

2009

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2009**

EXPLANATORY STATEMENT

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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2009

Outline

The Justice and Community Safety Legislation Amendment Bill 2009 (the Bill) amends a number of laws administered by the Department of Justice and Community Safety. The laws amended include the:

- *Bail Act 1992*
- *Crimes (Forensic Procedures) Act 2000*
- *Crimes (Sentencing Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Domestic Violence and Protection Orders Act 2008*
- *Evidence (Miscellaneous Provisions) Act 1991*
- *Liquor Act 1975*
- *Magistrates Court Act 1936*
- *Residential Tenancies Tribunal Act 1997.*

The proposed amendments are detailed below.

Bail Act 1992

The amendment to the Bail Act 1992 is purely technical in nature, and is required as a consequence of amending the definition of a relevant person under section 15 of the Domestic Violence and Protection Orders Act 2008.

Crimes (Forensic Procedures) Act 2000

With the commencement of the Crimes (Forensic Procedures) Amendment Act 2008 in July 2008, magistrates can now make orders for the taking of forensic materials from suspects who are not in police custody. While police have the power to detain a suspect for the purpose of carrying out the orders, they do not have the power to arrest or take into custody a suspect to carry out the orders. These amendments to the Crimes (Forensic Procedures) Act 2000 are necessary to give effect to the intention of the Crimes (Forensic Procedures) Amendment Act 2008 and ensures that the Magistrate making the order has the power to authorise police to arrest a person, and to issue a warrant to enter premises if that is appropriate.

Crimes (Sentencing Administration) Act 2005

Schedule 1 of the Children and Young People Act 2008 provides for modern criminal justice laws that apply to children and young people that focus on rehabilitation, flexibility and consistency in sentencing. Many of these amendments are due to commence on 27 February 2009, including

amendments to the Crimes (Sentencing Administration) Act 2005 to introduce a new chapter that sets out particular provisions dealing with the administration of sentences imposed on young offenders.

This Bill makes a number of small and technical amendments to the Crimes (Sentencing Administration) Act 2005 to ensure that the Act is consistent with the Children and Young People Act 2008.

Crimes (Sentencing) Act 2005

Schedule 1 of the Children and Young People Act 2008 amends the Crimes (Sentencing Administration) Act 2005 by inserting a new chapter that sets out a sentencing methodology that specifically deals with Courts' sentencing decisions that apply to children and young people. This includes specific dispositions relevant to children and young people, such as education and training conditions, accommodation orders and supervision conditions.

The amendments to the Crimes (Sentencing) Act 2005 are necessary to ensure that the provisions relating to the sentencing of children and young people under the Crimes (Sentencing) Act 2005 are consistent with the Children and Young People Act 2008.

Domestic Violence and Protection Orders Act 2008

The Domestic Violence and Protection Orders Act 2008 was passed by the Legislative Assembly, last year, to improve the ACT's statutory law on domestic violence and protection orders. The 2008 Act broadens the scope of intimate relationships covered by the law and increases protection for children exposed to domestic violence.

Part 1.5 of this Bill provides for technical changes to the definition of a 'relevant person', in section 15 of the Domestic Violence and Protection Orders Act 2008. A 'relevant person' is someone who can apply for a domestic violence protection order or someone who an order can be brought against, if the latter is someone who is perpetrating domestic violence, as defined by section 13 of the Act.

The changes meet two objectives. First, they clarify the definition of 'relevant person'. Second, they correctly align the definition with the class of persons intended to be covered by domestic violence protection order, i.e. any person who is subjected to domestic violence by a person with whom they are, or were, in a personal relationship, in which one provides or provided personal or financial commitment and support, irrespective of whether the persons are, or were, living together, their respective genders, etc.

The amendments have been made in consultation with agencies involved in the implementation of the Domestic Violence and Protection Orders Act 2008.

Evidence (Miscellaneous Provisions) Act 1991

The amendments to the Evidence (Miscellaneous Provisions) Act 1991 are necessary to ensure that the amendments made to the Act by the Sexual and Violent Offences Legislation Amendment Act 2008 will operate as intended. The Sexual and Violent Offences Legislation Amendment Act 2008 provides special measures for sexual assault victims and other vulnerable witnesses when they give evidence in court. The amendments are designed to make the experience of these witnesses in the criminal justice system less stressful and traumatic. To ensure that these amendments will operate efficiently and effectively minor amendments have been made to fulfil the original intent of the legislation.

Liquor Act 1975

This amendment to the Liquor Act 1975 inserts a new part 16 to address a concern about the validity of the appointment of Robyn Davies to the Liquor Licensing Board on 17 October 2008, and is made to remove doubt.

Magistrates Court Act 1930

The amendments to section 90AA of the Magistrates Court Act 1936 are necessary to ensure that the amendments made by both the Crimes Legislation Amendment Act 2008 and the Sexual and Violent Offences Legislation Amendment Act 2008 will operate as intended. The purpose of those amendments included making all committal proceedings 'paper committals', and ensuring that the evidence of complainants of sexual offences was tendered in that process without requiring the complainants to attend court. In preparing the legislation for implementation it has become apparent that two sub-sections of that provision require amending, prior to the commencement of the legislation in order that some uncertainty is removed and the intention of the section is clear.

Residential Tenancies Tribunal Act 1997.

This amendment to the Residential Tenancies Tribunal Act 1997 inserts a new part 12 to address a concern about the validity of the appointments of Allan Anforth and Jennifer David to the Residential Tenancies Tribunal on 17 October 2008, and is made to remove doubt.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2009

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 would be the *Justice and Community Safety Legislation Amendment Act 2009 (No 1)*.

Clause 2— Commencement

This clause enables the Parts of the Act to commence on the days prescribed in the clause.

Clause 3— Legislation amended – sch 1

This is a technical clause that notes that this Act amends the legislation listed in schedule 1.

Schedule 1 – Legislation amended

This is a technical clause that sets out the legislation that is amended by this Act.

Part 1.1 – Bail Act 1992

Amendment 1.1 – Section 9F (6), definition of a relevant person, note

Amends section 9F (6) by inserting a note that defines a relevant person as a consequence of amendment 1.13.

Part 1.2 Crimes (Forensic Procedures) Act 2000

Amendment 1.2 – Section 40, except note

This clause replaces the existing section to clarify that not all suspects, in respect of whom forensic procedures are made, are in custody.

Amendment 1.3 – New sections 40A to 40D

These sections set out the procedures that are to be followed when an order is made by a magistrate for a forensic sample to be taken from a suspect, but the suspect is not in custody. The provisions give the magistrate the ability to include in the order authorisation for police to arrest a suspect and take them to an appropriate place for the forensic procedure to be carried out.

The provisions also give Magistrates the power to issue warrants for police to enter premises in order to arrest a suspect, against whom an order has been made. This provision has been drafted to comply with the right to privacy

provided under the *Human Rights Act 2004*, and to provide certainty about the procedures that are to be followed when a forensic procedure has been ordered and the suspect is not in custody.

Amendment 1.4 – Dictionary, new definition of arrest and removal order

This is a technical amendment that inserts the definition of *arrest and removal order* by referring to the definition contained in section 40A as a result of amendment 1.3.

Part 1.3 Crimes (Sentence Administration) Act 2005

Amendment 1.5 – Section 26, new note

Inserts a new note to clarify that a reference to an “ACT correctional centre” for a CYP young offender under the *Crimes (Sentence Administration) Act 2005* is to be read as a “detention place” as defined under the *Children and Young People Act 2008*.

Amendment 1.6 – Sections 320B and 320C

This clause is a technical amendment that substitute sections 320B and 320C with new sections that use the correct term of a **CYP young offender**, and to define this term in 320B (2).

Amendment 1.7 – Section 320D (2), definition of CYP young offender

This is a technical amendment which inserts a definition of a CYP young offender by referencing the definition contained in section 320B (2) as amended by amendment 1.6.

Amendment 1.8 – Dictionary, note 2, new dot point

This is a technical amendment that inserts detention place into the list of definitions that are defined in the Legislation Act 2001.

Part 1.4 Crimes (Sentencing) Act 2005

Amendment 1.9 – Section 13 (3) (c), note

This is a technical amendment to insert a reference to a supervision condition contained in new section 133V of the *Crimes (Sentencing) Act 2005*.

Amendment 1.10 – New section 95 (2)

This section inserts a new sub section 2 which clarifies that section 95 of the Act does not apply to a young offender who has been given a good behaviour order with supervision conditions under section 133V of the Act.

Amendment 1.11 – Section 133M (2)

This is a technical amendment which enables the court to include any other condition in a good behaviour order that it considers appropriate for a young offender so long as it is not inconsistent with the *Crimes (Sentencing) Act 2005* or the *Crimes (Sentence Administration) Act 2005*.

Amendment 1.12 – Section 133V (1) (b)

This is a technical amendment that replaces rehabilitation condition with “a rehabilitation program condition”, which is the correct phrase.

Part 1.5 Domestic Violence and Protection Orders Act 2008**Amendment 1.13 – Section 15**

This section substitutes a new definition of ‘relevant person’ and ‘relevant relationship’ to clarify who it is that the Domestic Violence and Protection Orders Act is intended to provide protection to. The definitions are intended to cover those people who are in an intimate relationship, whether they have lived together or not.

The following are four examples of what will constitute a ‘relevant relationship’, if Part 1.5 is enacted. They are not exhaustive examples.

1. Ms H. and Mr I. had an ‘on-again, off-again’ sexual relationship, but did not cohabit. Ms H. used her income to help Mr I. establish a business. Mr I. and Ms H. often have lunch and dinner together and discuss their aspirations, problems and other intimate matters. After being sexual partners or close friends for one year, Ms H. commences a new sexual relationship. Mr I. starts to knock on the door to Ms H.’s home, at all hours of the night, and threatens Ms H. that he will “burn the house down”.

Mr I. is a ‘relevant person’ under section 15(e) of the Domestic Violence and Protection Orders Act 2008 (the Act). This is because Mr I. was in a ‘relevant relationship’ with Ms H., the ‘original person’. Section 15 of the Act defines ‘original person’. Ms H. was in a ‘relevant relationship’ with Mr I., because as prescribed by subsection 15(2), they were ‘2 people’ in an ‘intimate relationship other than a domestic partnership’. (Under section 169 of the Legislation Act 2001, people need to be cohabiting to be in a ‘domestic partnership’).

Further, Ms H and Mr I were in a relationship that fulfilled many of the factors that subsection 15(3) states indicate a ‘relevant relationship’. For example, in line with:

- subsection 15(3)(a), Ms H. and Mr I. were personally dependent on each other;
- subsection 15(3)(b), Mr I. was financially dependent on Ms H.;
- subsection 15(3)(c), they were in a relationship for one year;
- subsection 15(3)(d), they were in a sexual relationship; and
- subsection 15(3)(e), they were very involved in each other’s life to the extent that they shared meals and intimate information about each other.

Ms H. and Mr I. did not, for example, ‘share care or support for children or other dependents’, as per subsection 15(3)(g). However, it

is not the case that a ‘relevant relationship’ does not or did not exist, merely because it does or did not feature all or most of the indicators listed in Subsection 15(3).

2. Mrs K. and Mrs L. became close friends at a veterans’ nursing home, when they were tending their dying husbands. They came to share all the intimate details about the personal and financial circumstances that they were newly facing. Mrs K.’s husband died not long after Mrs L.’s. They helped each other organise the funerals. They were never in a sexual relationship or living in the same dwelling.

Mrs L. contracted a debilitating illness. Mrs K. became the sole, unpaid carer of Mrs L.. Mrs. L experienced difficulties sleeping. On one occasion, she threw a kitchen knife at Mrs K.’s head. Not long after this incident, Mrs K. committed to being the carer of her daughter’s infants, while her daughter was at work. With Mrs L.’s consent, Mrs K. arranged for paid carers for Mrs L..

After these arrangements were made, Mrs L. happens upon Mrs K. at a club they both regularly patronise. On one of these visits Mrs L. pushes and shoves Mrs K..

Mrs L. and Mrs. K were in a ‘relevant relationship’, and so Mrs L. is a ‘relevant person’ under the Act.

3. Ms M. and Ms O. have been in a sexual relationship with each other, for four weeks, but they rarely disclose it to others. They are sixteen and seventeen years old, respectively. They have never lived together. Ms M. wins a new job with her current employer. The new job is in another town and commences in six months. Ms M. reports to Ms O. that Ms M. will be moving to another town to do this job.

Ms O. threatens to let Ms M.’s work colleagues know that Ms. M. is in a same-sex relationship. Ms M.’s employer has expressed to Ms M. that “homosexuals are criminals who make me sick”. Ms M. has informed Ms O. that “The last thing I want is the boss to know I am in a relationship with a woman.”

Ms M. is in a ‘relevant relationship’ with Ms O, and so Ms. O is a ‘relevant person’, under the Act.

4. Mr P. and Mr Q. were in a sexual relationship, in Canberra, for eighteen months. While they did not cohabit, they travelled together, collecting vintage cars. They jointly refurbished the cars and entered them into competitions. Mr P. and Mr Q. also frequently took Mr Q’s brother and mother shopping and to medical appointments.

Mr P. and Mr Q. became estranged from each other not long after Mr P. moved overseas to work to raise the money needed to purchase his own business.

After some years, Mr P. returns to Canberra and discovers that Mr Q. is still living in Canberra. Mr P. begins confronting Mr Q., while Mr Q. is walking his dog in Mr Q.'s neighbourhood. In these confrontations, says Mr Q. "never gave their relationship a proper chance", that he knows where Mr Q. keeps his dog and cars, and that he knows where Mr Q. lives and that Mr Q. lives by himself.

Mr P. and Mr Q. were in a 'relevant relationship', under the Act, and so Mr P. is a 'relevant person'.

Amendment 1.14 – Dictionary, definitions of relative and relevant person

This is a technical amendment to replace the previous definition of relative and relevant person with the amended definition in section 15 and 15A.

Part 1.6 Evidence (Miscellaneous Provisions) Act 1991

Amendment 1.15 – Section 38(2)(c)

This is a technical clause that substitutes a new paragraph (c) for subsection (2) to clarify that a proceeding for a sexual offence includes a sentencing proceeding for a person convicted or found guilty of a sexual offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.16 – Section 38(4), note

This is a technical clause that substitutes new notes into subsection (4) to provide references to the correct provisions in the Magistrates Court Act 1930 which provide that a complainant in relation to a sexual offence is not required to attend, and give evidence at, and also must not be cross-examined at, a preliminary hearing in relation to the offence. The correction is required following amendments made to the Magistrates Court Act 1930 by the Crimes Legislation Amendment Act 2008.

Amendment 1.17 – Section 38A(1)(c)

This is a technical clause that substitutes a new paragraph (c) for subsection (1) to clarify that a proceeding for a violent offence includes a sentencing proceeding for a person convicted or found guilty of a violent offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.18 – Section 38B

This clause substitutes new sections 38B and 38BA into the Act as a consequence of amendment 1.13. The new sections define the terms relevant person and relative for the purposes of Division 4.2. The definitions

of relevant person and relative were always intended to correspond with the definition in the Domestic Violence and Protection Orders Act 2008.

Amendment 1.19 – New section 38C(3)(f)

This is a technical clause that inserts a new paragraph (f) for subsection (3) to ensure that the prosecutor is included in the list of relevant people who must be able to see a vulnerable witness while they are giving their evidence where screening arrangements are used.

Amendment 1.20 – Section 40B(1)(b)

This clause substitutes a new paragraph (b) for subsection (1) to clarify that a proceeding for a sexual offence includes a sentencing proceeding for a person convicted or found guilty of a sexual offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.21 – Section 40C(1)(b)

This clause substitutes a new paragraph (b) for subsection (1) to clarify that a proceeding for a violent offence includes a sentencing proceeding for a person convicted or found guilty of a violent offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.22 – Section 40G(2)

This is a technical clause that substitutes a new phrase into subsection (2) for section 40G to enable the prosecutor to provide notice of their intention to tender an audiovisual recording of a police interview with a complainant into evidence to either the accused or their lawyer. The amendment will better facilitate the notice process, overcoming difficulties that can be associated with serving notice.

Amendment 1.23 – Section 40G(3)

This is a technical clause that substitutes a new subsection (3) into the Act to provide that the notice that must be given by the prosecutor to an accused person or their lawyer must state:

- each audiovisual recording the prosecutor intends to tender;
- that the accused person and their lawyer are entitled to see and listen to each recording at a police station or other designated location;
- the person responsible for arranging access.

The notice is required to state the responsible person by naming the person, or stating the occupant of a position prescribed by regulation.

Amendment 1.24 – Section 40O(1)(b)

This clause substitutes a new paragraph (b) for subsection (1) to clarify that a proceeding for a sexual offence includes a sentencing proceeding for a person convicted or found guilty of a sexual offence. The definition of

sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.25 – Section 41(2)(b)

This clause substitutes a new paragraph (b) for subsection (2) to clarify that a proceeding for a violent offence includes a sentencing proceeding for a person convicted or found guilty of a violent offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.26 – Section 41(4), note

This is a technical clause that substitutes new notes into subsection (4) to provide references to the correct provisions in the Magistrates Court Act 1930 which provide that a complainant in relation to a sexual offence is not required to attend, and give evidence at, and also must not be cross-examined at, a preliminary hearing in relation to the offence. The correction is required following amendments made to the Magistrates Court Act 1930 by the Crimes Legislation Amendment Act 2008.

Amendment 1.27 – Section 41A(1)(b)

This is a technical clause that substitutes a new paragraph (b) for subsection (1) to clarify that a proceeding for a violent offence includes a sentencing proceeding for a person convicted or found guilty of a violent offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.28 – Section 48(2)(c)

This is a technical clause that substitutes a new paragraph (b) for subsection (2) to clarify that a proceeding for a sexual offence includes a sentencing proceeding for a person convicted or found guilty of a sexual offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.29 – Section 54, definition of criminal proceeding, paragraph (b)

This is a technical clause that substitutes a new paragraph (b) into the Act to clarify that a proceeding for a sexual offence includes a sentencing proceeding for a person convicted or found guilty of a sexual offence. The definition of sentencing proceeding has been clarified to ensure that all vulnerable witnesses who are required to give evidence in sentencing proceedings will be afforded the available protections.

Amendment 1.30 – Dictionary, definition of relevant person

This is a technical clause that substitutes the definitions of *relative* and *relevant person* into the Dictionary of the Act. The new definitions provide cross-references to the sections in the Act where the terms are defined.

Part 1.7 Liquor Act 1975

Amendment 1.31 – New part 16

A new Part 16 – Validation – is inserted into the *Liquor Act 1975*. to address an apparent defect in the appointment of Robyn Davies on 17 October 2008 as a result of a Standing Committee of the Assembly not being consulted prior to the appointment being made, and is made to remove doubt.

Section 184 – expiry – pt 16 – provides for the expiry of Part 16 on the day it commences.

Part 1.8 Magistrates Court Act 1930

Amendment 1.32 – Section 90AA (1)

This section has been amended to remove the reference to a statement being subject to the rules of evidence, as that qualification is already clearly set out in section 90AA(9). It is intended that all statements and exhibits be admitted as the evidence of the prosecution during a committal, but that the contents of those statements and exhibits be subject to the usual rules of evidence once they are admitted. It is intended that the rule of first hand hearsay should not apply to exclude statements from being admitted simply because they are statements and not oral evidence.

Amendment 1.33 – Section 90AA (3A) (b)

This paragraph is omitted as the intended operation of the section is that all transcripts of interviews between the police and witnesses or complainants will be admissible if the police attest that the contents are an accurate transcription, without restricting this provision to transcripts involving children or intellectually impaired people. It is intended that the provision apply to all people, regardless of age, infirmity or other characteristics.

Amendment 1.34 – New section 90AA (11A)

This is a technical clause that inserts new section 90AA(11A) into the Act. The new section provides that a complainant in relation to a sexual offence is not required to attend, and give evidence at, a preliminary hearing in relation to the offence. New section 90AA(11A), operating in conjunction with section 90AB(1), will mean that a written statement (including a statement in the form of a transcript of a recording made by a police officer) will be admitted as the complainant's evidence-in-chief, and no further evidence will be required to be given.

Amendment 1.35 – Section 90AA (12)

This is a technical clause that substitutes subsection (12) to include a definition of *sexual offence* for section 90AA.

Part 1.9 Residential Tenancies Act 1997

Amendment 1.36 – New part 12

A new Part 12 – Validation – is inserted into the *Residential Tenancies Act 1997* to address an apparent defect in the appointments of Allan Anforth and Jennifer David on 17 October 2008 as a result of a Standing Committee of the Assembly not being consulted prior to the appointment being made, and is made to remove doubt.

Section 143 – expiry – pt 12 – provides for the expiry of Part 12 on the day it commences.