

2016

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

**CRIMES (SERIOUS AND ORGANISED CRIME) LEGISLATION
AMENDMENT BILL 2016**

SUPPLEMENTARY EXPLANATORY STATEMENT

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Crimes (Serious and Organised Crime) Legislation Amendment Bill 2016

Outline of Government Amendments

This supplementary explanatory statement relates to the Crimes (Serious and Organised Crime) Legislation Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order 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 must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Bill, which was introduced in the Legislative Assembly on 9 June 2016, makes a number of amendments to the ACT's laws targeting serious and organised crime and other criminal activity.

The Bill aims to provide ACT Policing (ACTP) with the appropriate powers to target and disrupt serious and organised crime, and in particular criminal activities of outlaw motorcycle gangs (OMCGs). This will give police better tools to ensure the safety and protection of the ACT community from violence, drug trafficking and associated illegal activity that is sometimes undertaken by these groups.

This Bill will also make a number of minor and technical amendments to the ACT's criminal legislation, primarily with a focus on serious crimes.

The Bill will:

- modernise and relocate move-on powers from the *Crime Prevention Powers Act 1988* to the *Crimes Act 1900*;
- expand the categories of offence which are subject to non-association and place restriction orders (NAPROs) under the *Crimes (Sentencing) Act 2005*;
- introduce a new bail power of review for the Director of Public Prosecutions (DPP) in the *Bail Act 1992*;
- allow corresponding offenders to be prescribed where they have not been convicted but have been subject to a registration order in another jurisdiction, and in these circumstances require the Chief Police Officer (CPO) to decide whether a prescribed corresponding should be registered under the *Crimes (Child Sex Offenders) Act 2005*;
- provide that the registrar for the ACT child sex offenders register is the respondent in applications for removal of a person from the register under section 122C of the *Crime (Child Sex Offenders) Act*;

- clarify the operation of the new Intensive Corrective Order (ICO) through amendments to the *Crimes (Sentence Administration) Act 2005*; and
- amend the *Crimes (Assumed Identities) Act 2009* to improve the operation of assumed identities for Commonwealth intelligence agencies.

The explanatory statement accompanying the Bill provides a comprehensive account of the proposed amendments and can be accessed at:

http://www.legislation.act.gov.au/es/db_54038/current/pdf/db_54038.pdf

Government amendments to the Bill are required to address issues raised by key stakeholders about the bail review power following the introduction of the Bill, about the exclusion order provisions, and to include another urgent amendment to the *Firearms Act 1996* to address matters considered by the Court of Appeal in *The Director of Public Prosecutions v Scheele* [2016] ACTCA 23 (1 July 2016).

Bail review power for the DPP

The own-motion bail review power for the DPP (s 44) was introduced in order to deal with the rare circumstances in which high risk situations arise in relation to certain bail decisions and it is imperative that the decision should be reviewed in order to protect public safety. In the criminal process, the DPP has a unique insight into bail applications and hearings that will assist in determining when such a risk exists.

The power was accompanied by a number of safeguards to make certain that the power is used appropriately. After further consultation with key stakeholders such as the ACT Law Courts and Tribunal, Legal Aid ACT, the ACT Bar Association, and the ACT law Society, a small number of Government amendments have been made to refine the provision to ensure that it is fair, balanced and appropriate.

The key change is that the time within which the DPP must provide written notice about a review has been shortened from 24 hours to two hours, and the time within which a decision must be made has been shortened from 72 hours to 48 hours. Furthermore, non-sitting days, including public holidays, will be included in calculating the time allowed for the review.

Another key change is to require a review of the powers two years after they come into operation. Lastly, the commencement date for the bail review power in section 44 has shifted to 1 May 2017 to ensure that resourcing and operational issues are addressed prior to the power being used.

Exclusion powers

The new exclusion order provisions in the Bill did not include the exemption relating to picketing, protesting etc that was previously in the *Crime Prevention Powers Act 1998*. While protest action alone would not technically meet the threshold for an exclusion order to be

issued under the Bill, an amendment has been made to ensure that the fundamental right to the freedom of political communication that is enshrined in sections 7 and 21 of the Commonwealth Constitution are fully and clearly protected. Accordingly, the Bill inserts an exemption for those undertaking protest actions and related activities.

The effect of this exclusion is that a police officer will not be able to issue an exclusion direction where a person is engaged in conduct described in proposed amendment (1A).

Firearms Act 1996 amendments

On 24 November 2014 in the case of *R v Scheele* [2014] ACTSC 317, Penfold J held that under the Firearms Act an imitation/replica of a firearm that cannot propel a projectile is not a 'firearm' and therefore cannot be a 'prohibited firearm' under the Act. The DPP lodged a reference appeal against this decision, which was heard on 20 February 2015.

On 1 July 2016 the Court of Appeal handed down its decision in *The Director of Public Prosecutions v Scheele* [2016] ACTCA 23 (1 July 2016). The court dismissed the DPP's appeal stating that the legislation would need to be amended to give effect to the intention to make an imitation firearm a prohibited weapon.

The Government amendment supports the intention of the Firearms Act and the National Firearms Agreement that it is in the interests of public safety to apply strict controls on the possession of such items. The amendments clarify that imitation firearms are firearms, regardless of whether the item is capable of discharging a projectile. The purpose of the amendment is to restrict the possession or use of a thing that substantially looks like a firearm and that could be used to incite fear or assist in the commission of crime.

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Detail of Government Amendments

Amendment 1 – Clause 2 (1) Page 2, line 5—

This amendment changes the commencement date of the bail review power provisions in Part 2 to 1 May 2017, and clarifies the commencement dates for the remaining provisions.

Amendment 2 – Clause 3 Page 2, line 20—

This is a technical amendment reflecting that the legislation amended now includes the *Firearms Act 1996*.

Amendment 3 – Clause 6 Proposed new section 44 (3) Page 3, line 19—

This amendment changes the time within which the Director of Public Prosecutions must make an application and provide written notice of the application to the accused person that an application has been made.

The previous provisions required this to be done within 24 hours of the initial bail decision. This amendment requires this to be done within two hours after the decision is made, or if the decision is made between 4:00pm on a day and 8:00am the next day, by 10:00am on that next day.

Amendment 4 – Clause 6 Proposed new section 44 (5) (d) Page 4, line 11—

This amendment changes the timing of a bail review application and the stay on the initial bail decision. Previously, the stay would end 72 hours after the oral notice was given by the Director of Public Prosecutions that an application would be made. This time period has been shortened to 48 hours.

Amendment 5 – Clause 6 Proposed new section 44 (6) Page 4, line 14—

This amendment removes section 44 (6) from the Bill. Section 44 (6) stated that the period of time mentioned in section 44 (5) (d) was worked out ignoring any day when the Supreme Court is not open for business. The period of time from when the oral notice is given until the stay ends is now 48 hours, including any day that the Supreme Court is not open for business.

Amendment 6 – Proposed new clause 6A page 5, line 5—

This amendment inserts a review requirement in relation to the bail review power. It provides that the Minister must review the operation of the power as soon as practicable after the end of its 2nd year of operation. The report of the review must be presented to the Legislative Assembly by the Minister within six months after the day that the review is started. This review requirement expires three years after the commencement date, which is outlined in section 2 of the Bill.

Amendment 7 – Clause 10 Proposed new section 175 (1A) page 7, line 9—

This inserts a new provision into the exclusion order powers to exclude certain activities from the being subject to the exclusion provisions. Exclusion orders do not apply to a person who is picketing a place of employment, or demonstrating or protesting about a particular issue, or speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person’s view about a particular issue.

Amendment 8 – Proposed new part 7A Page 19, line 22—

This amendment inserts new part 7A which amends the *Firearms Act 1996* to clarify that imitation and replicas of firearms are prohibited firearms, regardless of whether the item is capable of discharging a projectile.

New section 23A outlines the application of the Firearms Act to imitation firearms. It states that the legislative provisions apply to an imitation firearm in the same way as they apply to a firearm, subject to three factors. These are that the registrar must not issue a licence for the possession or use of an imitation firearm (except to a firearms dealer), the registrar may issue a permit for the possession or use of an imitation firearm, and an imitation firearm is not required to be registered.

This amendment also provides that for the purposes of the Firearms Act, an imitation firearm that is an imitation of a pistol is taken to be a pistol, and an imitation firearm that is an imitation of a prohibited firearm is taken to be a prohibited firearm.

It defines an imitation firearm as something that, regardless of a number of factors such as colour and weight, substantially duplicates in appearance a firearm but is not itself a firearm. This definition includes something that the registrar declares to be an imitation firearm under section 31 of the Firearms Act. The definition also provides that an imitation firearm does not include a children’s toy, or something prescribed by regulation not to be an imitation firearm, or something declared not to be an imitation firearm under section 31.

This amendment also inserts a new definition of *imitation firearm* into the Dictionary of the Firearms Act, referring back to the definition in section 23A.