

2024

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

CRIMES LEGISLATION AMENDMENT BILL 2024

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

**Presented by
Shane Rattenbury MLA
Attorney-General**

CRIMES LEGISLATION AMENDMENT BILL 2024

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CRIMES LEGISLATION AMENDMENT BILL 2024

The *Crimes Legislation Amendment Bill 2024* (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 empower the court to order bail conditions when a person appears before the court in response to a summons or court attendance notice.
- b) *Bail Act 1992* to extend the permitted time limits for a charged person to be brought to the court in certain circumstances.
- c) *Crimes (Child Sex Offenders) Act 2005* to update the list of offences that trigger an obligation to register as a child sex offender in Schedules 1 and 2.
- d) *Crimes (Sentence Administration) Act 2005* to increase the number of Sentence Administration Board (SAB) appointees.
- e) *Crimes Act 1900* to clarify the definition of “serious offence” in section 300 of the Crimes Act.
- f) Technical amendments to the *Bail Act 1992*, *Information Privacy Act 2014*, *Integrity Commission Act 2018*, *Taxation Administration Act 1999* and *Victims of Crime Act 1994*.

CONSULTATION ON THE PROPOSED APPROACH

The amendments were developed in consultation with the following key justice stakeholders:

- Aboriginal and Torres Strait Islander Elected Body,
- Aboriginal Legal Service,
- ACT Bar Association,
- ACT Corrective Services,
- ACT Courts and Tribunal,
- ACT Director of Public Prosecutions,
- ACT Human Rights Commission,
- ACT Law Society,

- ACT Ombudsman,
- ACT Policing,
- Civil Liberties Australia,
- CMTEDD (including Treasury),
- Community and Public Service Union,
- CSD,
- Justice Caucus,
- Justice Reform Initiative,
- Legal Aid ACT,
- Prisoners Aid ACT,
- Sentence Administration Board,
- Victims of Crime Commissioner, and
- Winnunga Nimmityjah Aboriginal Health and Community Service

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 11 – Protection of family and children;
- Section 12 – Right to privacy;
- Section 18 – Right to liberty and security of person;
- section 19 – Humane treatment when deprived of liberty;
- Section 21 – The right to a fair trial;
- Section 22 – Rights in criminal proceedings.

Amend the Act to empower the court to order bail conditions when a person appears before the court in response to a summons or court attendance notice (*Bail Act 1992*)

This amendment will promote the protection of family and children (section 11), the right to privacy (section 12) and the right to liberty and security of person (section 18) by ensuring that accused persons to which a relevant risk applies in criminal law

proceedings are subjected to bail conditions that may protect the community as a whole, or specific witnesses in the proceedings.

Amend the Act to extend the permitted time limits for a charged person to be brought to the court in circumstances where the person is medically unfit (*Bail Act 1992*)

This amendment seeks to promote the rights of being treated humanely while deprived of liberty (section 19), the right to a fair trial (section 21) and rights in criminal proceedings (section 22).

When a person is medically unfit to be brought before a court, the current 48-hour time limit may, in some circumstances, see holding a bail hearing being prioritised over receiving medical treatment or care. This may result in bail hearings occurring where a person is not capable of providing instructions or understanding court proceedings due to their medical situation, which is contrary to a person's right to a fair trial.

This provision will ensure that while some limitation in timeliness of appearing before the court will occur, it will occur in a manner that promotes humane treatment, the right to a fair trial and the person's general rights in criminal proceedings in specific circumstances and with the maintenance of judicial oversight.

Update the list of offences that trigger an obligation to register as a child sex offender (*Crimes (Child Sex Offenders) Act 2005*)

These amendments will promote the right of children to be protected (section 11 of the HR Act) by ensuring that persons who are convicted of any child sex offences (whether those offences currently listed in the CSO Act schedules, or updated offences) are registered as a child sex offender.

This will reduce the risk to sexual safety of children by preventing persons who have been convicted of child sex offences from being employed in child-related employment and by requiring ongoing reporting to the Chief Police Officer of travel details, returns to the ACT, and changes in personal details including address or employment.

Crimes Act 1900 - Clarify what is meant by "an offence involving actual or threatened violence" in the definition of "serious offence"

This amendment will promote the protection of family and children (section 11) by ensuring that accused persons subject to criminal law proceedings for “serious offences” are subject to court orders that will protect the community.

Rights Limited

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

- Section 8 – Right to recognition and equality before the law
- Section 12 – Right to privacy
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person; and

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.

Amend the Act to empower the court to order bail conditions when a person appears before the court in response to a summons or court attendance notice (*Bail Act 1992*)

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

The amendment will operate to limit the right to move freely within the ACT and to leave the ACT (section 13) and limit the right to liberty and security of person (section 18).

Section 13 of the HR Act provides everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

Section 18 of the HR Act provides everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained and no-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

The amendment will create a situation where an individual is deemed to be in the ‘custody of the court’ in two identified circumstances, where:

- a. a person is served with the summons or Court Attendance Notice (CAN) while serving a sentence of imprisonment and the person is subsequently released from custody before appearing in court; or
- b. for persons not serving a sentence of imprisonment when the summons or CAN was served, if the court is satisfied, on fresh evidence or information that was unavailable when the person was served, that a relevant risk applies in the proceeding (such as failing to appear, committing another offence, interfering with evidence or harassing a person who may be required to give evidence).

The person will be deemed to be in the “custody of the court” at the time the court adjourns or postpones the hearing of the proceeding.

This amendment will empower the court to make a bail order (which requires that a person is first in the custody of the court) in relation to the above two categories of person. This may result in a bail order which limits a person’s right to move freely within the ACT or to leave the ACT (section 13 HR Act). Additionally, this amendment may result in a bail order which would deprive a person of some of their liberty, although this would be “on the grounds and in accordance with the procedures established by law” (section 18(2) HR Act).

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

The purpose of this amendment is to provide a process whereby the court is able to place a person who attends court in response to a summons or CAN on bail and order conditions for that bail, which the Bail Act would not otherwise permit. This amendment will further the purpose of enhancing community safety by operating to prevent further serious offending and protecting particular individuals who might be at risk. It will also operate to promote effectiveness of the criminal justice system.

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

There is a rational connection between the limitation of a person’s right to move freely and limitation of a person’s right to liberty and the objective of enhancing community safety and promoting effectiveness of the criminal justice system.

In circumstances where a person was serving a sentence of imprisonment, there would be no reason for police to arrest the person, so the person would be served with a summons or CAN. Upon being released and awaiting determination of their charge, the person may still present risks to community safety (such as interfering with evidence or harassing or interfering with a person required to give evidence), and this amendment will permit such a person to be placed on bail.

Additionally, if police obtain fresh evidence which indicates the accused is a greater risk to the community or a greater risk of further offending than was first known, making an order for bail will support the objective of community safety.

Further, if police obtain fresh evidence that indicates the accused is a greater risk of flight from the ACT or failing to appear in relation to the offence, the limitations on the person's right to move freely and their right to liberty will support the objective of community safety, by ensuring that the accused is appropriately sentenced for the offence and the objective of effectiveness of the criminal justice system, by ensuring the person stays in the ACT to answer the charge against them.

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

The limitation of rights is proportionate to the aim of making bail orders for the protection and welfare of the community and promoting effectiveness of the criminal justice system. Importantly, the limitation has been drafted in accordance with the least restrictive means of achieving this purpose.

This amendment will provide the court with a power to deem a person in the custody of the court in only limited circumstances rather than subjecting the person to actual custody. This approach recognises that bail orders should only be made in situations where there are live risks (having regard to the criteria set out for making bail in section 22 of the Bail Act) which clearly justify placing the person on bail conditions. The approach of deeming a person in custody is less limiting on a person's right to liberty and right to freedom of movement, while allowing the court to grant the person bail to manage risks and ensure compliance with court processes.

Importantly, this deeming provision will be limited in operation only for the purpose of making an order granting bail to the person and for applying provisions under the Bail Act in relation to the grant of bail (such as ordering conditions of bail, or undertakings to appear). It will not have effect for any broader purposes and deeming a person to be in custody will not be reflected on a person's criminal history. As such, this provision will have limited negative operation: it could not be expected to affect a person's security clearance, for instance. However, if the court is satisfied of the need for bail, it is possible that any bail order could affect a person's security clearance.

In addition, the deeming provision will apply to only limited numbers of people. In most instances, the deeming provision will only apply where the court is satisfied that a relevant risk applies in the proceeding based on fresh evidence or information that was unavailable when the person was served. However, the deeming provision will apply to all persons who were served with a summons or CAN while serving a

sentence of imprisonment. This limitation of rights for persons who were serving a sentence of imprisonment remains proportionate to the purpose.

As addressed above, for many people serving sentences of imprisonment, police are unable to arrest the person as they are already in custody, meaning proceedings must be commenced by way of summons or CAN. For this person, a relevant risk may still be applicable, however the court would not be satisfied “on fresh evidence or information that was unavailable when the person was served” as this information may well have been available when the person was served. For this smaller subset of people, it is still necessary that a deeming provision be available to permit the court to order bail to support community safety.

This limitation has been drafted in accordance with the least restrictive means of achieving this purpose. Alternate solutions to meet the objective of this amendment were considered, however, were more restrictive on a person’s human rights. This included amending police powers at section 212 of the *Crimes Act 1900* to allow police officers to arrest a person in circumstances where they had already issued the person with a CAN or summons.

The extent of the proposed amendment will stand in contrast to the approach in New South Wales and Queensland, which deems all persons who appear in answer to a summons or an existing bail undertaking into automatic custody.

Amend the Act to extend the permitted time limits for a charged person to be brought to the court in circumstances where the person is medically unfit (*Bail Act 1992*)

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

This amendment will limit the right to liberty under section 18, in particular, subsections 18(4) (a person who is arrested or detained must be brought promptly before a judge or magistrate and has the right to be tried within a reasonable time or released) and 18(5) (anyone who is awaiting trial must not be detained in custody as a general rule).

This amendment will allow the time period to bring a person who is in custody before the court to be extended up to 96 hours (48 hours additional to the original 48-hour requirement). This will be limited to circumstances where a doctor employed or contracted by the hospital certifies the person is an inpatient of the hospital and unfit to be brought before the court within the 48-hour period.

In contrast, a person is not medically unfit to be brought before the court in the following situation:

- a person in police custody complains of pain and swelling in their wrist which, upon assessment, police determine requires hospitalisation. The person is admitted and scheduled for non-urgent surgery later that day.
- The person is on moderate pain medication but has contacted and instructed a solicitor arranges for the person to appear before the court by telephone prior to their surgery.
- The treating doctor has no concerns about the person's medical fitness providing they can undergo surgery as scheduled. This person is not medically unfit to be brought before the court.

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

This amendment is intended to ensure that the person in custody is treated humanely and fairly in their criminal proceedings. Practically, it is anticipated this will be used in situations where a person is unconscious, in surgery during court hours, or heavily medicated.

Delaying a medically unfit person from being brought before the court ensures humane treatment by allowing medical care to be prioritised over court proceedings. It also engages the right to a fair trial by ensuring that when the person does come before the court, they have enough capacity to make informed decisions about their criminal proceedings.

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

The limitation to the right to liberty is important to ensuring that a person is treated humanely and fairly in their criminal proceedings, including that the person will receive a fair trial and receive their rights in criminal proceedings. Without the limitation to the right to liberty, it ensures that a bail hearing is not run in circumstances where a person is not capable of providing instructions or understanding court proceedings due to their medical situation, which is contrary to a person's right to a fair trial.

Practically, it is anticipated this will be used in situations where a person is unconscious, in surgery during court hours, or heavily medicated. For example, a driver is medically unfit to be brought before the court in the following situations:

- police attended a multi-vehicle crash with witnesses identifying the driver of one particular vehicle as of concern.
- The driver is unconscious and an ambulance takes them to hospital.

- After an initial assessment, doctors advise that the driver is in critical condition and they do not expect them to regain consciousness within 72 hours.

Without this amendment there are no options for people who are medically unfit not to attend court within the 48 hours.

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

The amendment is proportionate in that it allows for the extension of time only in circumstances where a person is unfit, based on the assessment of a doctor, and only for a further period of up to 48 hours. The provision also specifies that the person must be before the court as soon as practicable within the applicable time period (48 hours or the extended period; 96 hours).

Protections to the rights of the detained person are included within the amendment through the requirement that a person may only be certified unfit by a doctor who is an employee or contractor of the hospital where the person is an inpatient in order to ensure independence in their assessment.

The extension of time will only apply to those patients who are medically unfit to be brought before the court (for example unconscious, in surgery during court hours, or heavily medicated)

A person would not be medically unfit to be brought before the court, and therefore the extension of time would not apply, in the following situation:

- a person in police custody complains of pain and swelling in their wrist which, upon assessment, police determine requires hospitalisation. The person is admitted and scheduled for non-urgent surgery later that day.
- The person is on moderate pain medication but has contacted and instructed a solicitor arranges for the person to appear before the court by telephone prior to their surgery.
- The treating doctor has no concerns about the person's medical fitness providing they can undergo surgery as scheduled. This person is not medically unfit to be brought before the court.

The section also requires the police to provide the medical certificate to the court within the first-required 48 hour period. This is a safeguard to ensure that while the person may not physically be before the court, the court has oversight of the matter, is aware that the person is in police custody and a hearing must occur in some form within 96 hours. This inclusion of judicial oversight ensures the person's right to fairness in criminal proceedings and promotes the right to be treated humanely while in custody by ensuring that considerations of medical treatment and fitness are given prominence over facilitating a court hearing in the right circumstances.

In these ways, the limitation on the engaged rights is as minimal as possible.

Update the list of offences that trigger an obligation to register as a child sex offender (Crimes (Child Sex Offenders) Act 2005)

Rights limited

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

These amendments will update the Schedules of registrable offences in the *Crimes (Child Sex Offenders) Act 2005* (CSO Act) to reflect changes that have been made to the *Criminal Code Act 1995* (Cth) and the *Crimes Act 1900* (ACT). The following offences have been added to the Schedules:

- Incest with a person under the age of 10 (s 62(1) Crimes Act);
- Incest with a person under the age of 16 (s 62(2) Crimes Act);
- An offence listed in items 1 to 15 of Schedule 1 to the CSO Act, to which section 72AA of the Crimes Act applies (aggravated offences involving family violence);
- An offence listed in items 1 to 16 of Schedule 2 to the CSO Act, to which section 72AA of the Crimes Act applies (aggravated offences involving family violence);
- Possess or control child exploitation material obtained or accessed using carriage service (section 474.22A(1) Criminal Code (Cth));
- Conduct for the purposes of electronic service used for child abuse material (section 474.23A(1) Criminal Code (Cth)); and
- Use carriage service to “groom” another person to make it easier to procure child under 16 years old (section 474.27AA(1) Criminal Code (Cth)).

The amendments also update references to offences in the Criminal Code (Cth) which have been repealed. The amendments ensure that a person who has been convicted of a historic offence will still be captured by the registration requirements. The relevant offences are:

- Sexual servitude (section 270.6(1) and (2) Criminal Code (Cth));
- Possess, control, produce, distribute or obtain child exploitation material outside Australia (section 273.5(1) Criminal Code (Cth));

- Use postal service for child exploitation material (section 471.16 Criminal Code (Cth));
- Possess, control, produce, supply or obtain child exploitation material for use through postal service (section 471.17 of the Criminal Code (Cth));
- Use carriage service for child exploitation material (section 474.19(1) Criminal Code (Cth)); and
- Posses, control, produce, supply or obtain child exploitation material for use through carriage service (section 474.20(1) Criminal Code (Cth)).)

These amendments will engage and limit the right to privacy (section 12 of the HR Act) and the right to freedom of movement (section 13 of the HR Act) because some of the amendments broaden the range of offences captured under the CSO Act and, under the scheme, persons convicted of a registrable offence will be required to be on the child sex offender register and comply with a range of restrictions and reporting requirements, which will reduce the person's privacy and restrict their movements.

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

The purpose of the overarching scheme in the CSO Act and the amendment in this Bill is to protect children. The scheme aims to reduce the likelihood that registrable offenders will reoffend by targeting those offenders who engage in concerning conduct and prohibiting them from engaging in that conduct. Registration as a child sex offender means that offenders have fewer opportunities to be in situations that facilitate reoffending such as child-related employment and, accordingly, this can reduce the likelihood of reoffending. Registration and associated reporting requirements can also facilitate the investigation and prosecution of further child sex offences and mitigate the risk of an offender to the lives and sexual safety of children.

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

Updating the offences in the Schedules will ensure that following conviction of relevant child sex offences, offenders are automatically added to the Child Sex Offender Register and are subject to reporting requirements for the appropriate period of time. The imposition of conditions which limit a registrable offender's right to privacy and freedom of movement is a fundamental aspect of the child sex offender registration scheme and its aim of protecting children from people who have offended in a way which makes them a risk of sexually offending against children. These limitations allow police to monitor registrable offenders in order to protect the lives and sexual safety of children in the ACT and across other Australian jurisdictions. These limitations are essential to promoting the rights of children.

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

The amendments align the Schedule with current offences contained in legislation. Of note, the amendments only update the list of registrable offences in the Schedules to reflect changes which have been made to other criminal law legislation and make no substantive changes to the scheme itself.

There are existing privacy and security safeguards in place which were built into the CSO Act when the child sex offender registration scheme was developed. These include exceptions from registration under section 9 of the CSO Act, including where a person convicted of a single class 2 offence has been sentenced to a penalty other than a term of imprisonment or supervision.

The Bill includes saving provisions to ensure that persons who are convicted of historic offences that have been removed from an Act or amended will still be captured by the registration requirements. The scheme and the amendments are the least restrictive means available to provide continued protection to the sexual safety of children.

Crimes Act 1900 - Clarify what is meant by “an offence involving actual or threatened violence” in the definition of “serious offence”

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

Part 13 of the *Crimes Act 1900* sets out procedures for considering offenders where unfitness to plead and mental impairment is at play. Within Part 13, section 300 provides a definition for “serious offence”. This definition affects the orders the court can make, including how restrictive the orders must be.

For instance, under section 315D of the *Crimes Act* if a court decides a defendant is unfit to plead, but is likely to become fit to plead within the next 12 months, the court must adjourn the proceedings and, if the defendant is charged with a “serious offence” the court *must* remand the defendant in custody or release the defendant on bail. If the defendant is charged with an offence “other than a serious offence”, the court is only required to make the orders it considers appropriate.

The definition for “serious offence” has been amended to refer to offences punishable for longer than 12 months imprisonment if the factual circumstances of the offending involve actual or threatened violence and narrows the definition to also require that the offence involved “substantial risk of harm to another person”.

For persons subject to the definition of “serious offence”, the amendment to the definition will engage and limit the right to equality pursuant to section 8, which

provides everyone is equal before the law and is entitled to the equal protection of the law without discrimination. Part 13 of the Crimes Act relates to unfitness to plead and mental impairment and section 300 will amend the distinction between persons who are seen to have committed a “serious offence” and those whose conduct is regulated by Part 13, but their offence is not seen to be a “serious offence”. This inherently affects these person’s right to equal treatment before the law.

The amendment will also engage and limit the right to liberty and security pursuant to section 18, as offenders who are captured by this more limited definition will be subject to the more stringent requirements of Part 13 of the Crimes Act, which will restrict their liberty for the protection of the community.

This amendment will also engage the right to recognition and equality before the law (section 8 of the HR Act) because it affects the availability of orders following special verdict of not guilty because of mental impairment.

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

The purpose is to amend the definition of ‘serious offence’ in section 300 of the Crimes Act in response to the request for clarification of definition in the decision of her Honour Justice Loukas-Karlsson in *R v Matthews* [2022] ACTSC 105 at [91]-[93] as follows:

...whether the definition of a ‘serious offence’ in [s 300 of the Crimes Act](#) requires further clarification. The areas identified as requiring clarification are whether the phrase “an offence involving actual or threatened violence” should be defined and whether arson should fall within this definition, noting the comments made by Mossop J in [R v Jackson](#) concerning the nexus between the offence of arson and verdicts of not guilty by way of mental impairment.

This amendment will allow the Court the discretion to look at the mentally impaired person’s actual conduct (by having regard to whether it involved “substantial risk of harm to another person”), rather than solely whether the offence carries a maximum penalty greater than 12 months and the elements of the offence involved actual or threatened violence. This will permit the court to be more targeted to the seriousness of a person’s conduct when determining which provisions of Part 13 of the Crimes Act are applicable.

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

The new definition will determine the restrictiveness of orders the court must make in relation to an accused person under Part 13 both prior to any conviction and in relation to sentencing. The amendment ensures orders restricting the liberty of mentally impaired persons are only imposed in circumstances where their offending

conduct indicates they pose a substantial risk of harm to other persons in the community.

The amendment to the definition will continue to allow the court the discretion to have regard to the facts of the matter in assessing whether a mentally impaired person's actual or threatened violence created a substantial risk of harm to other persons, in deciding whether the conduct is "serious offence", thus determining which provisions in Part 13 will apply to the accused.

The amendment is capable of achieving its purpose of protecting the community. Part 13 of the Crimes Act sets out procedures for considering offenders where unfitness to plead and mental impairment is at play. By providing the court with further direction as to what is considered a "serious offence" this amendment will ensure that the court is able to consider the facts of the offending against a clear definition of serious offending to determine which provisions within Part 13 are applicable. In particular, that the offence being considered is serious enough to carry a maximum term of imprisonment of 12 months or more; involved actual or threatened violence; and involved substantial risk of harm to another person.

This will ensure that if a person's right to and equity and right to liberty is being limited that it is doing so for the protection of the community in only limited and clear circumstances.

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

The current definition of "serious offence" may create situations where a mentally impaired person may have their liberty restricted due to the elements of their offending involve actual or threatened violence, even if their actual conduct created no risk of harm to other persons.

Instead, the amendment will clarify that the more restrictive orders available to the Court following a special verdict of not guilty because of mental impairment in the case of serious offence should only be used where the factual circumstances of the offending also indicate the person presents a substantial risk of harm to other persons, rather than simply where the factual circumstances of the offending could be considered to involve actual or threatened violence.

This is the least restrictive approach on a person's human rights as it allows for orders that limit a person's human right to be made only when there is a substantial risk of harm to other persons in addition to other factors. This amendment still gives flexibility and discretion as the court must consider whether the factual circumstances meet that definition, whilst also ensuring the accused is referred to appropriate treatments and community safety.

Crimes Legislation Amendment Bill 2024

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 2024**. 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 2024

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 2024*.

Clause 2 — Commencement

This clause provides that the Act will commence on the 7th day after its notification day.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill, which will amend:

- *Bail Act 1992*;
- *Crimes Act 1900*;
- *Crimes (Child Sex Offenders) Act 2005*;
- *Crimes (Sentence Administration) Act 2005*; and

This Act also makes technical amendments to legislation as set out in Schedule 1 as follows:

- *Information Privacy Act 2014*;
- *Integrity Commission Act 2018*;
- *Taxation Administration Act 1999*; and
- *Victims of Crime Act 1994*.

Part 2 – Bail Act 1992

Clause 4 – New Section 17

This clause amends section 17 to make the wording of the section clearer and adds subsection 17(2), which will permit the extension of the current requirement to bring a person in custody before the court within 48 hours, to a period of up to 96 hours

(an additional 48 hours in addition to the original 48 hour period), when a person is certified to be medically unfit to be brought before the court.

For the time extension to be permissible, a police officer must provide the court a certificate from a doctor who is an employee or contractor of the hospital which states the accused person is an inpatient of the hospital and unfit to be brought before the court. This certificate must be provided within the original 48-hour period.

Clause 5 – New Section 19A

This clause inserts a new section into the Act to deem a person to be in the ‘custody of the court’ for the purpose of making an order granting the person bail or applying the provisions of the Bail Act in relation to the grant of bail. Pursuant to section 19A(1), these provisions will apply where:

- the person is not already in custody; and
- either –
 - the person was served with a summons or court attendance notice while service a sentence of imprisonment; or
 - the court is satisfied on fresh evidence or information that was unavailable when the person was served, that a relevant risk applies in the proceeding; and
- the court adjourns or postpones the hearing of the proceeding begun by the summons.

“Relevant risks” are defined at section 19(3) to refer to circumstances including failure to appear in court in relation to the offence, committing another offence, interfering with evidence in the proceeding, or harassing or interfering with a person who may be required to give evidence in the proceeding in relation to the offence.

Once section 19A(1) is satisfied, the court can proceed to make an order granting the person bail if it satisfied that the existing criteria for granting bail in the Bail Act are satisfied.

Subsection (2) will limit the circumstances where a person is considered to be in “the custody of the court” to the purposes of: making an order granting bail to the person; and to applying provisions under the Bail Act in relation to the grant of bail (such as conditions of bail and undertakings to appear). This provision is included as it is necessary for a person to be “in the custody of the court” prior to a bail order being made (such as being in police custody following arrest and having been charged, in the custody of a court, or in the custody of the Director-General of the Justice and Community Safety Directorate), and for the purposes of imposing bail conditions

(such as requiring an undertaking to be signed by the person before being ‘released’ on bail).

Clause 6 – Contravention of Act by police officers – Section 52(2)(a)(ii)

This clause is a technical amendment and removes a reference to the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth) and replaces it with a reference to the *National Anti-Corruption Commission Act 2022* (Cwlth) following the repeal of the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth).

Part 3 – Crimes Act 1900

Clause 7 – Definitions for Pt 13 – Section 300(1), definition of *serious offence*

This clause amends the definition of “serious offence” which applies to Part 13 of the Crimes Act, Unfitness to Plead and Mental Impairment.

The definition of serious offence is amended for Part 13 generally to apply to:

- an offence punishable by imprisonment for longer than 12 months;
- if the factual circumstances of the offending involve actual or threatened violence;
and
- substantial risk of harm to another person.

In addition, an offence against section 27(3) or (4) of the Crimes Act (“acts endangering life”) continues to fall within the definition of “serious offence”.

The definition is also amended to clarify that for Division 13.4, “Procedures for finding of not guilty because of mental impairment in the Magistrates Court”, the definition for serious offence is found at section 325 of the Crimes Act.

The amendment to the definition to add a requirement that the offending involved “substantial risk of harm to another person” will narrow and further clarify the offending which will be considered to be a “serious offence”, thus making the application of Part 13 clearer. In particular, it will clarify which provisions of Part 13 will apply to particular offending and how restrictive the orders must be that the court must make in circumstances such as when a person has been found temporarily unfit to plead.

Part 4 – Crimes (Child Sex Offenders) Act 2005

Clause 8 – Class 1 offences – Schedule 1, part 1.1, new items 14 to 16

This clause updates Schedule 1 of the Act to add the offences of incest with a person under the age of 10 and incest with a person under the age of 16, pursuant to sections 62(1) and (2) of the Crimes Act.

These offences would already be captured by the general provision in item 1 of Schedule 1, part 1.1 (which refers to any offence involving sexual intercourse with a child), but this amendment will remove any doubt.

This clause also updates Schedule 1 to include any offence mentioned in Part 4 of Schedule 1 of the CSO Act to which section 72AA of the Crimes Act applies (aggravated offences involving family violence).

Clause 9 – Schedule 1, part 1.2, new items 2A and 2B

This clause inserts item 2A, the offence of sexual servitude where the other person (as mentioned in that section) is a child pursuant to subsections 270.6(1) and (2).

This offence has been repealed from the Criminal Code, so this item is a saving provision, which will mean that persons who are convicted of historic offences for sexual servitude against subsections 270.6(1) and (2) of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Clause 10 – Class 2 offences – Schedule 2, part 2.1, new item 17

This clause inserts item 17 to update Schedule 2 to include any offence mentioned in Part 2.1 of Schedule 2 of the CSO Act to which section 72AA of the Crimes Act applies (aggravated offences involving family violence).

Clause 11 – Schedule 2, part 2.2, new item 11A

This clause inserts item 11A which refers to the offence of possessing, controlling, producing, distributing or obtaining child exploitation material outside Australia pursuant to section 273.5(1).

This offence has been repealed from the Criminal Code, so this item is a saving provision, which will mean that persons who are convicted of historic offences against section 273.5(1) of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Clause 12 – Schedule 2, part 2.2, new items 14A and 14B

This clause inserts items 14A and 14B.

Item 14A refers to the offence of using a postal service for child exploitation material pursuant to section 471.16.

This offence has been repealed from the Criminal Code, so this item is a saving provision, which will mean that persons who are convicted of historic offences against section 471.16 of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Item 14B refers to the offence of possessing, controlling, producing, supplying or obtaining child exploitation material for use through a postal service pursuant to section 471.17(1).

This offence has been repealed from the Criminal Code, so this item is a saving provision, which will mean that persons who are convicted of historic offences against section 471.17(1) of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Clause 13 – Schedule 2, part 2.2, new item 17A

This clause inserts item 17A to update Schedule 2 to include the offence of possessing or controlling child exploitation material obtained or accessed using a carriage service pursuant to section 474.22A(1) of the Criminal Code (Cwlth).

Clause 14 – Schedule 2, part 2.2, new items 20A and 20B

This clause inserts items 20A and 20B.

Item 20A refers to the offence of using a carriage service for child exploitation material pursuant to section 471.19(1).

This offence has been repealed from the Criminal Code (Cwlth), so this item is a saving provision, which will mean that persons who are convicted of historic offences against section 471.19(1) of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Item 20B refers to the offence of possessing, controlling, producing, supplying or obtaining child exploitation material for use through a carriage service pursuant to section 474.20(1).

This offence has been repealed from the Criminal Code (Cwlth), so this item is a saving provision, which will mean that persons who are convicted of historic offences against section 474.20(1) of the *Criminal Code Act 1995* (Cwlth) when it was in force will still be captured by the registration requirements.

Clause 15 – Schedule 2, part 2.2, new item 22A

This clause inserts item 22A to update Schedule 2 to include the offence of conduct for the purposes of electronic service used for child abuse material pursuant to section 474.23A(1) of the Criminal Code (Cwlth).

Clause 16 – Schedule 2, part 2.2, item 23, column 3

This clause amends item 23 of Schedule 2. The amendment omits the reference to “section 464.22 or section 474.23” in item 23, column 3 of Part 2.2 and inserts “section 474.22, 474.22A or 474.23”. This is due to an update to section 474.24A of the Criminal Code (Cwlth).

Clause 17 – Schedule 2, part 2.2, new item 28A

This clause inserts new item 28A to update Schedule 2 to include the offence of using a carriage service to ‘groom’ another person to make it easier to procure a child under 16 years old pursuant to section 474.27AA(1) of the Criminal Code (Cwlth).

Part 5 – Crimes (Sentence Administration) Act 2005

Clause 18 – New section 174(1)(ba)

This clause inserts the words ‘chief police officer’ into section 174 (1) to provide that the Minister must appoint the chief police officer, along with the other required persons, to the Sentence Administration Board. This will increase the member limit of the Board to 12 members.

Clause 19 – Appointment of board members – Section 174(3)

This clause omits the words ‘subsection (1) (c)’ from the existing section 174 (3) and replaces it with the words ‘subsection (1) (ba) and (c)’ which provides that the members mentioned in those sections are non-judicial member.

Clause 20 – New section 179A

This clause inserts the new section 179A to provide that the chief police officer may delegate their functions as a board member to a police officer to the rank of Commander or higher.

This ensures that there is flexibility of a law enforcement representative attending, while also ensuring that representative is of sufficient rank and authority to provide appropriate views.

Clause 21 – Dictionary, note 2

This clause inserts the word ‘chief police officer’ into Note 2 of the dictionary of the *Crimes (Sentencing Administration) Act 2005*.

Schedule 1 – Technical amendments

Part 1.1 – Information Privacy Act 2014

Clause [1.1] – Section 25(2), definition of *Commonwealth enforcement or intelligence body*, paragraph (e) and (f)

This clause removes the reference to the Integrity Commissioner appointed under the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth), which is now repealed, and replaces it with the National Anti-Corruption Commissioner mentioned in the *National Anti-Corruption Commission Act 2022* (Cwlth).

This clause also removes the reference to a staff member of the Australian Commission for Law Enforcement Integrity (within in the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth) and replaces it with a staff member of the National Anti-Corruption Commission established under the *National Anti-Corruption Commission Act 2022* (Cwlth).

Part 1.2 – Integrity Commission Act 2018

Clause [1.2] – Section 71(4), example 1

This clause omits the reference to the Australian Commission for Law Enforcement Integrity (ACLEI) in example 1 and substitutes it with a reference to the National Anti-Corruption Commission (NACC).

Clause [1.3] – Section 112(2), example 1

This clause omits the reference to the Australian Commission for Law Enforcement Integrity (ACLEI) in example 1 and substitutes it with a reference to the National Anti-Corruption Commission (NACC).

Clause [1.4] – Dictionary, definition of *Australian Commission for Law Enforcement Integrity* (or ACLEI)

This clause omits the dictionary definition for the Australian Commission for Law Enforcement Integrity (ACLEI).

Clause [1.5] – Dictionary, definition of *integrity body*, paragraph (g)

This clause omits the reference to Australian Commission for Law Enforcement Integrity (ACLEI) in the dictionary definition of “integrity body” and replaces it with a reference to the National Anti-Corruption Commission (NACC).

Clause [1.6] – Dictionary, new definition of *National Anti-Corruption Commission* (or NACC)

This clause inserts a dictionary definition for the National Anti-Corruption Commission.

Part 1.3 – Taxation Administration Act 1999

Clause [1.7] – Section 97(3), definition of *Commonwealth enforcement body*, paragraph (d)

This clause omits the reference to the Law Enforcement Integrity Commissioner in the definition of “Commonwealth enforcement body” and replaces it with a reference to the National Anti-Corruption Commissioner mentioned in the *National Anti-Corruption Commission Act 2022* (Cwlth), section 16.

Part 1.4 – Victims of Crime Act 1994

Clause [1.8] – Section 15I(2)(c), example 2

This clause omits the reference to the Australian Commission for Law Enforcement Integrity (ACLEI) in example 2 and replaces it with a reference to the National Anti-Corruption Commission (NACC) established under the *National Anti-Corruption Commission Act 2022* (Cwlth), section 20.