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

ELEVENTH ASSEMBLY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2026
(NO 2)**

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

**Presented by
Tara Cheyne MLA
Attorney-General
October 2026**

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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2026 (NO 2)

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 2026 (No 2) 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:

- *Crimes (Restorative Justice) Act 2004*
- *Liquor Act 2010*
- *Magistrates Court Act 1930*

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

Crimes (Restorative Justice) Act 2004

Restorative justice is a process that gives people who have caused harm and those who have been harmed an opportunity to come together in conversation.

The Bill proposes amendments to the *Crimes (Restorative Justice) Act 2004* (Restorative Justice Act) to clarify deidentified case studies may be used for the following purposes:

- a convenor gaining or maintaining accreditation in relation to restorative practices with a professional body
- educating or training people about the Restorative Justice Act or restorative practices
- preparing, presenting to the Legislative Assembly and publishing the Director-General's annual report under the *Annual Reports (Government Agencies) Act 2004* so far as the report relates to the administration of the Restorative Justice Act.

Liquor Act 2010

The amendment will discontinue the Liquor Advisory Board. Government has reviewed the arrangements, which have been in place since 2010, and determined that they are no longer fit for purpose.

The Government remains committed to engaging with the community, stakeholders and experts on liquor policy and reform. Future stakeholder engagement will continue through project-specific consultation mechanisms similar to those used in other jurisdictions.

Magistrates Court Act 1930

The Industrial Court has the jurisdiction to hear and decide certain industrial or work safety matters under s 291Q, *Magistrates Court Act 1930*. Under s 291U of the Act, only one magistrate may be declared to be an Industrial Court magistrate. The amendment will allow the Chief Magistrate to declare more than one magistrate as an Industrial Court Magistrate. This reform will support the Court in managing its industrial and work safety matter workload, which is currently too high for a single magistrate to oversee. Allowing the declaration of additional Industrial Court Magistrates will align with the Childrens Court Magistrate appointment provisions in the Act, which were amended in 2018 to allow more than one magistrate to be declared a Childrens Court Magistrate in response to increased workload.

CONSULTATION ON THE PROPOSED APPROACH

The Government has consulted with ACT Corrective Services, ACT Courts and Tribunal, ACT Policing, the ACT Office of the Director of Public Prosecutions, the Sentence Administration Board, the Therapeutic Support Panel, Victim Support ACT on developments of amendments in the Bill.

CLIMATE IMPACT

This Bill does not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

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

- **Section 12** – Right to privacy and reputation (limited)
- **Section 22** – Rights in Criminal Proceedings (limited)

Rights Limited

Section 12 HRA – Right to Privacy – *Crimes (Restorative Justice) Act 2004*

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

Section 12 of the Human Rights Act provides that individuals have the right to not have their privacy interfered with unlawfully or arbitrarily. The Bill proposes amendments to the *Crimes (Restorative Justice) Act 2004* (Restorative Justice Act). The Restorative Justice Unit (RJU) in the Justice and Community Safety Directorate provides a restorative justice service for people who have been harmed by offences in the ACT. These amendments will allow the RJU to use deidentified case studies for the purposes of annual reporting, educating or training people and accreditation of restorative justice convenors

The proposed amendments engage with the right to privacy because the information in the case studies is information about a person, despite being deidentified. The amendments relate to communication and informational privacy.

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

The amendment will clarify that the disclosure of protected information under the Act is permissible where the information has been deidentified, for the purposes of presenting case studies, educating or training people, gaining or maintaining accreditation as a restorative justice practitioner and for the purpose of the Justice and Community Safety Director-General's report. It will also have the effect of clarifying that de-identified case studies can be shared with referring justice entities, which builds trust and confidence in restorative justice processes and benefits. This will promote restorative justice practices in the ACT, support the professional development of the restorative justice program, and provide key stakeholders with information about the restorative justice process.

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

The limitation is required to clarify that education, training, accreditation and annual reporting on deidentified case studies can occur without a 'secret keeper' committing an offence under the Restorative Justice Act. The limitation is rationally connected, that is, will be likely to achieve, the purpose of increasing knowledge, understanding, trust and confidence in the Restorative Justice Scheme as de-identified case studies can be an important mechanism for explaining the restorative justice processes.

Proportionality (s28(2)(e))

The amendments use the least restrictive means reasonably available to achieve the purpose discussed above. The amendments retain the secrecy offence provision at section 64 of the Restorative Justice Act and simply create an additional exception. The amendments require the information for case studies to be de-identified, and only used for specific purposes: accreditation, annual reporting and educating or training people.

The amendments include important safeguards on the use of the de-identified information in case studies. The information must be no longer about an identifiable individual or an individual who is reasonably identifiable. For a disclosure of information other than in writing, the secret-keeper must use their best endeavours to de-identify the information. If the information is in writing, all reasonable steps must be taken to de-identify the information. The disclosure of the deidentified information only occurs in very limited circumstances.

By including important safeguards, confining the disclosure to specified circumstances, and retaining the existing offence provision, the proposed amendments are the least restrictive means reasonably available to achieve the policy intention.

Section 22 HRA – Rights in Criminal Proceedings – *Crimes (Restorative Justice) Act 2004*

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

Section 22 of the Human Rights Act provides that individuals have rights in criminal proceedings, including the right to be presumed innocent until proven guilty according to law. The proposed amendments create exceptions to the offence in section 64 of the Restorative Justice Act.

Section 58(3) of the *Criminal Code 2002* provides that a defendant who wishes to rely on any exception provided by the law creating an offence has an evidential burden in relation to the matter. This places the onus on the defendant to adduce evidence that the de-identified case studies were made, disclosed or communicated for the purposes of educating or training people, accreditation and annual reporting. Once the defendant has provided sufficient evidence to raise the issue the burden shifts back to the prosecution to prove that the exception does not apply.

The draft Bill clearly identifies where there is a reverse onus of proof for the new exception in new section 64(3A). The Bill also inserts a note referring to the reverse onus of proof for the exception in existing section 64(3). The exceptions align with the framing of the existing exception in the Act.

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

The purpose of the limitation is to ensure that the offence operates as intended (that is, protects privacy) while providing a workable exception in respect of de-identified case studies. Placing an evidentiary burden on the defendant to raise this exception avoids the prosecution having to establish in each case that the exception does not apply. As discussed above, the overall amendment will help build trust and confidence in restorative practices and help promote restorative justice in the Territory.

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

Casting the provision as an exception retains the secrecy offence in section 64 and aligns with other existing provisions of the Restorative Justice Act. The Bill also clarifies the operation of the existing exception at section 64(3), by inserting a note referring to the reverse onus of proof.

Having express exceptions in section 64 make it clear that there are lawful ways that deidentified case studies may be used, while aligning with the existing structure of the Act.

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

The proposed amendments are a reasonable, necessary and proportionate way to achieve the policy objective. As noted above, using an exception aligns with the

existing structure of the offence provision at section 64 of the Restorative Justice Act. The exception imposes an evidentiary burden on the defendant to adduce evidence to raise the issue rather than a legal burden to prove that the exception applies. The elements of the exception are matters that are uniquely within the knowledge, and capable of being satisfied by, the defendant and it would not be reasonable for the prosecution to establish these elements.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2026 (NO 2)

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2026 (NO 2)**. In my opinion, having regard to the Bill and 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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Tara Cheyne MLA
Attorney-General

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 2026 (No 2)*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the on the day after its notification day.

Clause 3 Legislation amended

This clause identifies the legislation that will be amended in the Bill, mentioned in parts 2 to 4:

- *Crimes (Restorative Justice) Act 2004*
- *Liquor Act 2010*
- *Magistrates Court Act 1930*

Clause 4 Legislation repealed

This clause provides for the repeal of the *Liquor Advisory Board Appointment 2025 (NI2025-132)* and *Liquor Advisory Board Appointment 2025 (No 2) (NI2025-502)*.

Part 2 Crimes (Restorative Justice) Act 2004

Clause 5 Secrecy Section 64 (1), new definition of de-identified

This clause inserts the definition of de-identified information. Information is de-identified if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

Clause 6 Section 64 (3), new note

This clause inserts a note in section 64 (3), which says that the defendant has an evidential burden in relation to the matters mentioned in s (3).

Clause 7 New section 64 (3A)

This clause inserts a section before section 64 (4), providing that subsection (2) does not apply if the information consists of or relates to a case study concerning the exercise of a function of this Act; and the record is made, or the information is disclosed or communicated in connected with a convenor gaining or maintaining accreditation in relation to restorative practices with a professional body, educating or training people about the Act or restorative practices, or for preparing, presenting to the Legislative Assembly, or publishing the Director-General's annual report; and for a disclosure or communication of information other than in writing – the secret keeper users their best endeavours to de-identify the information; and otherwise – all reasonable steps have been taken to de-identify the information.

A note says that the defendant has an evidential burden in relation to the matters mentioned in s 64 (3A).

Clause 8 Section 64 (4), new note

This clause inserts a note in section 64 (4) which says that the defendant has an evidential burden in relation to the matters mentioned in s 64 (4).

Part 3 Liquor Act 2010

Clause 9 Liquor advisory board Part 15

This clause omits Part 15.

Clause 10 Dictionary, definition of *liquor advisory board*

This clause omits the definition of “liquor advisory board” from the Dictionary.

Part 4 Magistrates Court Act 1930

Clause 11 Industrial Court Section 291P (1)

This clause omits ‘the Industrial Court Magistrate’ from subsection 291P (1) and substitutes ‘an Industrial Court Magistrate’.

Clause 12 Chief Magistrate to arrange business of Industrial Court Section 291R (2) (a)

This clause substitutes subsection 291R (2) (a) to ‘a magistrate who is to be an Industrial Court Magistrate’.

**Clause 13 Industrial Court Magistrate to hear all matters
Section 291S (1)**

This clause omits ‘the Industrial Court Magistrate’ in subsection 291S (1) and substitutes ‘an Industrial Court Magistrate’.

**Clause 14 Industrial Court Magistrate
Section 291U (1) to (4)**

This clause substitutes subsection 291U (1) to (4) to enable the Chief Magistrate to declare more than one Magistrate, including the Chief Magistrate, as an Industrial Court Magistrate. A declaration cannot be made for a period exceeding four years. The clause also sets out the circumstances in which a declaration must be revoked.

**Clause 15 Acting Industrial Court Magistrate
Section 291V (1)**

This clause omits ‘an Industrial Court Magistrate’ in subsection 291V (1) and substitutes ‘an Industrial Court Magistrate’.

Clause 16 Section 291V (1) (b)

This clause substitutes subsection 291V (1) (b) to provide a circumstance in which the Chief Magistrate may assign a Magistrate to act as an Industrial Court Magistrate.

The provision limits the assignment of an acting Industrial Court Magistrate to circumstances where no Industrial Court Magistrate is available to exercise the functions.

Clause 17 Section 291V (2)

This clause omits ‘as Industrial Court Magistrate is the Industrial Court Magistrate’ in subsection 291V (2) and substitutes ‘as an Industrial Court Magistrate is an Industrial Court Magistrate’.

**Clause 18 Assignment of other magistrates for Industrial Court matters
Section 291W (1) (a) (i)**

This clause omits ‘the Industrial Court Magistrate’ in subsection 291V (1) and substitutes ‘an Industrial Court Magistrate’.

**Clause 19 Industrial Court—completion of part-heard matters
Section 291X (1) (b) (i)**

This clause omits ‘the Industrial Court Magistrate’ in subsection 291X (1) (b) (i) and substitutes ‘an Industrial Court Magistrate’.