

**2015**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (SENTENCING)  
AMENDMENT REGULATION 2015 (No 1)**

**SL 2015-3**

**EXPLANATORY STATEMENT**

**Presented by  
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Attorney-General**

# Crimes (Sentencing) Amendment Regulation 2015 (No 1)

## Outline

The objects of the *Crimes (Sentencing) Act 2005* are to promote respect for the law and the maintenance of a just and safe society, provide a range of sentencing options, maximise the opportunity for imposing sentences that are constructively adapted to individual offenders, promote flexibility in sentencing and consolidate legislation relating to the imposition of sentences.

Section 136 of the Crimes (Sentencing) Act provides that criminal justice entities may exchange information contained on their records relating to an offence, including an alleged offence. It does not compel an entity to exchange information with another entity but rather creates an authority for criminal justice entities to exchange information to the extent of their responsibilities.

Section 136 (4) (i) of the Crimes (Sentencing) Act provides that an entity may be prescribed as a criminal justice entity by regulation.

Section 136 was enacted to address concerns that some agencies had with sharing information with each other on the basis that they might be in breach of their obligations under the National Privacy Principles contained in the *Privacy Act 1988* (Cth) (now the Australian Privacy Principles), and that sharing information might otherwise prejudice the effective operation of their agency.

Under the *Information Privacy Act 2014*, (Territory Privacy Principle 6 TPP6—use and disclosure of personal information) information may be exchanged by ‘enforcement bodies’ for the purpose of ‘enforcement related activities’ which means preventing, detecting, investigation, prosecuting or punishing criminal offences or breaches of a law imposing a penalty or sanction.

Section 136 puts beyond doubt the ability of criminal justice agencies to share information, and conveys to agencies the strong intention of the ACT Legislative Assembly that they cooperate with each other in the exchange of information relating to the criminal justice system.

The purpose of this Regulation is to remove the Aboriginal Justice Centre as a criminal justice entity and prescribe the Aboriginal Legal Service (NSW/ACT) as a criminal justice entity under section 136 (4) (i) of the Crimes (Sentencing) Act.

The Aboriginal Legal Service is a community based organisation that provides information and referral, and legal advice and court representation to Aboriginal and Torres Strait Islander men, women and children across NSW and ACT.

To allow this entity access to information necessary to undertake its functions and remove legal impediments to the exchange of information, this Regulation prescribes it as criminal justice entity.

This Regulation also prescribes the Domestic Violence Project Coordinator as a criminal justice entity. This will ensure that information can be shared by existing criminal justice entities with the statutorily appointed Domestic Violence Project Coordinator to allow the functions of the office to be carried out more effectively. Specifically, this amendment will allow the *Review into Domestic and Family Violence Deaths in the ACT* to be conducted effectively.

Finally, this Regulation prescribes Canberra Men's Centre as a criminal justice entity, which will allow the non-government, not-for-profit organisation to access information necessary to undertake its functions and remove legal impediments to the exchange of information. Canberra Men's Centre provides services and support for men, and promotes men's health and wellbeing. The organisation runs the 'Working With the Man' program which is a specialist intervention program for men who have been violent to women and who acknowledge and take responsibility for their actions. The program aims to effect long-term behavioural change and reduce reoffending by offering Canberra Men's Centre services through a case managed approach to voluntary participants.

Program coordinators frequently liaise with the ACT Policing Victims of Crime Unit and prescribing the Canberra Men's Centre as a criminal justice entity will support a effective partnership.

#### *Impact on Human Rights*

The disclosure of personal information engages and limits the right to privacy contained in section 12 of the *Human Rights Act 2004*, which states that "everyone has the right not to have his or her privacy... interfered with unlawfully or arbitrarily".

However, the right to privacy is a qualified right and section 28 of the Human Rights Act provides legislative recognition that human rights may be limited in certain circumstances. Limitations on the right to privacy can be applied where it can be shown that it is necessary in a free and democratic society to do so and if there is a legal basis for such interference.

On balance and considering the factors outlined in section 28, the limitation on the right to privacy is justified in this instance. Allowing the Aboriginal Legal Service (NSW/ACT), the Domestic Violence Project Coordinator and Canberra Men's Centre to share information with other criminal justice entities in certain circumstances is appropriate and will support the purposes of the Act.

The purpose is to provide authority for criminal justice entities to exchange information to the extent of their responsibilities and allow for improved information sharing with other agencies in the criminal justice system, which is important and necessary. The limitation on the right to privacy related to the disclosure of personal information between criminal justice entities is justified and reasonable for this purpose.

Additionally, the engagement of the right is limited as the information sharing provisions are restricted and controlled by the Act. Prescribing the entities that can receive information ensures that the disclosure does not happen unlawfully or

arbitrarily. This is the least restrictive means of supporting the purposes of the Act and the efficient and effective operation of information sharing between criminal justice entities. For these reasons, the amendment is a proportionate limitation on the right to privacy.

## Detail

### **Clause 1 – Name of regulation**

This clause establishes the name of the Regulation as *Crimes (Sentencing) Amendment Regulation 2015 (No 1)*.

### **Clause 2 – Commencement**

This is a formal provision specifying when the Regulation will commence. The Regulation will commence on the day after its notification day.

### **Clause 3 – Legislation Amended**

This regulation amends the *Crimes (Sentencing) Regulation 2006*.

### **Clause 4 – Section 3 (a)**

This clause provides that the Aboriginal Legal Service and the Canberra Men's Centre are criminal justice entities for the purposes of s 136 (4) (i) of the Crimes (Sentencing) Act, and omits the provision prescribing the Aboriginal Justice Centre.

### **Clause 5 – New section 3 (ca)**

This clause provides that the Domestic Violence Project Coordinator, appointed under s 11 of the *Domestic Violence Agencies Act 1986*, is a criminal justice entity for the purposes of s 136 (4) (i) of the Crimes (Sentencing) Act.