

Serial 10
Criminal Code Amendment Bill 2021
Ms Uibo

A Bill for an Act to amend the Criminal Code

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE AMENDMENT ACT 2021

Act No. [] of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2021

An Act to amend the Criminal Code

[Assented to [] 2021]
[Introduced [] 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Criminal Code Amendment Act 2021*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the Criminal Code.

4 Section 43AA amended (Application of Part)

(1) Section 43AA(2)(c)

omit

(2) After section 43AA(2)(g)

insert

(ga) section 10 (Death or serious harm caused in the course of violence of 2 or more persons);

5 Section 43BF amended (Attempt)

Section 43BF(10), after "43BG"

insert

, 43BGA, 43BH

6 Section 43BG amended (Complicity and common purpose)

(1) Section 43BG(5)(a)

omit

his or her

insert

the person's

(2) Section 43BG(6)

omit

principal offender

insert

other person

(3) Section 43BG(7)

omit, insert

(7) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also for the purpose of determining whether a person commits the offence because of the operation of this section.

(8) Any special liability provisions that apply to an offence apply also for the purpose of determining whether a person commits the offence because of the operation of this section.

(9) If the trier of fact is satisfied beyond reasonable doubt that a person committed an offence because of the operation of this section or otherwise than because of the operation of this section, but is unable to determine which, the trier of fact may nevertheless find the person guilty of the offence.

7 Section 43BGA inserted

After section 43BG

insert

43BGA Joint commission

- (1) A person is taken to have committed an offence if:
 - (a) the person and at least one other person enter into an agreement to commit an offence; and
 - (b) an offence is committed either:
 - (i) in accordance with the agreement; or
 - (ii) in the course of carrying out the agreement.
- (2) For subsection (1)(b)(i), an offence is committed ***in accordance with the agreement*** if:
 - (a) the conduct of one or more parties in accordance with the agreement makes up the physical elements consisting of conduct of an offence (the ***joint offence***) of the same type as the offence agreed to; and
 - (b) to the extent that a physical element of the joint offence consists of a result of conduct – the result arises from the conduct engaged in; and
 - (c) to the extent that a physical element of the joint offence consists of a circumstance – the conduct engaged in, or a result of the conduct engaged in, happens in the circumstance.
- (3) For subsection (1)(b)(ii), an offence is committed ***in the course of carrying out the agreement*** if the person is reckless about the commission of an offence (the ***joint offence***) that another person in fact commits in the course of carrying out the agreement.
- (4) A person commits an offence because of the operation of this section only if the person and at least one other party to the agreement intend that an offence will be committed under the agreement.
- (5) An agreement:
 - (a) may consist of a non-verbal understanding; and

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- (b) may be entered into before, or at the same time as, the conduct making up any of the physical elements of the joint offence was engaged in.
- (6) A person cannot be found guilty of an offence because of the operation of this section if, before the conduct making up any of the physical elements of the joint offence was engaged in, the person:
- (a) terminated the person's involvement; and
 - (b) took all reasonable steps to prevent the conduct from being engaged in.
- (7) A person may be found guilty of an offence because of the operation of this section even if:
- (a) another party to the agreement is not prosecuted or found guilty; or
 - (b) the person was not present when any of the conduct making up the physical elements of the joint offence was engaged in.
- (8) Any defences, procedures, limitations or qualifying provisions that apply to the joint offence apply also for the purposes of determining whether a person commits the offence because of the operation of this section.
- (9) Any special liability provisions that apply to the joint offence apply also for the purposes of determining whether a person commits the offence because of the operation of this section.
- (10) If the trier of fact is satisfied beyond reasonable doubt that a person committed an offence because of the operation of this section or otherwise than because of the operation of this section, but is unable to determine which, the trier of fact may nevertheless find the person guilty of the offence.

8 Section 43BH amended (Innocent agency)

- (1) Section 43BH, heading

omit, insert

43BH Commission by proxy

(2) After section 43BH(1)

insert

(1A) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also for the purposes of determining whether a person commits the offence because of the operation of this section.

9 Section 43BJA amended (References in Acts to offences)

Section 43BJA, note, after "43BG"

insert

, 43BGA

10 Part V, Division 5 inserted

After section 148E

insert

Division 5 Recruitment of child

148F Recruiting child to engage in criminal activity

- (1) A person commits an offence if:
- (a) the person is an adult; and
 - (b) the person intentionally recruits another person to carry out or assist in carrying out criminal activity; and
 - (c) the other person is a child and the person has knowledge of that circumstance; and
 - (d) the person is reckless as to whether the child carries out or assists in carrying out the criminal activity.

Maximum penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to subsection (1)(a).
- (3) A person may be found guilty of an offence against subsection (1) even if:
- (a) the criminal activity is not carried out; or
 - (b) the criminal activity is impossible to carry out; or

-
- (c) the child is not prosecuted or found guilty of an offence.
- (4) A person cannot be found guilty of more than one of the following offences for the same conduct:
- (a) an offence against subsection (1);
 - (b) an offence referred to in section 12(2);
 - (c) an offence against section 43BI.

Notes for subsection (4)

1 Section 12(2) refers to the offence of counselling or procuring.

2 Section 43BI is the offence of inciting the commission of an offence.

- (5) In this section:

criminal activity means conduct that constitutes an offence punishable by a maximum term of imprisonment of 1 year or more.

recruit includes counsel, procure, solicit, incite and induce.

11 Part XI, Division 15 inserted

After section 461

insert

Division 15 Criminal Code Amendment Act 2021

462 Application of section 43BGA

Section 43BGA applies only in relation to offences committed after the commencement of section 7 of the *Criminal Code Amendment Act 2021*.

12 Schedule 1 amended (Provisions of Code to which Part IIAA applies)

Schedule 1, after entry for "Part IV"

insert

Section 148F (Recruiting child to engage in criminal activity)

13 Repeal of Act

This Act is repealed on the day after it commences.