

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

Presented by
Gordon Ramsay MLA
Attorney-General

CRIMES LEGISLATION AMENDMENT BILL 2018

Outline

Outline.....	1
Introduction.....	2
Purpose of the Bill	2
Human Rights Considerations	3
Detail.....	4
Part 1 – Preliminary	4
Part 2 – <i>Confiscation of Criminal Assets Act 2003</i>	4
Part 3 – <i>Crimes Act 1900</i>	5
Part 4 – <i>Crimes (Child Sex Offenders) Act 2005</i>	5
Part 5 – <i>Crimes (Surveillance Devices) Act 2010</i>	6
Part 6 – <i>Drugs of Dependence Act 1989</i>	7
Part 7 – <i>Legislation Act 2001</i>	7
Part 8 – <i>Magistrates Court Act 1930</i>	7
Part 9 – <i>Supreme Court Act 1933</i>	8

Introduction

This Explanatory Statement relates to the Crimes Legislation Amendment Bill 2018 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the amendments. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The policy objective of the Bill is to improve the operation and efficiency of the criminal justice system by making amendments to a range of criminal laws.

The Bill:

- a) clarifies that warrants under the *Crimes (Child Sex Offenders) Act 2005* (CSO Act) are issued by a magistrate, rather than the Magistrates Court, to bring the CSO Act provisions in line with warrant provisions under other Territory Acts. The intention is to avoid unintended consequences of inappropriately vesting the power in the court, rather than in a designated person;
- b) provides powers to an associate judge of the Supreme Court, equivalent to those granted to judges, as a *persona designata*, to issue warrants under the *Confiscation of Criminal Assets 2003*, the *Crimes Act 1900*, the *Crimes (Surveillance Devices) Act 2010*, and the *Drugs of Dependence Act 1989*. This approach is consistent with recent amendments made to the *Supreme Court Act 1933* which expanded the jurisdiction of the associate judge to include the jurisdiction (including the inherent jurisdiction) of the Supreme Court that is exercisable by a single judge, except for trials on indictment and matters before the Court of Appeal. Increasing the pool of judicial officers authorised to perform *persona designata* functions will improve efficiencies of the Supreme Court and timeliness for law enforcement agencies;
- c) extends existing mechanisms for transferring back-up or related charges with an indictable matter committed to the Supreme Court under section 88B of the *Magistrates Court Act 1930*; and
- d) increases the monetary value of a penalty unit for offences committed by individuals and corporations by amending section 133(2) of the *Legislation Act 2001*.

Further analysis of each amendment is contained in the detail of the Explanatory Statement below.

Human Rights Considerations

The Bill does not limit any of the rights contained in the *Human Rights Act 2004* (HR Act). Clause 22 (which amends section 88B of the *Magistrates Court Act 1930*) engages and supports the right to a fair trial under section 21(1) of the HR Act as it enhances the right to have criminal charges, and rights and obligations, recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

CRIMES LEGISLATION AMENDMENT BILL 2018

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Crimes Legislation Amendment Act 2018*.

Clause 2 — Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 — Legislation Amended

This clause identifies the legislation amended by the Act, namely the:

- *Confiscation of Criminal Assets Act 2003*
- *Crimes Act 1900*
- *Crimes (Child Sex Offenders) Act 2005*
- *Crimes (Surveillance Devices) Act 2010*
- *Drugs of Dependence Act 1989*
- *Legislation Act 2001*
- *Magistrates Court Act 1930*
- *Supreme Court Act 1933*.

Part 2 – *Confiscation of Criminal Assets Act 2003*

Clause 4 – Definitions for part 13, Section 195, definition of *issuing officer*, paragraph (a)

This clause amends the definition of *issuing officer*, for a search warrant, in section 195 of the *Confiscation of Criminal Assets Act 2003* to include an associate judge of the Supreme Court for Part 13 of the Act. This will extend to the associate judge the ability to:

- issue search warrants under section 199;
- issue warrants by telephone or other electronic means under section 203;
- grant extensions of time to move things to another place for examination or processing under section 218;
- make orders under section 220 requiring a person to provide any information or assistance reasonably necessary to allow the executing police officer to do various things such as accessing data; and

- make orders under section 228 permitting a police officer to keep a seized thing for a further period.

Part 3 – *Crimes Act 1900*

Clause 5 – Definitions for pt 10, Section 185, definition of *issuing officer*, paragraph (a)

This clause amends the definition of *issuing officer*, in relation to a warrant to search premises or a person or a warrant for arrest under part 10 of the *Crimes Act 1900* to include an associate judge of the Supreme Court. This amendment will an associate judge with the power to issue:

- search warrants under section 194;
- warrants by telephone or other electronic means under section 205;
- warrants for arrest under section 219; and
- warrants for the arrest of a child under 10 years old under section 252A.

Part 4 – *Crimes (Child Sex Offenders) Act 2005*

Clause 6 – Entry and search warrant – application, Section 116C (1)

Section 116 of the *Crimes (Child Sex Offenders) Act 2005* (CSO Act) allows a police officer above the rank of sergeant to apply to the Magistrates Court for a warrant authorising entry to, and search of, premises occupied by a registered child sex offender.

The warrant scheme under the CSO Act differs from warrant schemes created under other Territory legislation as it empowers the Magistrates Court to issue a warrant, rather than a ‘magistrate’ or ‘issuing officer’ in their personal capacity as *persona designata*.. The explanatory material accompanying the Crimes (Child Sex Offenders) Amendment Bill 2015 (which inserted Part 3.11 relating to entry and search warrants) does not provide any reason for the departure from the usual warrant model by vesting the power in the ‘Magistrates Court’.

It is well established that the process of issuing a warrant is an administrative function, not a judicial one (*Hilton v Wells* (1985) 157 CLR 57 and *Grollo v Palmer* (1995) 184 CLR 348).

This clause clarifies that it is a chief police officer, a deputy chief police officer or a police officer of or above the rank of sergeant who is the *applicant* for an entry and search warrant under the CSO Act. The term *applicant* is used throughout Part 3.11 of the CSO Act relating to entry and search warrants. This is a technical amendment intended to bring the provision into line with other warrant provisions.

Clause 7 – Section 116C (1)

This clause clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court, under the CSO Act to bring the provisions in line with warrant provisions under other

Territory Acts and avoid unintended consequences of inappropriately vesting the power in the court.

Clause 8 – Section 116C (4)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 9 – Section 116H (3) (a)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 10 – Section 116I (4)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 81 – Section 116I (5)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 12 – Section 116J (2)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 9 – Section 116J (3)

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court.

Clause 14 – Further amendments, mentions of *Magistrates Court*

This clause is consequential to the amendment at clause 7, which clarifies that warrants are to be issued by a magistrate, rather than the Magistrates Court. This clause omits the term ‘Magistrates Court’ and substitutes it with ‘magistrate’ in sections 116D (1), 116E (3), 116F, 116G (2) and (3), 116H (1)(l) and 116J (1).

Part 5 – *Crimes (Surveillance Devices) Act 2010*

Clause 15 – Who may issue warrants? Section 10 (1), new note

This clause inserts a new note into section 10 (1) to clarify that a ‘judge’ includes an associate judge.

Clause 16 – Dictionary, new definition of *judge*

This clause inserts a new definition of ‘judge’ to clarify that a ‘judge’ includes an associate judge for the purposes of the *Crimes (Surveillance Devices) Act 2010*. The term ‘judge’ is defined in Part 1 of the Dictionary to the *Legislation Act 2001* as meaning “a resident judge, additional judge or acting judge under the *Supreme Court Act 1933*.” This will provide powers to an associate judge to issue warrants under Part 2 and emergency authorisations under Part 3.

Part 6 – *Drugs of Dependence Act 1989*

Clause 17 – Search Warrants, Section 187 (1), definition of *issuing officer*, paragraph (a)

This clause amends the definition of *issuing officer* to include an associate judge for the purposes of section 187 of the *Drugs of Dependence Act 1989*. This will extend to the associate judge the ability to issue search warrants under section 187.

Part 7 – *Legislation Act 2001*

Clause 18 – Penalty Units, Section 133 (2) and note

This clause amends section 133(2) of the *Legislation Act 2001* by increasing the value of a ‘penalty unit’ that provide the basis for determining statutory fines. In accordance with section 133(3) of the Act, the Attorney-General has reviewed the appropriateness of current penalty unit values and decided to increase the value of penalty units:

- from \$150 to \$160 for an offence committed by an individual, and
- from \$750 to \$810 for an offence committed by a corporation.

This amendment will ensure the relative weight of penalties is maintained and continues to have a deterrent effect.

The clause also provides an example of how a fine is calculated using penalty units.

Part 8 – *Magistrates Court Act 1930*

Clause 19 – Court may waive committal proceedings, New section 88B (1A)

Part 3.5 of the *Magistrates Court Act 1930* provides the mechanism for the Magistrates Court to commit an accused person for trial, and makes specific provision for the transfer of back-up and related charges to the Supreme Court in certain confined circumstances.

Section 88B of the *Magistrates Court Act 1930* provides a mechanism for matters to be committed for trial on the application of the accused and with the consent of the prosecution, in effect a waiver of a full committal proceeding. There is no mechanism to also transfer

back-up and related charges in a committal under section 88B. This appears to be an anomaly in the drafting of section 88B, specifically by reference to the way that similar sections operate when transferring indictable matters to the Supreme Court. The inability to transfer back-up and related charges creates an unnecessary consequence of requiring the Magistrates Court to retain back-up and related charges in that court until the committed matter is finalised.

This clause amends section 88B to align the committal process with other committals to allow back-up and related charges to be transferred to the Supreme Court.

Section 88B (1A) requires the prosecutor to tell the court about the back-up or related offence if the court commits an accused person for trial under section 88B (1). The court must transfer the proceeding for the back-up and related offence to the Supreme Court, to be dealt with under Part 8 of the *Supreme Court Act 1933*. This addresses the issue of transferred charges at first instance.

Section 88B (1B) clarifies that subsection (1A) does not prevent the accused person being charged with an offence after committal under subsection (1).

Section 88B (1C) requires the court to transfer the proceeding for the back-up and related offence to the Supreme Court, to be dealt with under Part 8 of the *Supreme Court Act 1933*, if the accused person is charged with a back-up or related offence after committal under subsection (1). This addresses the situation where further related or back-up charges may be instituted after a waiver of committal proceedings.

Part 9 – *Supreme Court Act 1933*

Clause 20 – Back-up and related offences, Section 68D (1) (a) (i)

The Supreme Court has the power to deal with back-up and related charges under section 68D of the *Supreme Court Act 1993*. The power of the Supreme Court to deal with back-up and related charges is limited to where a person:

- is committed for trial following a plea of guilty (section 90A (7) of the *Magistrates Court Act 1930*);
- is committed for an indictable offence to be tried summarily (section 92A);
- is committed for trial (section 94); and
- is sent for sentence by the Childrens Court to the Supreme Court (section 291G).

Substituted section 68D (1)(a)(i) extends the power of the Supreme Court to deal with back-up and related offences committed under section 88B.

Substituted section 68D (1)(a)(ia) clarifies an anomaly by correctly referencing section 90A (7) which provides the mechanism for the Magistrates Court to commit a person for trial following a plea of guilty. The reference to section 90B is inconsistent with the references in

sections 68D (1)(a)(ii)-(iv) as they refer to the provisions empowering the court to commit primary charges for sentence (rather than the transfer of back-up and related charges).