

2021

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

**CRIMES (SENTENCING)
AMENDMENT REGULATION 2021 (No 1)**

SL2021–21

EXPLANATORY STATEMENT

**Presented by
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CRIMES (SENTENCING) AMENDMENT REGULATION 2021 (No 1)

OVERVIEW OF THE AMENDING REGULATION

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 share information to the extent of their responsibilities.

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 shared 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.

Section 136 (4) (i) of the *Crimes (Sentencing) Act* provides that an entity may be prescribed as a criminal justice entity by regulation. Section 3 of the *Crimes (Sentencing) Regulation 2006* provides a list of organisations and agencies currently prescribed as criminal justice entities. The Canberra Men’s Centre was prescribed as a criminal justice entity pursuant to section 3 in 2015 and is currently listed at section (3) (b) of the *Crimes (Sentencing) Regulation 2006*.

The purpose of this amending regulation is to amend section (3) (b) to update the name of the organisation to reflect its current legal trading name – Everyman Australia Incorporated.

EveryMan Australia Incorporated is a non-government, not-for-profit organisation which provides services and support for men, and promotes men's health and wellbeing. The organisation runs programs for men who have been violent, including to women, and who acknowledge and take responsibility for their actions. Their programs aim to effect long-term behavioural change and reduce reoffending, and they have the safety of participants' partners, children and family as a top priority. Program coordinators frequently liaise with the ACT Policing Family Violence Unit and share information pursuant to their status as a criminal justice entity.

The Canberra Men's Centre was renamed EveryMan Australia Incorporated in 2016. Correctly reflecting the organisation's current trading name in the regulation will facilitate its on-going role as a criminal justice entity, and its relationships with other prescribed criminal justice entities including to access information necessary to undertake its functions and removing legal impediments to the exchange of information.

CONSULTATION ON THE PROPOSED APPROACH

This regulation has been tabled in response to requests from Everyman Australia Incorporated and ACT Policing.

CONSISTENCY WITH HUMAN RIGHTS

It is unlikely that the amending regulation will engage HR Act rights as it only updates the details of an existing criminal justice entity already prescribed for the purposes of s 136(4) of the *Crimes (Sentencing) Act 2005*, rather than assigning new rights or interests.

However the organisation's prescription as a criminal justice entity, and the information sharing scheme provided for under s 136 of the *Crimes (Sentencing) Act 2005*, have previously been found to engage and limit Section 12 – Right to privacy and reputation.

The scheme primarily engages and limits the right to privacy because it facilitates the disclosure of personal information between criminal justice entities.

The right to privacy is 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. Amending the name of the Canberra Men's

Centre in the regulation to facilitate its on-going role as a criminal justice entity is appropriate and will support the purposes of the Act.

The purpose of s 136 of the Crimes (Sentencing) Act, and related regulation, 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.

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Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Regulation. The name of the Regulation will be the *Crimes (Sentencing) Amendment Regulation 2021 (No 1)*.

Clause 2 — Commencement

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

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Crimes (Sentencing) Regulation 2004*.

Clause 4 — Section 3 (b)

This clause omits current section 3 (b), which currently provides that ‘the Canberra Mens Centre Incorporated (ABN 54 979 533 031)’ is a criminal justice entity for the purposes of section 136 of the *Crimes (Sentencing) Act 2005*. The omission is necessary as the name of the entity has changed.

Clause 5 — New section 3 (fa)

This clause adds in ‘Everyman Australia Incorporated (ABN 54 979 533 031)’ as a criminal justice entity for the purposes of section 136 of the *Crimes (Sentencing) Act 2005*. The addition is necessary to reflect the change in the name of the organisation.