

**2023**

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

**CRIMES LEGISLATION AMENDMENT BILL 2023**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
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# CRIMES LEGISLATION AMENDMENT BILL 2023

## Outline

Outline .....	1
CRIMES LEGISLATION AMENDMENT BILL 2023 .....	2
OVERVIEW OF THE BILL .....	2
CONSULTATION ON THE PROPOSED APPROACH.....	2
CONSISTENCY WITH HUMAN RIGHTS .....	3
Detail .....	12
Part 1 – Preliminary .....	12
Part 2 – Bail Act 1992.....	12
Part 3 – Confiscation of Criminal Assets Act 2003 .....	13
Part 4 – Crimes Act 1900.....	13
Part 5 – Crimes (Sentencing) Act 2005 .....	13
Part 7 – Evidence Act 2011 .....	14
Part 8 – Juries Act 1967 .....	14
Part 9 – Magistrates Act 1930.....	17
Part 10 – Magistrates Court Regulation 2009 .....	18
Part 11 – Victims of Crime Act 1994 .....	18

## **CRIMES LEGISLATION AMENDMENT BILL 2023**

The *Crimes Legislation Amendment Bill 2023* (the Bill) is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (the HR Act).

### **OVERVIEW OF THE BILL**

The Bill is an omnibus bill which amends criminal law legislation to support the efficient and effective functioning of the ACT criminal justice system. The Bill amends the:

- a) *Bail Act 1992* to address an anomaly in timeframes in relation to the period for which a bail decision is stayed when an application is made for a review of bail;
- b) *Confiscation of Criminal Assets Act 2003* to require a statutory review of the unexplained wealth scheme three years after the 2022 Review;
- c) *Crimes (Sentencing) Act 2005* to allow a non-parole period to be set for offences committed in custody.
- d) *Crimes (Sentencing) Act 2005* to clarify that the court may impose a fine in addition to, or instead of, any other sentence;
- e) *Crimes Act 1900* to remove the element requiring the prosecution to prove that damage to property does not exceed \$5000 in the minor property damage offence;
- f) *Juries Act 1967* to introduce an offence for juror misconduct;
- g) *Juries Act 1967* to introduce a model for majority verdicts by juries; and
- h) *Magistrates Court Act 1930* to improve enforceability of infringement notice offences;
- i) *Victims of Crime Act 1994* and *Crimes (Sentencing) Regulation 2006* to update relevant references to the new title of Domestic, Family and Sexual Violence Coordinator-General;

### **CONSULTATION ON THE PROPOSED APPROACH**

The amendments were developed in consultation with the following key justice stakeholders: Aboriginal Legal Service ACT/NSW, Aboriginal and Torres Strait Islander Elected Body, Access Canberra, ACT Bar Association, ACT Corrective Services, ACT Courts and Tribunal, ACT Director of Public Prosecutions, ACT Electoral Commission, ACT Health, ACT Human Rights Commission, ACT Law Society, ACT Long Service Leave Authority, ACT Ombudsman, ACT Policing, Civil

Liberties Australia, Chief Minister, Treasury and Economic Development Directorate, Community and Public Service Union, Community Services Directorate, Environment, Planning and Sustainable Development Directorate, Justice Caucus, Justice Reform Initiative, Legal Aid ACT, Prisoners Aid ACT, Sentence Administration Board, Transport Canberra and City Services Directorate, Victims of Crime Commissioner, Winnunga Nimmityjah Aboriginal Health and Community Services and WorkSafe ACT.

## **CONSISTENCY WITH HUMAN RIGHTS**

During the development of this Bill due regard was given to its compatibility with human rights as set out in the HR Act.

### **Rights Promoted**

The Bill engages and promotes the following rights under the HR Act:

- Section 18 – Right to liberty and security of person
- Section 21 – Right to a fair trial
- Section 22 – Rights in criminal proceedings

### Address an anomaly in timeframes in relation to the period for which a bail decision is stayed when an application is made for a review of bail (*Bail Act 1992*)

This amendment aligns the time that a bail decision is stayed when the DPP gives the court notice of a proposed application for a review of bail (24 hours) with the time allowed under the Bail Act for the DPP to make an application for a review of bail (2 hours or by 10am on day if the decision is made after 4pm).

Section 44 of the Bail Act applies to the right of review of bail decisions for an accused person charged with a family violence offence or a serious offence. The Bill amends section 44(5)(b) of the Bail Act to provide that the operation of the bail decision is stayed until the first of the following happens: the DPP tells the court that made the decision that an application will not be made or the period for making the application and giving written notice of the application has ended. Currently, section 44 allows for a bail decision to be stayed for up to 24 hours, even in circumstances where the DPP has decided not to pursue a review or has not met the timeframes required by section 44(3) to be able to advance an application for review. This amendment will align timeframes for the stay with the section 44(3) deadline, which in practice will allow a bail decision to take effect sooner than the current section 44(5)(b), where the stay continues even in the event parties are aware an application for a review will not take place.

The amendment promotes the right to liberty (section 18 of the HR Act) by allowing a bail decision to be affected sooner (in recognition of the likelihood that the decisions

the DPP would seek to review are most likely to be grants of bail). It also promotes the rights in criminal proceedings (section 22 of the HR Act) by allowing a person to be tried without unreasonable delay and the outcome of that ‘trial’ to take effect once it has been decided. The amendment does not limit rights.

Allow a non-parole period to be set for offences committed in custody (*Crimes (Sentencing) Act 2005*)

This amendment engages and promotes the right to liberty and security of person (section 18 of the HR Act), as it will allow the court to set non-parole periods for sentences imposed for offences that occur in custody, based on consideration of individual circumstances and offending.

This amendment repeals section 64 (2)(e) of the *Crimes (Sentencing) Act 2005*, which provides that sentences of imprisonment for offences committed while in lawful custody are excluded sentences of imprisonment for Part 5.2, which governs the setting of non-parole periods. The repeal of section 64(2)(e) permits the court to set a non-parole period for a sentence of imprisonment imposed for an offence committed while in lawful custody.

This amendment addresses the issue considered in *Biddle v Gatherer* [2021] ACTSC 236, in which Justice Loukas-Karlsson commented that “section 64 (2) (e) may require some legislative attention as to whether greater flexibility in sentencing is appropriate”.

This amendment promotes the right to liberty and security of person by providing detainees who offend in custody with the opportunity to apply for parole, where the court is satisfied a non-parole period should be set when sentencing an offender. The amendment will allow the court to set a non-parole period in accordance with the requirements under sections 65 and 66 of the *Crimes (Sentencing) Act 2005*. The amendment will enable the court to determine the appropriateness and length of a non-parole period with regard to the individual circumstances of each detainee, and will facilitate the ability of detainees to become eligible for parole despite custodial offending.

### **Rights Limited**

The Bill engages and limits the following rights under the HR Act:

- Section 12 – Right to privacy and reputation
- Section 18 – Right to liberty and security of person
- Section 21 – Right to a fair trial
- Section 22 – Rights in criminal proceedings

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

#### Improve enforceability of infringement notice offences (*Magistrates Court Act 1930*)

This amendment improves the enforceability of infringement notice offences and builds on the work of the *Magistrates Court (Infringement Notice) Amendment Act 2020*, which has not yet commenced. The framework operates by finding alternative options for people to pay penalties for infringement notices, including through undertaking approved social work.

Where people are seeking alternative options for repaying infringement notices, the framework requires the person making the application to provide details about their circumstances and financial situation. The new provisions will provide an opportunity to persons on infringement notice management plans to provide additional information about their circumstances and financial situation (such as if they hold a concession card or about their suitability to participate in community work) ahead of the administering authority cancelling the plan.

This approach engages, but does not limit, the right to privacy and reputation (section 12 of the HR Act). The relevant aspects of this right are expressed as the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily' and 'not to have his or her reputation unlawfully attacked'.

The requests for information will be supported by law, and the opportunity to provide the information is not mandatory. The request for information provided for in the amendment does not put the person in a more disadvantageous position than they are upon receiving an infringement notice in the first place. In collecting, using and storing any information the administering authority would be required to act in accordance with existing ACT information protection and privacy legislation.

#### Introduce the offence of improper inquiry by juror (*Juries Act 1967*)

The amendment makes it an offence for a sworn jury member to make inquiries about matters relevant to a criminal trial, without the authorisation of the court. This amendment is intended to prevent information or evidence that has not been tested in the courtroom being considered during jury deliberations. The offence does not apply to someone making an inquiry with the authorisation of the court.

### **1. Nature of the right and the limitation (s 28 (2) (a) and (c))**

Section 22 (1) of the HR Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The amendment engages and limits this right by creating a reverse burden of proof.

This amendment provides that the defendant has the evidential burden in proving they were given authorisation of the court to make the inquiry, and therefore did not commit an offence. As this shifts the burden of proof to the accused, it is known as 'reverse burden of proof' and will limit the presumption of innocence.

The amendment also engages and limits the right to liberty (section 18 of the HR Act) as the offence carries a maximum penalty of two years imprisonment. Section 18 of the HR Act provides that no-one may be arbitrarily arrested and detained, and no one will be deprived of their liberty, except on grounds and in accordance with the procedures established by law. Arrest or detention may be 'arbitrary' if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances of the case or not in accordance with due process.

### ***2. Legitimate purpose (s 28 (2) (b))***

The legitimate purpose of the limitation is to ensure there is equal access to information and a jury decision is not influenced by irrelevant information that has not been tested by both parties in court.

Equal access to a fair hearing means that each party must have a reasonable opportunity to present their case. If a juror obtains information from an unauthorised inquiry, the prosecution and defence have not had a reasonable opportunity to present their case on this information, including on its relevance or probative value. This is problematic as a juror's opinion on the case may be swayed by this information.

### ***3. Rational connection between the limitation and the purpose (s 28 (2) (d))***

Prohibiting juror inquiries without the authorisation of the court ensures the jury is only considering relevant information and evidence that both the prosecution and the defence are able to test in front of all jury members. This engages and promotes the right to a fair trial (section 21 of the HR Act) for the accused.

Introducing a new offence is an appropriate and effective mechanism for achieving the legitimate purpose, given the significant consequences that arise from jurors making unauthorised inquiries. Jurors will be provided information about this offence when they commence on a jury, to encourage them to act in accordance with the law and not make inquiries about matters relevant to a criminal trial, without the authorisation of the court.

In the Tasmania Law Reform Institute Final Report No. 30 'Jurors, Social Media and the Right of an Accused to a Fair Trial' published January 2020 (the TLRI report) noted that some jurors think a direction by a judge not to go on social media is simply advice and not an order of the court that may have vast ramifications on the trial. There are also situations where some jurors may actively and dishonestly seek their own information. Therefore, a maximum penalty of imprisonment for this new

offence is appropriate to signify the seriousness of the conduct, that it is criminal offence to conduct an improper inquiry, and not simply advice given by the judge. The maximum penalty also stresses this seriousness and is intended to act as an appropriate general and specific deterrent from that behaviour.

#### **4. Proportionality (s 28 (2) (e))**

The amendment is proportionate to the aim of achieving a right to a fair trial. This is particularly for situations where an innocent person could be found guilty of an offence due to juror relying on information found in that jurors own unauthorised inquiry.

If jurors rely on information obtained without the court's authorisation, or information that has not been considered by both parties in the courtroom, it is possible that the judicial officer may order a mistrial. A mistrial is costly for the community in terms of the time and resources used for the criminal trial. The alleged victim and the accused both have to wait until the retrial is listed and heard again. The alleged victim and witnesses may have to give evidence again which could result in re-traumatisation, while the community and the accused bear the cost of a second trial.

Noting these costs to the parties and the community, the maximum penalty is proportionate to the offending behaviour. It is set at a maximum penalty of 2 years imprisonment to achieve the aim of deterring the behaviour while also reflecting both the seriousness of the offence and the seriousness of the consequences that flow from it.

The improper inquiry offence is also objectively more serious than other offences in the *Juries Act 1967*. For example, breaching confidentiality of jury deliberations (under section 42C of the *Juries Act 1967*) has a maximum penalty of 50 penalty units, 6 months imprisonment or both. However, while that conduct may expose the discussions of jurors that led to their decision, the purpose of this offence is to protect the integrity of those deliberations so each jury can have frank and open discussions. A juror conducting their own improper inquiry could lead to that potentially inaccurate or untested information being discussed in a jury deliberation, relied on in making a decision and potentially lead to a guilty verdict. That guilty verdict could then result in an innocent person being imprisoned for a crime they did not commit. Thus, the ramifications for the conduct are serious enough to justify the maximum penalty.

The penalty of two years imprisonment is the maximum penalty that can be imposed in the most serious cases. The amendment does not create a mandatory sentencing regime and judicial sentencing discretion is retained to ensure that justice is done as appropriate in in each individual case.

Other jurisdictions which also have a juror misconduct offence are New South Wales (*Jury Act 1977* (NSW), s 68C), Victoria (*Juries Act 2000* (Vic), S 78A) and



Queensland (*Jury Act 1995* (QLD), 69A). While Victoria’s maximum penalty for this offence is 120 penalty units, Queensland has a maximum penalty of 2 years imprisonment, and New South Wales has a maximum penalty of 50 penalty units, imprisonment for 2 years or both. The maximum penalty in the ACT offence is comparable to New South Wales and Queensland equivalent offences.

The amendment does not seek to change the jury’s right to ask the court questions or to clarify issues during a proceeding. During a criminal proceeding, the jury may send notes or questions to the judicial officer presiding over the case. If a further inquiry is required, the judicial officer can make this decision and therefore would be authorising any such inquiry.

The introduction of this offence impresses on the community and future jurors the importance of not conducting their own inquiries and relying only on the information put forward in the courtroom.

The reverse evidential burden is reasonable because the elements that the defendant is being asked to prove are uniquely within the knowledge of, and capable of being established by, the defendant. If a juror conducts their own unauthorised inquiry or inquiries, it should be clear on the evidence that this is not authorised by the court. For example, if a juror brings books or written material on a subject matter relating to the case into the jury room, but this written material has not been discussed in the courtroom by the prosecution and the defence, it would likely be an improper juror inquiry. However, a juror may believe there are specific directions from the court that authorise this material. If so, it is reasonable for the juror to be required to provide information on why they believe or how the court had expressly authorised the inquiry. It would be unreasonable for the prosecution to establish the relevant element of this offence of this improper juror inquiry unless it is shown that the court had authorised the juror to make the inquiry.

### Introduce a model for majority verdicts by juries (*Juries Act 1967*)

#### **1. Nature of the right and the limitation (s 28 (2) (a) and (c))**

Section 21(1) of the HR Act provides that everyone has 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 (“right to a fair trial”).

The ACT’s criminal trial system permits, and for some offences requires, a trial by jury. By amending the Juries Act to only require 11 jurors out of 12 to be in agreement for a verdict, the amendment is engaging and limiting the right to a fair trial by amending the requirements for the decision by a “competent, independent and impartial court or tribunal”.

#### **2. Legitimate purpose (s 28 (2) (b))**

The legitimate purpose of the limitation is to promote the effectiveness of the criminal justice system and to recognise that in a diverse community, people may not always agree, or alternatively that one or several people may be unreasonable or unrepresentative of the community. This limitation will also protect victims of crime by reducing the likelihood that they will be required to provide evidence, be cross-examined and live through the potentially traumatic experience of a trial more than once in circumstances where there is evidence that the majority of the jury (11 of 12 jurors) consider that the offence was committed beyond reasonable doubt.

### **3. Rational connection between the limitation and the purpose (s 28 (2) (d))**

There is a rational connection between the purpose of promoting effectiveness of the criminal justice system, and of protecting victims, with any limit on the right to a fair trial.

By allowing majority verdicts to be accepted by the court, there will be improved effectiveness of the justice system and reduced re-traumatisation for victims by increasing the likelihood that a verdict might be reached even if there is some diversity in the approach of the jurors such that one juror is “holding out” while the rest of the jury agree that the prosecution has proved the offence was committed beyond reasonable doubt.

### **4. Proportionality (s 28 (2) (e))**

This amendment is proportionate to the aim of achieving effectiveness in the criminal justice system and reducing re-traumatisation to victims, in that the amendment does not significantly change the decision-making of a “competent, independent and impartial court” by still requiring 11 of the 12 jurors to determine beyond reasonable doubt that an offence was committed.

This is an amendment that has been widely adopted by other human rights jurisdictions, including the United Kingdom (10:2 majority verdicts); New Zealand (11:1 majority verdicts), Victoria (11:1 majority verdicts) and Queensland (11:1 majority verdicts).

Further, the amendment includes a requirement that a reasonable period (of at least 6 hours) to have passed, having regard to the complexity and nature of the trial, as an important safeguard for the independence and impartiality of the relevant court and the right to a fair trial before a majority verdict can be offered.

### **Human rights not engaged**

Remove the element requiring the prosecution to prove that damage to property does not exceed \$5000 in the minor property damage offence (Crimes Act 1900)

This amendment amends the minor property damage offence to remove the requirement for the prosecution to establish that damage to property does not exceed \$5,000. This amendment does not engage human rights.

Clarify that the court may impose a fine in addition to, or instead of, any other sentence (*Crimes (Sentencing) Act 2005*)

This is a technical amendment which clarifies that the court may impose a fine in addition to, or instead of, any other sentence. The amendment does not engage rights under the HR Act.

Require a statutory review of the unexplained wealth scheme three years after the 2022 Review (*Confiscation of Criminal Assets Act 2003*)

This amendment requires a further statutory review of the unexplained wealth scheme to be conducted in August 2025. The amendment does not engage human rights under the HR Act.

Update relevant references to the new title of Domestic, Family and Sexual Violence Coordinator-General (*Victims of Crime Act 1994* and *Crimes (Sentencing) Regulation 2006*)

This is a technical amendment and does not engage human rights under the HR Act.

CRIMES LEGISLATION AMENDMENT BILL 2023

***Human Rights Act 2004 - Compatibility Statement***

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Crimes Legislation Amendment Bill 2023**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

# CRIMES LEGISLATION AMENDMENT BILL 2023

## 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 2023*.

#### Clause 2 — Commencement

This clause provides that the Act, other than the provisions mentioned below, will commence on the 7th day after its notification day. Sections 14, 15 and 18 commence 6 months after the Act's notification day. Parts 9 and 10 commence on the later of the commencement of section 16 of the *Magistrates Court (Infringement Notices) Amendment Act 2020* and the day after the Act's notification day.

#### Clause 3 — Legislation amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Bail Act 1992*, *Confiscation of Criminal Assets Act 2003*, *Crimes Act 1900*, *Crimes (Sentencing) Act 2005*, *Crimes (Sentencing) Regulation 2006*, *Evidence Act 2011*, *Juries Act 1967*, *Magistrates Court Act 1930*, *Magistrates Court Regulation 2009* and *Victims of Crime Act 1994*.

### Part 2 – Bail Act 1992

#### Clause 4 – Right of review of bail decisions – prosecution – Section 44 (5) (b)

This clause aligns the time that a bail decision is stayed when the DPP gives the court notice of a proposed application for a review of bail (24 hours) with the time allowed under the Bail Act for the DPP to make an application for a review of bail (2 hours or by 10am on day if the decision is made after 4pm).

Section 44 of the Bail Act applies to the right of review of bail decisions for an accused person charged with a family violence offence or a serious offence. The Bill amends section 44(5)(b) of the Bail Act to provide that the operation of the bail decision is stayed until the first of the following happens: the DPP tells the court that made the decision that an application will not be made or the period for making the application and giving written notice of the application has ended. Currently, section 44 allows for a bail decision to be stayed for up to 24 hours, even in circumstances where the DPP has decided not to pursue a review or has not met the timeframes required by section 44(3) to be able to advance an application for review. This amendment will align timeframes for the stay with the section 44(3) deadline, which in practice will allow a bail decision to take effect sooner than the current section

44(5)(b), where the stay continues even in the event parties are aware an application for a review will not take place.

### **Part 3 – Confiscation of Criminal Assets Act 2003**

#### **Clause 5 – New section 258A**

This clause inserts new section 258A which provides that the Minister must review the operation and effectiveness of the unexplained wealth provisions as soon as practicable after 3 August 2025 and present a report of the review to the Legislative Assembly by 3 August 2026. The section expires on 3 August 2027.

### **Part 4 – Crimes Act 1900**

#### **Clause 6 – Destroying or damaging property – Section 116 (3) (d)**

This clause omits section 116 (3) (d) which currently provides that the damage to property does not exceed \$5,000.

### **Part 5 – Crimes (Sentencing) Act 2005**

#### **Clause 7 – Fines – orders to pay – Section 14 (1)**

This clause omits the words ‘that is punishable by fine.’ This has the effect of clarifying any inconsistency with section 14 (4).

#### **Clause 8 – Section 64 (2), definition of *excluded sentence of imprisonment*, paragraph (a)**

This clause omits section 64 (2) (e) of the *Crimes (Sentencing) Act 2005*, which provides that a sentence of imprisonment imposed for an offence committed while in lawful custody is an excluded sentence of imprisonment for the application of Part 5.2 of the *Crimes (Sentencing) Act 2005*.

The effect of repealing section 64 (2) (e) is that the court will be permitted to set a non-parole period for a sentence of imprisonment imposed for an offence committed while in lawful custody pursuant to Parts 5.2 and 5.3 of the *Crimes (Sentencing) Act 2005*.

The purpose of this clause is to allow the court the discretion to consider the individual circumstances and facts of the custodial offending to determine whether to set a non-parole period and the length of that period. This may allow more detainees the opportunity to become eligible for parole, which may support their rehabilitation and reduce the risk of further offending.

## **Clause 9 – Dictionary, note 2**

This clause inserts “corrections officer” into note 2 of the Dictionary, to refer to the definition of “corrections officer” in the *Legislation Act 2001*, Dictionary, Part 1.

## **Clause 10 – Dictionary, definition of *corrections officer***

This clause omits the definition of “corrections officer” in the Dictionary to rely on the definition of “corrections officer” in the *Legislation Act 2001*, Dictionary, Part 1.

## **Part 6 – Crimes (Sentencing) Regulation 2006**

### **Clause 11 – Criminal justice entities – Act, s 136 (4) def *criminal justice entity*, par (i) – Section 3 (1) (i) and (j)**

This clause updates the reference in the Crimes (Sentencing) Regulation 2006 to the two former titles within legislation to recognise the new title of the Domestic, Family and Sexual Violence Coordinator-General.

## **Part 7 – Evidence Act 2011**

### **Clause 12 – Exclusion of evidence of reasons for judicial etc decisions – Section 129 (5) (a) (ii)**

This clause inserts the words ‘*section 42AB or*’ after the words *Juries Act 1967*, in section 129 (5) (a) (ii).

It is noted that section 129 of the *Evidence Act 2011* relates to evidence of reasons for decisions of a judge or evidence of reasons for decisions made by a member of a jury, not being tendered as evidence or being published. However, at subsection (5) (a) (ii) there is an exception to this rule relating to offences against section 43 of the *Juries Act 1967* (Personation of jurors). The amendment adds the improper juror inquiry offence to this exclusion at section 129 of the *Evidence Act 2011*.

The purpose of this amendment is to allow investigation and prosecution of the improper juror inquiry offence by ensuring it is not a further offence by disclosing evidence of jury deliberations in prosecuting the specific offence.

## **Part 8 – Juries Act 1967**

### **Clause 13 – New section 4**

This clause inserts section 4 to provide that other legislation applies in relation to offences against this Act. The Notes refer to the application of Chapter 2 of the *Criminal Code 2002* and section 133 of the Legislation Act, which relates to the value of penalty units. This is a standard provision inserted into an Act when the first new offence is inserted into the Act after 1 January 2003 in accordance with section 8 of the *Criminal Code 2002*.

### **Clause 14 – Section 38**

This clause inserts section 37A to define “majority verdict” and “unanimous verdict”. A majority verdict is defined of a verdict agreed by 11 jurors for a jury consisting of 12 jurors. A unanimous verdict is defined as a verdict agreed by all jurors.

The clause substitutes section 38 which provides that a majority verdict must be taken for an offence against a territory law if the judge is satisfied that a reasonable period (of at least 6 hours) has passed, taking into account the complexity and nature of the trial, and after examination on oath of 1 or more jurors, that the jury is not likely to reach a unanimous verdict.

The clause substitutes section 39 which provides that of a jury has retired, the judge may discharge the jury if satisfied that a reasonable period (of at least 6 hours) has passed, taking into account the complexity and nature of the trial, and after examination on oath of 1 or more jurors, that the jury is not likely to reach a unanimous verdict or, if a majority verdict would be sufficient, a majority verdict.

### **Clause 85 – Adjournment of trial on discharge of jury for disagreement – Section 40**

This clause changes the reference to section 39 rather than section 38 for adjourning a trial date, as section 39 is now the section for where a jury can be discharged.

### **Clause 9 – new section 42BA**

This clause inserts the new section 42BA. The section introduces the new offence for an improper inquiry made by a juror about matters relevant to the criminal trial the juror is sworn in.

Subsection (1) provides that the juror commits an offence if they are a sworn juror for a criminal trial, if that juror makes an inquiry, the purpose of obtaining that inquiry was to obtain information about any matter relating to the trial, and the inquiry was not made in the proper exercise of that person’s functions as a juror.

The maximum penalty is 2 years imprisonment. This penalty is to impress on the community the importance of the obligations of a juror, and stress that it is important to only rely on the information put forward during the court proceedings.

It is a key element to this offence that this inquiry is done without authorisation of the court and parties to the proceeding. The defendant charged with the juror misconduct offence will have the evidential burden in proving that the inquiry was made in the proper exercise of the person’s functions as a juror. For clarity, it is provided that if a juror makes an inquiry which contravenes a direction given by the judicial officer in the proceeding, this will not be considered a proper exercise of the person’s functions as juror.



While it is understood that some jurors may research due to confusion about the trial process or a genuine belief that their actions are in the pursuit of ‘fairness’ or discovering the truth, any questions or discussions about the trial need to be authorised by the court. There may be situations where there are investigations or inquiries made by the jury with the authority of the court. For example, the jury may ask for information or clarification on a particular issue such as legal definitions, court and jury processes, or certain evidence. However, any questions of this type would need to be put to the judicial officer for consideration.

Subsection (4) provides a non-exhaustive list of what making an inquiry may include and provides some examples of the type of conduct that would be an improper inquiry by a juror.

This offence has been modelled on the New South Wales provision on juror misconduct in section 68C of the *Jury Act 1977 (NSW)*.

This offence does not override or infringe on the courts inherent power to charge a person with contempt of court.

### **Clause 17 – Confidentiality of jury deliberations and identities – Section 42C (11), new definition of *offence relating to jury deliberations***

This clause inserts the new definition of “offence relating to jury deliberations” in subsection 11 of section 42C.

Confidentiality of jury deliberations is protected under section 42C of the *Juries Act 1967*, providing it is an offence to disclose protected information under subsection (2), an offence to solicit or obtain protected information under subsection (3), and it is an offence to publish protected information under subsection (4). However, there are exceptions to this provided under subsection (5) (6) and (7). This clause includes investigating or prosecuting improper jury inquiry offence as one of those exceptions.

The purpose of this amendment is to reduce any limitations in investigating the improper juror inquiry offence or admissibility of evidence in the prosecution of the offence. It also ensures the investigating of this new offence does not make a person contravene the confidentiality of jury obligations.

### **Clause 10 – Dictionary, new definitions**

This clause inserts a dictionary definition for “majority verdict” and “unanimous verdict”.

## **Part 9 – Magistrates Act 1930**

### **Clause 19 – Extension of time to pay penalty – Section 124 (1) (a)**

This clause inserts the words “infringement notice or”. The *Magistrates Court (Infringement Notices) Amendment Act 2020* will, on commencement, introduce a new section 124(1)(a). This provision allows people to apply for an extension of time to pay a penalty for a wide range of reasons.

This clause extends these reasons further. A person currently has a right to apply for an extension of time to pay a penalty if they have received a reminder notice. This requirement has been amended to ensure that the person can apply before they have received a reminder notice, removing the risk of incurring a financial penalty associated with a reminder notice.

### **Clause 20 – New section 124 (3)**

This clause inserts subsection (3) to provide that if the time to pay an infringement notice penalty is extended and a territory law limits the period to begin a prosecution for the infringement notice offence, the period to begin the prosecution is extended until 1 year after payment of the penalty is required.

This clause ensures that the underlying offence supporting the alternative pathway remains able to be prosecuted, if necessary.

### **Clause 11 – Effect of payment of infringement notice penalty – Section 125 (3)**

This is a consequential amendment on the insertion of new section 131ACB.

Upon commencement, the *Magistrates Court (Infringement Notices) Amendment Act 2020* will substitute section 125 (3) with a more streamlined provision. The provision states, simply, that section 125 is subject to section 127 (Withdrawal of infringement notices). This clause continues that approach by adding that section 125 is also subject to section 131ACB (Infringement notice management plan – effect of cancellation).

### **Clause 22 – Application for infringement notice management plan or addition to plan – decision - New section 131AB (4A)**

This clause corrects a procedural issue under the framework. Section 131AB states that holders of cards mentioned in section 131AA(4)(b) must have their applications for an infringement notice management plan approved.

New section 131AB(4A) creates discretion if the person has previously had a infringement notice management plan covering the same infringement notice and it was cancelled under section 131ACA.

### **Clause 12 – New sections 131ACA and 131ACB**

The *Magistrates Court (Infringement Notices) Amendment Act 2020* has not yet commenced. Upon commencement, it will establish a new framework for alternatives to pay penalties issued under infringement notices. These alternatives include participating in approved social work and entering into infringement notice management plans to pay penalties in manageable instalments.

This clause inserts two new sections into this framework to clarify process, powers, and effects for cancelling an infringement notice management plan established under this scheme. Through this process, an administering authority and a person unable to maintain payments under an infringement notice management plan might agree that approved social work might be a preferable option for the person, or that waiving some penalties or parts of penalties might be preferable.

The administering authority must provide a person with 28 days notice of an intent to cancel the infringement notice management plan. This provides the person an opportunity to provide evidence of their financial circumstances and evidence of their ability to make future payments.

### **Part 10 – Magistrates Court Regulation 2009**

#### **Clause 13 – New sections 3B and 3C**

This clause inserts the conditions under which, under section 131ACA(1)(b)(i), the administering authority's power to cancel an infringement notice management plan is enlivened (section 3B) and the matters that need to be considered by the administering authority when deciding to cancel an infringement notice management plan (section 3C).

### **Part 11 – Victims of Crime Act 1994**

#### **Clause 14 – Membership of board – Section 22C (c)**

This clause recognises the new title of the Domestic, Family and Sexual Violence Coordinator-General.