) that would be posed to the health of the person on whom the procedure is to be carried out; and
  - (ea) that the persons giving the requisite consent may withdraw that consent at any time; and
  - (f) that the seeking of the requisite consent and any giving of such consent was being, or would be, recorded; and
  - (g) that the persons giving the requisite consent are each entitled to a copy of that record; and
  - (h) that the person on whom the procedure is to be carried out may have, so far as is reasonably practicable, a person of his or her choice present while the procedure is carried out.
- (3) The requisite consents may be given:
- (a) in person; or
  - (b) by telephone, telex, fax or other electronic means.
- (4) Nothing in this section affects the rights of a person under Part 1C, in particular a person's rights under:
- (a) section 23G (Right to communicate with friend, relative and legal practitioner); or
  - (b) section 23P (Right of foreign national to communicate with consular office).

### **3ZQD Withdrawal of consent**

If a person who has given consent to the carrying out of a prescribed procedure expressly withdraws consent to the carrying out of that procedure (or if the withdrawal of such consent can reasonably be inferred from the person's conduct) before or during the carrying out of the procedure, the carrying out of the procedure is not to proceed otherwise than by order of a magistrate on the application of an investigating official.

**3ZQE Recording of giving of information about carrying out a prescribed procedure and relevant responses**

- (1) An investigating official must, if practicable, ensure that:
  - (a) the giving of information about a prescribed procedure and the responses (if any) of the persons to whom the information is given are recorded by audio tape, video tape or other electronic means; and
  - (b) a copy of the record is made available to the person on whom it is sought to carry out the procedure.
- (2) If recording the giving of information and the responses (if any) of the persons to whom the information is given in the manner referred to in subsection (1) is not practicable, the investigating official must ensure that:
  - (a) a written record of the giving of the information and of the responses (if any) is made; and
  - (b) a copy of the record is made available to the person on whom it is sought to carry out the procedure.

**Subdivision C—Determination of age during proceedings**

**3ZQF Circumstances where judge or magistrate may order carrying out of a prescribed procedure on own initiative**

If:

- (a) a person is being prosecuted for a Commonwealth offence; and
- (b) the judge or magistrate presiding over the proceedings related to that offence is satisfied that it is necessary to ascertain whether or not the person is, or was, at the time of the alleged commission of that offence, under 18;

the judge or magistrate presiding may make an order requiring the carrying out of a prescribed procedure in respect of the person.

**Subdivision D—Communication of orders by judges or magistrates**

**3ZQG Orders made by judges or magistrates concerning carrying out of a prescribed procedure**

- (1) If a judge or a magistrate orders the carrying out of a prescribed procedure (whether as a result of a request by an investigating official or not), the judge or magistrate must:
  - (a) ensure that a written record of the order, and of the reasons for the making of the order, is kept; and
  - (b) ensure that the person on whom the procedure is to be carried out is told by an investigating official in a language in which the person is able to communicate with reasonable fluency:
    - (i) that an order for the carrying out of the procedure has been made and of the reasons for the making of the order; and
    - (ii) of the arrangements for the carrying out of the procedure; and
    - (iii) of the fact that reasonable force may be used to secure the compliance of the person to whom the order relates.
- (2) The judge or magistrate may give directions as to the time, place and manner in which the procedure is to be carried out.

**Subdivision E—Matters relating to the carrying out of prescribed procedures**

**3ZQH Appropriate medical or other standards to be applied**

A prescribed procedure must be carried out in a manner consistent with either or both of the following:

- (a) appropriate medical standards;
- (b) appropriate other relevant professional standards.

**3ZQI Reasonable and necessary force**

Except where the carrying out of a prescribed procedure to determine a person's age is undertaken with the consent of that person and of an additional adult person in accordance with section 3ZQC, the person carrying out the procedure, and any

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person assisting that person, is entitled to use such force as is reasonable and necessary in the circumstances.

## **Subdivision F—Disclosure and destruction of age determination information**

### **3ZQJ Disclosure of age determination information**

- (1) A person is guilty of an offence if:
  - (a) the person's conduct causes the disclosure of age determination information other than as provided by this section; and
  - (b) the person is reckless as to any such disclosure.

Penalty: Imprisonment for 2 years.

- (2) A person may only disclose age determination information:
  - (a) for a purpose related to establishing and complying with the rules governing:
    - (i) the detention of the person to whom the age determination information relates; or
    - (ii) the investigation of a Commonwealth offence by that person; or
    - (iii) the institution of criminal proceedings against that person for a Commonwealth offence; or
  - (b) for a purpose related to the conduct of:
    - (i) the investigation of the person to whom the age determination information relates for a Commonwealth offence; or
    - (ii) proceedings for a Commonwealth offence against that person; or
  - (c) for the purpose of an investigation by the Privacy Commissioner of the Commonwealth or the Commonwealth Ombudsman; or
  - (d) if the person to whom the age determination information relates consents in writing to the disclosure.

Note: A defendant bears an evidential burden in relation to the matters referred to in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

### **3ZQK Destruction of age determination information**

- (1) If, in relation to a Commonwealth offence:
  - (a) age determination information relating to a person has been obtained by carrying out a prescribed procedure; and
  - (b) 12 months have passed since the carrying out of the procedure; and
  - (c) proceedings in respect of the offence have not been instituted against the person from whom the information was taken or have discontinued;the information must be destroyed as soon as practicable.
- (2) If, in relation to a Commonwealth offence, age determination information relating to a person has been obtained by carrying out a prescribed procedure and:
  - (a) the person is found to have committed the offence but no conviction is recorded; or
  - (b) the person is acquitted of the offence and:
    - (i) no appeal is lodged against the acquittal; or
    - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn;the information must be destroyed as soon as practicable unless an investigation into, or a proceeding against, the person for another Commonwealth offence is pending.
- (3) A magistrate may, on application by an investigating official, extend the period of 12 months referred to in subsection (1), or that period as previously extended under this subsection in relation to the information, if the magistrate is satisfied that there are special reasons for doing so.

### **2 After paragraph 23C(7)(f)**

Insert:

- (fa) any time during which the questioning of the person is suspended or delayed in order to allow the making of an application under section 3ZQB or the carrying out of a prescribed procedure within the meaning of Division 4A of Part 1AA;

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*[Minister's second reading speech made in—  
House of Representatives on 7 March 2001  
Senate on 4 April 2001]*

(20/01)