

2024

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

**CRIMES (SENTENCING)
AMENDMENT REGULATION 2024 (No 1)
SL2024-15**

EXPLANATORY STATEMENT

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

Crimes (Sentencing) Amendment Regulation 2024 (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.

In 2022 the Crimes (Sentencing) Amendment Regulation (No 1) was introduced to prescribe the Sexual Assault (Police) Review Oversight Committee (the Oversight Committee) as a criminal justice entity. This was done to enable the exchange of information by the Oversight Committee for the purposes of implementing the Sexual Assault (Police) Review.

The Sexual Assault (Police) Review was established by the ACT Government in 2022 as a response to the “*Listen. Take action to prevent, believe and heal*” report released in October 2021. 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cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.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 titled *Sexual Assault (Police) Review* (the Review). Some members of the Oversight Committee were already prescribed as criminal justice entities in their professional capacities, while other members were not.

As the review required the sharing of information about an offence, and/or an alleged offence from a police file, the Oversight Committee required prescription as a criminal justice entity to overcome any barrier in performing its purpose and function.

The Oversight Committee published its Report to the ACT Government on 28 March 2024. It was originally intended that the Oversight Committee's prescription as a criminal justice entity concludes on 30 June 2024 in accordance with the time limited nature of the Committee's role. However, at the time of the Report's publication there were further outstanding cases that were still being worked on by the Committee.

The ACT Government consequently agreed to extend the prescription of the Oversight Committee as a criminal justice entity, to support ongoing review of outstanding cases, until 31 August 2024. This Regulation enables that extension.

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.

Limitations 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 *Crimes (Sentencing) Regulation 2006* designated 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. Under the amendment, the

prescription of the Sexual Assault (Police) Review Oversight Committee is intended to conclude on 31 August 2024, reflecting the time limited nature of the Committee's role. Further, the prescription by regulation is a safeguard as regulations are subject to examination by the Legislative Assembly.

Detail

Clause 1 – Name of regulation

This clause establishes the name of the Regulation as *Crimes (Sentencing) Amendment Regulation 2024 (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 (1) (j) etc

This clause inserts under subsection 3 (1) (j) 'the body known as the Sexual Assault (Police) Review Oversight Committee'.

Subsection (2) is inserted to state that subsection 3 (1) (j) will expire on 31 August 2024.