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

ELEVENTH ASSEMBLY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2025 (NO 3)**

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

**Presented by
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2025 (NO 3)

The Bill **is not** 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*.

This explanatory statement relates to the Justice and Community Safety Legislation Amendment Bill 2025 (No 3) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

OVERVIEW OF THE BILL

The Bill is an omnibus bill which amends of the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*;
- *Crimes Act 1901*;
- *Crimes (Sentencing) Act 2005*;
- *Criminal Code 2002*;
- *Discrimination Act 1991*;
- *Domestic Relationships Act 1994*;
- *Human Rights Commission Act 2005*;
- *Legal Profession Act 2006*;
- *Legislation Act 2001*;
- *Major Events Act 2014*;
- *Official Visitor Act 2012*;
- *Wills Act 1968*; and
- *Working with Vulnerable People (Background Checking) Act 2011*.

The Bill will improve the ACT's justice and community safety legislation, to ensure that it is of the highest standards, facilitates the practical operations of justice sector agencies and best supports and protects the ACT community.

In particular, the Bill will improve governance and institutions by amending:

- the *ACT Civil and Administrative Tribunal Act 2008* and the *Human Rights Commission Act 2005* to improve the handling of matters before the ACT Civil and Administrative Tribunal (ACAT) and the ACT Human Rights Commission;
- the *Legal Profession Act 2006* to provide more effective and appropriate remedies for unsatisfactory professional conduct of legal practitioners;

- the *Official Visitor Act 2012* to clarify the eligibility requirements for the appointment of Official Visitors and their conflict of interest obligations, and to validate the appointment of an Official Visitor; and
- the *Wills Act 1968* to facilitate the effective management of the centralised will register for the ACT.

The Bill will improve community safety by amending:

- the *Discrimination Act 1991* and *Criminal Code 2002* to expand protections against vilification and serious vilification;
- the *Discrimination Act 1991* and *Crimes Act 1901* (including consequential amendments to references to offences in the *Working with Vulnerable People (Background Checking) Act 2011* and the *Crimes (Sentencing) Act 2005*) to ensure protections apply to all pregnant people;
- the *Major Events Act 2014* to ensure safer management of major events; and
- the *Working with Vulnerable People (Background Checking) Act 2011* to strengthen the protection of children in early education and care settings by enabling better information sharing between Access Canberra and the national body responsible for the national register of individuals subject to prohibition notices.

The Bill will also improve identity and belonging by amending:

- the *Domestic Relationships Act 1994* and *Legislation Act 2001* to make references to domestic partnership and civil partnerships more inclusive.

CONSULTATION ON THE PROPOSED APPROACH

The amendments in the Bill were developed in targeted consultation within Government and with relevant stakeholders where appropriate. In some cases, minor and technical amendments were identified by the Government agency that administers or operates under the relevant Act, or by key stakeholders in the relevant sector.

Internal consultation

- The Office of LGBTIQA+ Affairs was consulted on the vilification, pregnancy, and domestic and civil partnerships related amendments.
- Operational Directorates for the ACT Official Visitors scheme – Justice and Community Safety Directorate (ACT Corrective Services), Health and Community Services Directorate (HCSD) (Children, Families and Young People, Office of Disability, Chief Psychiatrist) – were consulted on the amendments to the Official Visitor Act.
- HSCD was consulted on amendments to the Discrimination Act.

- Chief Minister, Treasury and Economic Development Directorate (CMTEDD) (Venues Canberra), Events ACT, and ACT Policing were consulted on amendments to the Major Events Act.
- HCSD, Access Canberra and the ACT Early Childhood Education and Care Regulatory Authority were consulted on the amendments to the WWVP Act.

External consultation

- The Official Visitors Board and Chair and the Official Visitors were consulted on amendments to the Official Visitor Act.
- The ACT Human Rights Commission was consulted on the amendments to the Human Rights Commission Act and the Discrimination Act.
- Legal Aid ACT and the Public Trustee and Guardian were consulted on amendments to the Wills Act.
- The ACT Law Society was consulted on the amendments to the Legal Profession Act.

SUMMARY OF AMENDMENTS

ACT Civil and Administrative Tribunal Act 2008 (ACAT Act)

The Bill makes a minor amendment to ensure that ACAT can grant leave to inspect a document or other thing, to ensure that all items requested to be produced under subpoenas can be ordered, including documents and other objects that may be relevant.

Discrimination Act 1991 and Criminal Code 2002 (vilification amendments)

The Bill will expand protections against unlawful vilification in the Discrimination Act and serious vilification in the Criminal Code to include the protected attributes of sex and people associated with a person or group of people who are identified by reference to the listed protected attributes.

These Acts already include disability, gender identity, HIV/AIDS status, race, religious conviction, sex characteristics, and sexuality as protected attributes in the context of vilification and serious vilification. However, the Human Rights Commission has identified that an expansion of these categories is necessary to ensure better protection against vilification in the ACT community.

Discrimination Act 1991 and Crimes Act 1901 (pregnancy amendments)

The amendments to the Discrimination Act and Crimes Act will update language relating to pregnancy, in line with the ACT LGBTIQ+ Legal Audit recommendation 2 to ensure legislative provisions in relation to pregnancy and childbirth are gender

inclusive. The amendments align with broader efforts to ensure gender neutral language is utilised across the ACT statute book.

The definition of 'potential pregnancy' in section 5A of the Discrimination Act will be amended to ensure that all pregnant people are captured by the protected attribute of 'pregnancy'. Similar amendments will be made to the Crimes Act to ensure that offences against pregnant women apply to all pregnant people. Consequential amendments will be made to references to these offences in the *Working with Vulnerable (Background Checking) Act 2011* and *Crimes (Sentencing) Act 2005*.

Human Rights Commission Act 2005 (HRCA)

The Bill will allow a person, with leave of the Human Rights Commission, to amend a complaint at any time. This will allow a person to add allegations to a complaint, rather than having to submit a new complaint where the subject matter is connected or the complaint is about the same entity. In particular, this will assist in the streamlining of complaints made about discrimination, retirement villages, occupancy matters, and sexuality and gender identity conversion practices, as these types of complaints can be reviewed by the ACAT. If the matters go to the ACAT, there is a resource burden as the ACAT must make a determination on whether to make orders joining the related matters. By enabling complaints to be amended by the Human Rights Commission before they are referred to the ACAT, the amendments will ensure the ACAT is able to determine the true scope of the complaint.

Legal Profession Act 2006 (LPA)

The Bill increases the fine limit for fines able to be imposed for complaints of unsatisfactory professional conduct of legal practitioners by the relevant council (the ACT Law Society and ACT Bar Association) and ACAT. This will better align fines in the ACT with other jurisdictions and ensure they are commensurate with the behaviour being penalised. The fine limit has not been reviewed since 2006. The Bill will amend the LPA to increase the maximum amount that can be imposed by way of a fine by the ACTLS from \$1500 (currently) to \$10,000. The Bill will also increase the maximum amount that can be imposed by ACAT for a finding of unsatisfactory professional conduct that does not amount to professional misconduct from \$10,000 to \$25,000.

These amendments will allow the councils to appropriately distinguish between different levels of seriousness of unsatisfactory professional conduct and allow a larger number of complaints to be dealt with by the ACTLS, where appropriate, rather than needing to be referred to ACAT.

Domestic Relationships Act 1994 and Legislation Act 2001

The Bill will make minor amendments to the Domestic Relationships Act and Legislation Act to ensure provisions relating to domestic partnerships and civil partnerships are gender inclusive.

The amendment to the Legislation Act will update the section 169(2) definition of 'domestic partnership' to be more gender inclusive, in line with the ACT LGBTIQ+ Legal Audit recommendation 6 to replace references to 'sex' with 'gender' where appropriate. The definition provides that 'a domestic partnership is the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis'. The amendment will remove the phrase 'whether of a different or the same sex', as it is now well understood that a domestic partnership does not have to be between persons of different sex or gender. This approach will be more inclusive and better reflect inclusive relationships and community expectations.

For the same reasons, the amendment to the Domestic Relationships Act will omit the phrase 'regardless of their sex' from section 37D, which regards how civil partnerships are entered into.

Major Events Act 2014

The Bill makes amendments to the *Major Events Act 2014* to clarify the application of offence and other provisions.

Official Visitor Act 2012 (OVA)

The Bill makes amendments to the OVA to clarify the eligibility requirements for the appointment of Official Visitors and their conflict of interest obligations, and to validate the appointment of an Official Visitor.

The OVA prohibits a person from being eligible for appointment if they are a 'public employee'. This was intended to prevent Official Visitors from being public servants, to ensure that Official Visitors exercise their functions independent from government influence. However, the technical legislative definition of 'public employee' is broader and includes statutory office holders. It was not originally intended that holding another statutory office holder role would necessarily make someone ineligible for appointment as an Official Visitor. The OVA also prohibits a person from being eligible if they hold a 'relevant interest in relation to the place'. Official Visitors have raised concerns about a lack of clarity in relation to the scope of relevant interests.

The Bill addresses these concerns by amending the eligibility criteria to provide that a person cannot be appointed as an Official Visitor if they are a 'public servant', or if they have an actual or perceived conflict of interest that would prevent them from properly carrying out the functions of an Official Visitor for the place. This will mean

that someone could still be eligible for appointment if they hold a statutory office holder role, provided this does not give rise to a conflict of interest.

The Bill validates the appointment of an Official Visitor that was found to be invalid due to an administrative oversight. At the time of the person's appointment, it was not known by the Board and appointing committee that 'public employee' included statutory office holders, even where this does not give rise to a conflict of interest, and therefore the person was not eligible for appointment due to a concurrent statutory role. The amendment will seek to rectify this oversight.

Finally, the Bill provides that an Official Visitor must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of their functions and requires Official Visitors to give written notice throughout the duration of their appointment of any paid employment the Official Visitor proposes to undertake, and any activity the Official Visitor proposes to undertake that may give rise to a conflict of interest during the exercise of the Official Visitor's functions. This may include, for example, volunteering for a service provider in a visitable place or acquiring shares in a company involved in a visitable place. This will support the Minister's obligations under s12(2)(b) to terminate an Official Visitor appointment if the Official Visitor fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of their functions.

Wills Act 1968

The Bill will make amendments to the Wills Act to facilitate a centralised Will Register for the ACT under the Public Trustee and Guardian. Legal Aid ACT hold several wills that need to be transferred to the Public Trustee and Guardian. Legislative amendment is necessary to allow this transfer so that the wills can all be held safely by one entity. There is a significant benefit to the ACT Community in having all wills deposited with statutory agencies in the ACT being centralised. This will allow for improved data security and records management, easier searching and a single source of truth.

Working with Vulnerable People (Background Checking) Act 2011 (WWVP Act)

The Bill makes amendments to the WWVP Act to clarify information sharing in relation to early childhood education and care on a national basis.

The Education and Care Services National Law (National Law) is a federated law, applied in the ACT under the *Education and Care Services National Law (ACT) Act 2011*. Under Part 11 of the National Law, the national authority is the Australian Children's Education and Care Quality Authority (ACECQA). Each state and territory have their own regulatory authority to administer the National Law in that jurisdiction, as set out in Part 12 of the National Law. Although ACECQA works alongside state and territory regulatory authorities, it has no regulatory power.

The amendments to the WWVP Act make it explicit that Access Canberra is authorised by law to access and receive personal and identifying information ('protected information') from ACECQA as the National Authority.

State and territory regulatory authorities have the power to prohibit individuals from engaging in the early childhood education and care sector. Prohibition notices are effective nationwide. ACECQA provides a database for use of state and territory regulators and maintains a national register of around 400 people subject to a prohibition notice. Under the National Law, the ACT Regulatory Authority can share details of persons it has prohibited in the ACT with Access Canberra. However, ACECQA has no authority under the National Law to share protected information about individuals (as contained in the prohibition notices issued by other states and territories), including sharing that information with working with children check agencies.

Uncertainty in the WWVP Act means that privacy law may create impediments to the receipt and use of this information from ACECQA, which could discourage proactive information sharing. Providing for explicit legal authority in the WWVP Act to receive this protected information will facilitate national information sharing and support ongoing efforts to improve child safety in early childhood education and settings.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

The Bill engages the following sections of the Human Rights Act 2004 (HRA):

- Section 8 – Right to equality and non-discrimination (*promoted*)
- Section 11 – Right to protection of the family and children (*promoted*)
- Section 12 – Right to privacy and reputation (*promoted and limited*)
- Section 16 – Right to freedom of expression (*limited*)
- Section 18 – Right to liberty and security of person (*promoted and limited*)
- Section 21 – Right to a fair trial (*promoted*)
- Section 27B – Right to work and work-related rights (*limited*)

Rights promoted

The amendments to the HRCA to improve the operations of the Human Rights Commission will generally promote all human rights by enabling the efficient handling of complaints made under the HRA.

The vilification related amendments to the Discrimination Act and Criminal Code will support the right to equality and non-discrimination (section 8 HRA) and the right to security of person (section 18 HRA) by ensuring that people are protected from vilification and serious vilification on the grounds of sex and association with a

person or group of people who are identified by reference to the listed protected attributes.

The pregnancy related amendments to the Discrimination Act and the Crimes Act will support the right to equality and non-discrimination (section 8 HRA) and the right to security of person (section 18 HRA) by using gender neutral language to ensure that all pregnant people are protected by the protected attribute of 'pregnancy' and by the criminal offences against pregnant women.

The amendments to the Domestic Relationships Act and the Legislation Act will promote the right to equality (Section 8 HRA) by ensuring that provisions relating to domestic partnerships and civil partnerships are gender inclusive.

The amendments to the WWVP Act will promote the right to protection of children and the family (section 11 HRA) by ensuring relevant information under the National Law is available to Access Canberra to protect children from risk. These amendments will also promote the right to fair trial (Section 21 HRA) by ensuring the correct factors under the National Law are considered in occupational discipline proceedings.

The right to protection of the family and children (section 11) will also be promoted by the amendments to the Wills Act by ensuring wills are properly managed and maintained in a centralised register.

Rights limited

Section 12 HRA – Right to Privacy – OVA amendments

1. Nature of the right and the limitation (s28(2)(a) and (c))

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence inferred with unlawfully or arbitrarily. The amendments to the OVA may limit the right to privacy for Official Visitors, as they clarify the obligations of Official Visitors to disclose conflicts of interest throughout their period of appointment. Official Visitors will be required to give written notice to the Official Visitors Board of any paid employment they propose to undertake, and any activity they propose to undertake that may give rise to a conflict of interest during the exercise of their functions. Official Visitors will have an obligation to take all reasonable steps to avoid a conflict of interest.

2. Legitimate purpose (s28(2)(b))

The purpose of the amendment is to protect vulnerable people residing in visitable places by strengthening the Official Visitors Board's ability to monitor the independence of Official Visitors to ensure they are properly carrying out their functions.

3. Rational connection between the limitation and the purpose (s28(2)(d))

The independence of Official Visitors, as enshrined in section 14A of the OVA, is necessary to ensure they can fulfil their functions without being subject to the direction of anyone else. In addition to undermining the independence of the scheme, conflicts of interest have the potential to affect the trust and confidence placed by entitled persons in the Official Visitor role and affect their ability to properly exercise their functions.

By requiring Official Visitors to proactively report conflicts of interest to the Official Visitors Board, the amendment will support the Board's ability to advise the Minister in relation to their obligation under s12(2)(b) to terminate an Official Visitor appointment if they fail to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of their functions.

4. Proportionality (s28(2)(e))

Requiring Official Visitors to proactively disclose conflicts of interest is necessary to enable the Official Visitor Board to monitor the independence of the scheme. This ensures that Official Visitors can properly exercise their independent functions and is the least restrictive way to achieve this objective. Official Visitors need not disclose any personal information beyond this remit.

Section 12 HRA – Right to Privacy – Wills Act amendments

1. Nature of the right and limitation (s28(2)(a) and (c))

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The amendments to the Wills Act limit the right to privacy for those who have engaged Legal Aid to draft and hold possession of a will, as the transfer of wills from Legal Aid to the Public Trustee and Guardian will require the disclosure of identifiable information.

2. Legitimate purpose (s28(2)(b))

The amendment is intended to directly benefit the person who has written a will (the testator). Safekeeping a will within a single government agency ensures that it is easier for the person's will to be located and given effect after their death, thereby supporting their wishes. The amendment promotes their right to privacy, as their autonomy to make decisions regarding their property is protected (whereas if a person dies intestate or if their will cannot be located, their property is distributed according to legislative rules).

A secondary and related purpose of this amendment is to benefit members of the ACT community who are entitled to access wills. By enabling Legal Aid to deposit wills in its custody with the Public Trustee and Guardian, which maintains a centralised wills register, this access is more readily facilitated.

3. Rational connection between the limitation and the purpose (s28(2)(d))

Sharing identifiable information of the person whose will is held with Legal Aid is necessary to ensure the correct person(s) can access and request information regarding a will. The amendment will enable the will to be given effect, protecting the person's wishes and improving access for the ACT community via the centralised register.

4. Proportionality (s28(2)(e))

The limitation is considered reasonable and proportionate. The amendment will have a minor impact on the right to privacy because the personal information is being shared between government agencies bound by statutory obligations in relation to privacy and recordkeeping (e.g. the *Privacy Act 2014* and the *Territory Records Act 2002*). It is also an offence for officials at the Public Trustee and Guardian to disclose information obtained in the course of their functions, other than in authorised circumstances (section 65A of the *Public Trustee and Guardian Act 1985*).

Access to the wills register by members of the public is also governed by legislative rules. This means the Public Trustee and Guardian may only disclose information about a will to those who are legitimately entitled to inspect it (section 126 of the *Administration and Probate Act 1929*).

These legislative safeguards limit the extent of the intrusion into the testator's privacy, as a result of the amendment. There is no less restrictive way to enable the transfer of wills.

Section 16 HRA – Right to Freedom of Expression – vilification amendments

1. Nature of the right and the limitation (s28(2)(a) and (c))

The right to freedom of expression provides that everyone has the right to hold opinions without interference and may express themselves freely in any form. This right may be limited by the amendments to the Discrimination Act and Criminal Code to protect against unlawful vilification and serious vilification on the grounds of sex and association with a person or group of people who are identified by reference to the listed protected attributes.

2. Legitimate purpose (s28(2)(b))

The purpose of this amendment is to strengthen protections against vilification and serious vilification so that people can live safely in the community.

3. Rational connection between the limitation and the purpose (s28(2)(d))

The protections in the Discrimination Act and Criminal Code already include disability, gender identity, HIV/AIDS status, race, religious conviction, sex characteristics, and sexuality as protected attributes in the context of vilification and serious vilification. However, the Human Rights Commission has identified that an expansion of these categories is necessary to ensure better protection against vilification in the ACT community.

By expanding protections against unlawful vilification and serious vilification to the attributes of sex and personal association, the amendments will strengthen these protections so that people in these new cohorts are not aggrieved by vilifying conduct.

4. *Proportionality (s28(2)(e))*

The only speech that will be restricted by the amendment is speech which is within the scope of unlawful vilification under the Discrimination Act (i.e. speech that incites hatred towards, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of the listed attributes, other than in private) and serious vilification under the Criminal Code (i.e. speech that is threatening and where the person is reckless about whether it incites hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of the listed attributes, other than in private or if the person is reckless about whether it is in private). Expanding these existing protections to additional attributes is the least restrictive way of achieving the objective of strengthening protections against vilification for these cohorts.

WWVP Act amendments

Section 27B HRA – Right to work and work-related rights

1. *Nature of the right and the limitation (s28(2)(a) and (c))*

The right to work and other work-related rights provides that everyone has the right to work, including the right to choose their occupation or profession freely, and is entitled to enjoy these rights without discrimination. The right to work will be limited by the amendments to the WWVP Act which will provide an explicit authority for Access Canberra to access and receive information provided by the national authority under the Education and Care Services National Law 2011 (National Law), the Australian Children's and Care Quality Authority (ACECQA). This information includes nationwide prohibition notices, which bar individuals from working in early childhood education and care settings if they may pose an unacceptable risk of harm to children. If an individual's application for WWVP registration is refused on the basis of the individual being subject to a prohibition notice, this may limit the individual's right to work by restricting their ability to engage in regulated activities in Schedule 1 of the WWVP Act.

2. *Legitimate purpose (s28(2)(b))*

The legitimate purpose of the amendment is to better facilitate information sharing between Access Canberra and the national authority to ensure that people who are prohibited from working in early childhood education and care are known in each jurisdiction and prevented from working in those areas. This is ultimately to protect children from people who have been deemed unsafe to work in this environment because they may pose an unacceptable risk of harm to children.

3. Rational connection between the limitation and the purpose (s28(2)(d))

Information sharing is necessary to ensure the correct people are prohibited from working with children and cannot obtain a working with vulnerable people card. The prohibition on people working in these areas is necessary to protect children from harm from individuals. The amendment also allows Access Canberra to collect information about people in the National Register, for the purposes of correctly identifying people who are prohibited from working in certain areas. It is necessary for Access Canberra to receive prohibition notice information to properly protect children from risks to safety.

4. Proportionality (s28(2)(e))

There is no less restrictive way to protect children from people who are the subject of a prohibition notice. This amendment will only increase information sharing to ensure that those who are already barred from working in early education and care settings cannot work in these areas in the ACT. People subject to a prohibition notice may still be able to work with other vulnerable people, depending on the nature of the prohibition and their offending. The prohibition on the right to work in these contexts promotes the right to protection of children and also the right to security of person for children.

Section 12 HRA – Right to Privacy

1. Nature of the right and the limitation (s28(2)(a) and (c))

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence inferred with unlawfully or arbitrarily. The amendments to the WWVP Act limit the right to privacy by providing an explicit authority for Access Canberra to access and receive information about an individual subject to a prohibition notice. Personal information that may be disclosed will include an individual's first and last name, date of birth, the fact that they have a prohibition notice in a particular state and territory, and the entity that issued the notice.

2. Legitimate purpose (s28(2)(b))

As outlined above, the legitimate purpose of the amendment is to better facilitate information sharing between Access Canberra and the national authority to ensure that people who are prohibited from working in early childhood education and care are known in each jurisdiction and prevented from working in those areas.

3. Rational connection between the limitation and the purpose (s28(2)(d))

As outlined above, it is necessary for Access Canberra to receive prohibition notice information to properly protect children from risks to safety.

4. Proportionality (s28(2)(e))

As outlined above, there is no less restrictive way to protect children from people who are the subject of a prohibition notice. A key privacy safeguard is the offence in

section 273 of the National Law, which sets out a duty of confidentiality. This provision provides that an individual exercising functions under the National Law must not disclose to another person protected information. In this context, protected information means information that is personal to a particular individual and that identifies or could lead to the identification of the individual, and that comes to a person's knowledge in the course of, or because of, the person exercising functions under the National Law.

Section 18 HRA – Right to liberty and security of person – Human Rights Commission Act amendments

1. Nature of the right and the limitation (s28(2)(a) and (c))

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

Section 98(1) of the Human Rights Commission Act makes it an offence if a person causes or threatens to cause a detriment to someone else because the other person has made a complaint under this Act. The offence has a maximum penalty of 50 penalty units, imprisonment for 6 months or both. The amendment to section 98(1)(a)(i) limits this right as it expands the circumstances in which this offence applies to people amending a complaint.

Similarly, the amendment to introduce the new section 98(2)(aa) limits this right as it makes it an offence if a person threatens or intimidates someone else with the intention of causing the other person to amend, or not to amend a complaint made under this Act. This offence has a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

2. Legitimate purpose (s28(2)(b))

The purpose of this amendment is to protect people from being victimised for having amended or wanting to amend a complaint under the Act. It is also intended to protect all complainants from being pressured to change a complaint that is on foot before the Commission.

3. Rational connection between the limitation and the purpose (s28(2)(d))

Expanding the existing offences in section 98 will ensure that complainants amending a complaint or wanting to amend a complaint will benefit from the victimisation protections under the Act, and that all complainants will be protected from being pressured to amend their complaint.

4. Proportionality (s28(2)(e))

The inclusion of 6 months imprisonment as a possible maximum penalty for these offences appropriately reflects the seriousness of the conduct and is necessary to deter people from victimising complainants. The offences are not strict liability.

Expanding the existing offences in section 98 is the least restrictive way to achieve the objective of protecting complainants from victimisation in the described circumstances.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2025 (No 3)*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commenced on the 7th day after its notification day.

Clause 3 Legislation amended

This clause identifies the legislation that will be amended in the Bill:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Crimes Act 1900*
- *Crimes (Sentencing) Act 2005*
- *Criminal Code 2002*
- *Discrimination Act 1991*
- *Domestic Relationships Act 1994*
- *Human Rights Commission Act 2005*
- *Legal Profession Act 2006*
- *Legislation Act 2001*
- *Major Events Act 2014*
- *Official Visitor Act 2012*
- *Wills Act 1968*
- *Working with Vulnerable People (Background Checking) Act 2011*

Part 2 ACT Civil and Administrative Tribunal Act

Clause 4 Powers in relation to witnesses etc

Section 41 (3)

This clause substitutes current section 41(3) with a new section providing that the tribunal may give leave to a party to inspect or make a copy of a document, or to inspect an item other than a document.

This amendment aligns section 41(3) with current section 41(1) and (2), which provide that the tribunal may require a person to produce, by subpoena, items other than documents.

Part 3 Crimes Act 1900

Clause 5 Meaning of aggravated offence—pt 2

**Section 9A, definition of *aggravated offence*,
paragraph (a)**

This clause omits the term 'woman' and substitutes it with 'person' so that the meaning of aggravated offence in pt 2 is inclusive of all pregnant people. This reflects the amendments to section 48A (2) (Aggravated offences—pt 2 offences against pregnant women) in this Part.

This clause omits the term 'women' and substitutes it with 'person' in the notes at sections 15(3), 19(2), 20(2), 21(2), 23(2), 24(2) and 29(3), to reflect the amendments to Section 48A (Aggravated offences—pt 2 offences against pregnant women) in this Part.

This clause substitutes the heading in section 48A with 'Aggravated offences—pt 2 offences against pregnant person' so that the offence is inclusive of all pregnant people.

This clause substitutes the term 'woman' with 'person' so that the offence is inclusive of all pregnant people.

This clause substitutes the heading at section 48B with 'Alternative verdicts for aggravates offences—pt 2 offences against pregnant person' so that this provision is inclusive of all pregnant people.

Clause 10 **Aggravated offence may allege more than 1 factor of aggravation**

Section 434C (1), example

This clause omits the term 'woman' and substitutes it with 'person' so that the example is inclusive of all pregnant people.

Clause 11 Section 434C (2), definition of *relevant factor of aggravation*, paragraph (a)

This clause omits the term ‘woman’ and substitutes it with ‘person’ to reflect the amendments to Section 48A (Aggravated offences—pt 2 offences against pregnant women) in this Part.

Clause 12 Dictionary, definition of *actual bodily harm etc*

This clause omits the term ‘woman’ and substitutes it with ‘person’ in the dictionary definitions of actual bodily harm, aggravated offence, and grievous bodily harm to make these definitions inclusive of all pregnant people.

Part 4 Crimes (Sentencing) Act 2005

Clause 13 Sentencing—relevant considerations

Section 33 (1) (g)

This clause omits the term ‘a pregnant woman’ and substitutes it with ‘pregnant’ so that this provision is inclusive of all pregnant people.

Clause 14 Section 33 (1) (g) (i)

This clause substitutes section 33 (1) (g) (i) with ‘whether the offender knew, or ought reasonably to have known, that the victim was pregnant; and’ so that this paragraph is inclusive of all pregnant people.

Part 5 Criminal Code 2002

Clause 15 Serious vilification

New section 750 (1) (c) (va)

This clause inserts the attribute of ‘sex’ to the list of attributes protected by the serious vilification offence at section 750.

Clause 16 New Section 750 (1) (c) (viii)

This clause inserts the attribute of ‘association (whether as a relative or otherwise) with a person who is, or a group of people who are, identified by reference to an attribute mentioned in subparagraphs (i) to (vii)’ to the list of attributes protected by the serious vilification offence at section 750.

Clause 17 New Section 750 (2), definition of *threatening act*,

paragraph (a)

This clause is a minor consequential amendment to a subparagraph reference in the definition of threatening act at section 750.

Part 6 **Discrimination Act 1991**

Clause 18 **Meaning of *potential pregnancy***

Section 5A, definition of *potential pregnancy*

This clause omits the term ‘woman’ and substitutes it with ‘person’ to clarify that the protected attribute of pregnancy is inclusive of all pregnant people.

Clause 19 **Unlawful vilification**

New section 67A (1) (ea)

This clause inserts the attribute of ‘sex’ to the list of attributes protected by the unlawful vilification provision at section 67A.

Clause 20 **New section 67A (1) (h)**

This clause inserts the attribute of ‘association (whether as a relative or otherwise) with a person who is, or a group of people who are, identified by reference to an attribute mentioned in paragraphs (a) to (g)’ to the list of attributes protected by the unlawful vilification provision at section 67A.

Clause 21 **Dictionary, definitions of *man* and *woman***

This clause removes the definitions of ‘man’ and ‘woman’ which are no longer needed.

Part 7 **Domestic Relationships Act 1994**

Clause 22 **How civil partnership is entered into**

Section 37D

This clause omits the phrase ‘regardless of their sex’ so that the provision uses gender inclusive language.

Part 8 **Human Rights Commission Act 2005**

Clause 23 **Discrimination commissioner’s functions**

Section 23 (2) (c)

This clause omits the phrase ‘men and women’ and substitutes it with the gender inclusive phrase ‘all people’ to reflect that the promotion of the recognition and acceptance within the community of the equality of all people is one of the functions of the commission in relation to discrimination.

Clause 24 Individual with more than 1 role

Section 34(3), example

This clause is a technical amendment that omits the example at section 34 as it is now out of date since amendments made by the *Protection of Rights (Services) Legislation Amendment Act 2016* increased the number of members and changed the quorum formula.

Clause 25 New section 44A

This clause inserts a new section 44A which provides that a complainant may, with leave of the commission, amend a complaint at any time.

Clause 26 Victimisation etc

Section 98 (1) (a) (i)

This clause inserts ‘or amended’ so that it is an offence if a person causes or threatens to cause a detriment to someone else because the other person has amended a complaint under this Act.

Clause 27 New section 98 (2) (aa)

This clause inserts a new section to the existing offence at section 98, so that it is an offence for the person to threaten or intimidate someone with the intention of causing the other person to amend, or not to amend, a complaint made under this Act.

Clause 28 Protection of others from liability

Section 100A (1) (a)

This clause inserts ‘or amendment’ so that the protection of others from civil or criminal liability extends to the making or amendment of a complaint.

Part 9 Legal Profession Act 2006

Clause 29 Summary conclusion of complaint procedure by fine etc

Section 413 (3)

This clause increases the maximum fine that the ACT Law Society can impose on a legal practitioner if they have completed an investigation of a complaint against the practitioner and are satisfied that the practitioner will be found guilty by the ACAT of unsatisfactory professional conduct. The previous maximum fine amount of \$1,500 is omitted, and substituted with the increased limit of \$10,000.

Clause 30 Fines – Australian legal practitioners

Section 427 (1) (a)

This clause increases the maximum fine that the ACT Civil and Administrative Tribunal can issue by way of fine if satisfied that the practitioner is guilty of unsatisfactory professional conduct. The clause omits the previous maximum fine amount of \$10,000 and substitutes it with the increased limit of \$25,000.

Clause 31 New chapter 13

This clause inserts New Chapter 30 into the *Legal Profession Act 2006*. This new Chapter contains the relevant transitional provisions. The new Chapter provides that the increased fine will only apply to conduct that happens, or is alleged to have happened, on or after Part 3 of the amending Act (being the *Justice and Community Safety Legislation Amendment Act 2025 (No 3)*) commences.

Part 10 Legislation Act 2001

Clause 32 References to *domestic partner* and *domestic partnership*

Section 169 (1), note

This clause omits the note at section 169(1) which provides the Macquarie dictionary definition of spouse. This definition is no longer needed.

Clause 33 Section 169(2)

This clause omits the phrase ‘whether of a different or the same sex’ so that the provision uses gender inclusive language.

Part 11 Major Events Act 2014

Clause 34 Scanning, ordinary and frisk searches—requirements

Section 19(2)

This clause amends section 19 (2) to substitute ‘major event venue’ and replace it with ‘event venue’, to clarify that this provision applies to both Major Events and

Important Sporting Events under the Act, as contemplated in the offences in Division 3.3 of the Act.

**Section 24(8), definition of *ban order offence*,
paragraph (a) (i)**

This clause amends section 24 (8) – which seeks to define ban order offence – to substitute to an incorrect reference to section 12 (Meaning of prohibited items) and replace it with a correct reference to refer to section 13 (Offences – unauthorised entry to event venue).

Clause 36 Retention and return of certain prohibited items

Section 61 (a) (ii)

This clause amends section 61 (a) (ii) to substitute 'other prohibited item' and replace it with 'other prohibited item surrendered or confiscated under section 15 or seized under section 50.' This improves clarify of the clause to clearly identify the items in scope of this section.

This clause amends section 61 (c) to substitute 'prohibited item to which paragraph (a) does not apply' and replace it with 'returnable item' to improve clarity of the clause by using the defined term, rather than an explanation of the term.

Part 12 Official Visitor Act 2012

Section 10 (3) (a) and (b)

This clause substitutes sections 10 (3) (a) and (b) to provide that the Minister must not appoint a person as an official visitor for a visitable place if the person (a) is a public servant; or (b) has an actual or perceived conflict of interest that would prevent the official visitor from properly carrying out the functions of an official visitor for the place. The amendments are intended to increase the clarity of the eligibility criteria for Official Visitors. Statutory office holders will no longer be automatically ineligible for appointment as an official visitor by virtue of being a public employee.

This clause omits the definition of 'relevant interest' for consistency with the amendments in this Part.

Clause 40 Ending appointment

Section 12 (3)

This clause omits the term ‘public employee’ and substitutes it with ‘public servant’ for consistency with the amendments in this Part.

Clause 41 New section 14B

This clause inserts a new conflict of interest provision at section 14B.

Subsection (1) provides that an Official Visitor must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the official visitor’s functions.

Subsection (2) provides that an Official Visitor must give written notice of the following to the Official Visitors Board: (a) any paid employment the official visitor proposes to undertake; (b) any activity the official visitor proposes to undertake that may give rise to a conflict of interest during the exercise of the official visitor’s functions. This may include, for example, volunteering for a service provider in a visitable place or acquiring shares in a company involved in a visitable place. This subsection is intended to ensure the Official Visitors Board is able to monitor the independence of official visitors throughout the duration of their appointment. This will support the Official Visitors Board’s ability to advise the Minister in relation to the obligation under section 12(2)(b) to terminate an Official Visitor appointment if the Official Visitor fails to take all reasonable steps to avoid being places in a position where a conflict of interest arises during the exercise of their functions.

Clause 42 New part 12

This clause inserts a new part 12. Section 63 provides that Clare Doube is taken to have been appointed as a corrections Official Visitor for the period beginning on 1 September 2023 and ending on the commencement of the *Official Visitor (Corrections Management) Appointment 2025 (No 1)*. Anything done, or purported to have been done, by Clare Doube during that period as a corrections Official Visitor is taken to be, and always have been, valid as if the *Official Visitor (Corrections Management) Appointment 2023 (No 1)* had validly appointed Clare Doube as a corrections Official Visitor. Section 64 provides that pt 12 expires on the day it commences.

Part 13 Wills Act 1968

Clause 43 New section 33

This clause inserts new section 33 which applies to wills held by the legal aid commission which were made with their legal assistance. It allows the legal aid commission to deposit the will with the public trustee and guardian and give them the

identifying information about the will. The new section also requires that the legal aid commission keep records on any will they deposit with the public trustee and guardian, including the date it was deposited. The definition for identifying information refers to the existing definition under section 32 (4) of the *Wills Act 1968*.

Part 13 Working with Vulnerable People (Background Checking) Act 2011

This clause allows the disclosure of prohibition notices given under the Education and Care Services National Law by the National Authority to the Commissioner for Fair Trading. The includes information ancillary to the prohibition notice, including information required to identify the person the prohibition notice relates to.

This is a definitional clause that supports clause 44 by defining the Education and Care Services National Law and the National Authority. The Education and Care Services National Law is a piece of national uniform legislation, and so in order that the law as legislated in each jurisdiction is captured under the definition the clause is drafted to cover the Education and Care Services National Law “as applying in any participating jurisdiction.”

This clause is a technical amendment that brings the listed title of a Class A disqualifying offence in line with its new title in the Crimes Act. The change substitutes the word 'woman' with 'person'.