

**2022**

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

**CRIMES (SENTENCING)  
AMENDMENT REGULATION 2022 (No 1)  
SL2022-14**

**EXPLANATORY STATEMENT**

**Presented by  
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# Crimes (Sentencing) Amendment Regulation 2022 (No 1)

## Outline

The objects of the *Crimes (Sentencing) Act 2005* (the Act) 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 Act provides that criminal justice entities may exchange information contained in their records relating to an offence, including an alleged offence.

Section 136 of the Act 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.

Section 136 of the Act puts beyond doubt the ability of criminal justice entities to share information that falls within the scope of the section. Further, it 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 in pursuit of the best practice fulfilment of their respective functions.

### *The Sexual Assault (Police) Review Oversight Committee*

One purpose of this regulation amendment is to prescribe the Sexual Assault (Police) Review Oversight Committee (the Oversight Committee) as a criminal justice entity.

On 13 December 2021, the ACT Government released the report, “*Listen. Take action to prevent, believe and heal*” by the Sexual Assault Prevention and Response Steering Committee. One of the recommendations within this report was that the ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.

In response to the report, the ACT Government agreed to this recommendation, provided funding and appointed members to the Oversight Committee to lead the review. Of significance, some members of the Oversight Committee are currently prescribed as criminal justice entities in their professional capacities, while other members are not.

As the review will require the sharing of information about an offence, and/or an alleged offence from a police file, the Oversight Committee requires prescription as a criminal justice entity to overcome any barrier in performing its purpose and function. It is intended that the Oversight Committee’s prescription as a criminal justice entity

conclude on 30 June 2024 in accordance with the time limited nature of the Committee's role.

### *Coordinator-General for Family Safety and Coordinator-General for the Prevention of Sexual Violence*

The purpose of this regulation amendment is for the Coordinator-General for Family Safety and the Coordinator-General for the Prevention of Sexual Violence to be prescribed as criminal justice entities. The purpose of these prescriptions is to support the performance of the respective roles within the area of preventing and responding to domestic, family and sexual violence, as well as monitoring work across government to progress the implementation of the ACT Government's response to the report by the Sexual Assault Prevention and Response Steering Committee. These prescriptions will also support and promote an awareness among other criminal justice entities that they can proactively share information to support informed and comprehensive systems responses to domestic, family and sexual violence.

### *ACT Civil and Administrative Tribunal*

Another purpose of this amendment to the Regulation is to prescribe the ACT Civil and Administrative Tribunal (ACAT) as a criminal justice entity. This prescription is done in anticipation of the Affected Persons Register under the *Mental Health Act 2015* being transferred to the Victims of Crime Commissioner. The prescription of ACAT as a criminal justice entity will remove the current impediments on information sharing with the Victims of Crime Commissioner, noting that some information is not clearly allowed to be shared under other statutory provisions. The prescription will promote the safety and wellbeing of victims of crime and facilitate the ongoing administration and maintenance of the Affected Persons Register.

### *Impact on Human Rights*

Section 12 of the *Human Rights Act 2004* provides that "everyone has a right not to have his or her privacy... interfered with unlawfully or arbitrarily". 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 2004* 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 Oversight Committee, the Coordinator-General for Family Safety, the Coordinator-General for the Prevention of Sexual Violence and ACAT to share information with other criminal justice entities in certain circumstances is appropriate and will support the purposes of the *Crimes (Sentencing) Act 2005*.

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.

Limitation on rights need to be lawful and not arbitrary. Arbitrary refers to a decision or action which is not based on reasonable and relevant identifiable criterion. A law that permits an interference with privacy must be sufficiently precise and confined so as not to give too much discretion to authorities. The regulation designates specific, identified organisations which have a role attached to the function of the criminal justice system as criminal justice entities under section 36 of the *Crimes (Sentencing) Act 2005*.

The engagement of the right is limited as the information sharing provisions are restricted and controlled. 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. The prescription of the Sexual Assault (Police) Review Oversight Committee is intended to conclude on 30 June 2024, reflecting the time limited nature of the Committee's role; while the prescription of the two Coordinators-General and ACAT are ongoing, reflecting the ongoing role of these entities in the criminal justice system. Further, the prescription by regulation is a safeguard as regulations are subject to examination by the Legislative Assembly.

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 2022 (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 – New section 3(i) to (l)

This clause inserts:

- (i) the ACAT;
- (j) the Coordinator-General for Family Safety;
- (k) the Coordinator-General for the Prevention of Sexual Violence;
- (l) the body known as the Sexual Assault (Police) Review Oversight Committee.

**Clause 5 – New section (3)(2)**

This clause inserts:

(2) Subsection (1)(l) and this subsection expire on 30 June 2024.