

2023

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

**JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT
BILL 2023**

GOVERNMENT AMENDMENTS

SUPPLEMENTARY EXPLANATORY STATEMENT

**To be moved by
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Attorney-General**

JUSTICE (AGE OF CRIMINAL RESPONSIBILITY) LEGISLATION AMENDMENT BILL 2023

Government Amendments

Outline of Government Amendments

On 9 May 2023, the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 (the Bill) was introduced to the Legislative Assembly. The policy objective of the Bill is to raise the minimum age of criminal responsibility (MACR) in the ACT from 10 to 14 years, to ensure that children under the age of 14 years, except for those aged 12 and 13 years who commit certain exceptionally serious and intentionally violent offences, cannot be held criminally responsible.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill.

The Government amendments make changes to the Bill in response to recommendations of the Inquiry into the Bill by the Standing Committee on Justice and Community Safety in *Report No. 18 Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*, and as identified by the Justice and Community Safety Directorate (JACS) and Community Services Directorate (CSD). These Government amendments are necessary to ensure the Bill achieves its intended objectives and that any limitations on human rights are proportionate and justified.

Consistency with Human Rights

Rights Promoted

The Government amendments engage and may promote the following rights in the *Human Rights Act 2004* (HRA):

- Section 8(3) – recognition and equality before the law
- Section 9 – right to life
- Section 11 – protection of the family and children
- Section 12 – privacy and reputation
- Section 19(1) – humane treatment when deprived of liberty
- Section 27(1) – cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities.

Section 8(3) of the HRA states '[e]veryone is...entitled to the equal protection of the law without discrimination'. Discrimination includes differential treatment based on place of residence.¹ The Government amendments clarify that the ACT will not make

¹ See, e.g., Committee on Economic, Social and Cultural Rights, [General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights](#) (2009) 11 [34].

transfer arrangements with other jurisdictions for individuals who are subject to orders in relation to an offence they committed in another jurisdiction when under the MACR. Where an individual subject to such an order in another jurisdiction seeks to move to the ACT, there are two possible outcomes:

- The original jurisdiction agrees to the move and continues to provide the individual with supervision (e.g. via phone or personal visits).
- The original jurisdiction does not agree to the move and the person is prevented from moving to the ACT.

This decision is a matter for the original jurisdiction, not the ACT. Further, if a person under the MACR in this situation does move to the ACT and then engages in harmful behaviour, they will be supported through the MACR service response, not the ACT youth justice system. This will ensure there is no gap in service provision and young people who enter the ACT are treated equally with those who are residents.

Section 9 of the HRA protects the right to life. This right includes a duty on the State to provide medical care and regularly monitor the health of individuals deprived of liberty.² The Government amendments ensure a child or young person's health professional can visit them in an intensive therapy place. The amendments also ensure the Senior Practitioner can enter an intensive therapy place to oversee and monitor any use of restrictive practices. This is relevant where an intensive therapy place is also a provider, within the meaning of section 8(1) of the *Senior Practitioner Act 2018*, which is authorised to use restrictive practices. These amendments will help support the health and wellbeing of children and young people who are deprived of their liberty for the purpose of intensive therapy.

Section 11 of the HRA states that:

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
- (2) Every child has the right to the protection needed by the child because of being a child.

The Government amendments promote this right as they support a reform that raises the MACR to prevent children from engaging with the criminal justice system. This recognises the significant developmental differences between children or young people and adults and ensures that when children and young people engage in harmful behaviour, it is addressed by a system that better responds to their stage of development and needs.

Specifically, this right will be promoted by:

² Human Rights Committee, [General Comment No 36: Right to Life](#) (2019) 8-9 [29].

- amendments to expand the grounds for a referral to the Therapeutic Support Panel to cover circumstances where a child or young person is at risk of engaging in, or has engaged in, serious damage to property or the environment, cruelty to an animal, or any other serious or destructive behaviour;
- amendments to the offence of incitement, by ensuring that a person who incites a child under the MACR to commit an offence can still be found guilty of committing the offence of incitement, even when the child incited cannot be held criminally responsible for committing the offence because they are under the MACR. This amendment will provide a protective mechanism by providing an avenue for adults to be prosecuted of committing the offence of incitement involving children and young people under the MACR;
- amendments to the offence of recruiting a child to engage in criminal activity, by clarifying that a person who recruits a child under the MACR to commit an indictable offence can still be found guilty of committing an offence, even when the child recruited cannot be held criminally responsible for committing the offence because they are under the MACR. This amendment will provide a protective mechanism by providing an avenue for adults to be prosecuted of the offence of recruiting a child to engage in criminal activity if the child is under the MACR;
- amendments to the registration and recognition of interstate personal protection orders in the ACT, by supporting the objectives of the Bill; and
- expanding the range of individuals characterised as a secondary victim.

Section 12 of the HRA states that '[e]veryone has the right – (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and (b) not to have his or her reputation unlawfully attacked'. The Government amendments will promote this right by requiring the destruction of forensic material collected from a child alleged to have committed an offence when they were under the MACR, and by ensuring that victims are aware that a statement the victim provides will not be provided to the child without the victim's consent.

Section 19(1) of the HRA protects the right to humane treatment when deprived of liberty. This right includes an obligation for detained persons who have not received a criminal conviction to be treated in a way that is appropriate for their unconvicted status, including by being kept separate from convicted individuals.³ The Government amendments strengthen the requirement that an intensive therapy place must not be a place of detention. This will ensure children and young people

³ [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#) (1988) principle 8; referenced in Human Rights Committee, [General Comment No 21: Humane Treatment of Persons Deprived of Their Liberty](#) (1992) 1 [4]-[5].

deprived of liberty for the purpose of intensive therapy are not housed with convicted individuals or in places that have been used to detain convicted individuals.

Section 27(1) of the HRA protects the right of anyone who belongs to an ethnic, religious, or linguistic minority to enjoy their culture, practise their religion, and use their language. The Government amendments include ‘working with culturally and linguistically diverse children and young people’ as one of the listed qualifications, experience or expertise that will enable an individual to be appointed to the Panel. This will help the Panel to better understand the issues affecting referred children or young people from culturally and linguistically diverse communities and support it to make appropriate decisions and recommendations.

Rights Limited

The Government amendments engage and limit the following rights in the HRA:

- Section 9 – right to life
- Section 18 – right to liberty and security of the person

These rights are limited by the amendments concerning the registration and recognition of interstate personal protection orders.

1. Nature of the right and the limitation (ss 28 (2) (a) and (c))

The amendments to sections 92 and 95 of the *Personal Violence Act 2016* limit the victims’ right to life under section 9 of the HRA, and the right to security of the person under section 18 of the HRA.

The right to life (section 9 of the HRA) requires public authorities take reasonable steps to protect life, including taking steps to protect someone whose life is at risk from another person, where the authorities know or should know of this risk. This right is engaged as a child or young person under the MACR can no longer be the subject of a personal protection order in the ACT. Furthermore, interstate personal protection orders will no longer be registered and recognised in the ACT.

Consequently, this limits the victims’ right to security (section 18 of the HRA).

The government is required to provide reasonable measures to protect a person’s physical security, including through the work of the police and emergency services. The right means that victims should be protected from a child who engages in harmful behaviour towards them. However, once these amendments commence, the right to security of victims may be limited as they will no longer be able to rely on the enforcement of a personal protection order, if the order is, or would be, against a child under the MACR.

It is important to note that although personal protection orders against a child under the MACR will no longer be recognised or enforced in the ACT, ACT Policing, ACT Courts and Tribunal and other relevant entities will be able to refer a child under the MACR to the Therapeutic Support Panel where the child or young person has

engaged in personal violence behaviour, including (but not limited to) physical violence or abuse, sexual violence or abuse, threatening behaviour, stalking, harassing, intimidating or offensive behaviour, or damaging property. Furthermore, police will still be able to intervene to protect victims, including arresting and detaining a child or young person aged between 10 and 13 where the child or young person is carrying out or is likely to carry out conduct that would be an offence or where the child or young person has already injured someone or there is imminent danger of injury to a person because of the child's conduct.

2. *Legitimate purpose (s 28 (2) (b)) and rational connection between the limitation and the purpose (s 28 (2) (d))*

The purpose of nullifying interstate personal protection orders against children under the MACR is to support the policy objective of the Bill, which is to raise the MACR to 14 years old, to ensure that children under 14 years old (except for those aged 12 and 13 years who commit certain exceptionally serious and intentionally violent offences) cannot be held criminally responsible. In order to support the policy objective of the Bill and raise the MACR, children under the MACR cannot be subject to personal protection orders.

This will shift the response to the child's harmful behaviour from a criminal justice response to a therapeutic response, to deal with the complex needs of the child. If a child has a genuine need for therapeutic support services, and is at risk of engaging in, or has engaged in, harm to themselves or someone else, serious damage to property or the environment, cruelty to an animal, or any other serious or destructive behaviour, they may be referred to the Therapeutic Support Panel.

This will likely result in fewer children and young people becoming involved in the criminal justice system and improved safety for the community. There is clear evidence that young people's involvement in the criminal justice system can solidify criminogenic behaviour and therefore increase their likelihood of reoffending. Raising the MACR aims to reduce recidivism among children and young people by diverting them from involvement in the criminal justice system.

4. *Proportionality (s 28 (2) (e))*

These limitations on victims' rights is the least restrictive necessary to support the policy objective of the Bill to raise the MACR to 14 years old. The rights of victims in relation to the criminal justice system can no longer be given effect to in the same way because there will no longer be a criminal justice response to the harmful behaviour of children and young people under the MACR for most offences. The response to this cohort is so that these children and young people will receive intensive support and therapy to address harmful behaviours, with the aim of reducing such behaviour and ultimately keeping our community safer.

While a criminal justice response will no longer occur, there will still be mechanisms to recognise harm to victims including the right to an effective remedy and the right to security of person under the HRA. These rights remain protected through

the alternative pathways to respond to harmful behaviour by children and young people under the MACR. This includes the Therapeutic Support Panel for children and young people, which is created by the Bill.

Victims of harmful behaviour are also entitled to make a harm statement to the Therapeutic Support Panel explaining the impact of the harmful behaviour on them. The panel must take any harm statement made by the victim into account when exercising its functions. The Therapeutic Support Panel or the Victims of Crime Commissioner may disclose information about a child or young person responsible for harmful behaviour to the victim of the behaviour where it is appropriate in the circumstances. For example, this could allow a victim to receive certain information about a child and young person's therapy plan.

A victim of a child or young person's harmful behaviour (even where that child or young person is under the age of the raised MACR) will still be able to apply for assistance under the *Victims of Crime (Financial Assistance) Act 2016* for support in recognition of the harm they have suffered and access support through the Victim Support Scheme (under the *Victims of Crime Act 1994*).

In addition, a child or young person under the MACR who harms a victim will be eligible for referral to restorative justice conferencing under the *Crimes (Restorative Justice) Act 2004*. While ordinarily restorative justice conferencing would be available as an alternative to criminal justice processes, in appropriate cases restorative justice could provide a supplementary way of encouraging responsibility taking, repairing damaged relationships and supporting those who have been harmed alongside therapeutic interventions. Participation in a restorative justice process would be voluntary and only with the agreement of the child or young person (see proposed section 19(1)(b) of the *Crimes (Restorative Justice) Act 2004*).

Furthermore, police officers will retain all their current powers with respect to intervening in circumstances where there may be a risk of harm to a person, to protect life and security of person, including their powers to arrest and detain a child or young person who is under the revised MACR. Any arrest or detention of such a young person will not result in any criminal justice action. A young person may be returned to their parents or their place of residence where appropriate or otherwise referred to an appropriate service.

In particular, the Bill provides that police officers can refer a child or young person to the Therapeutic Support Panel for children and young people who can make recommendations to the Director-General of the Community Services Directorate about whether to apply for an Intensive Therapy Order (an ITO). Under an ITO, the Childrens Court is empowered to order that the child or young person be subject to conditions the Court considers necessary to prevent the child or young person from engaging in harmful conduct (section 532). The Childrens Court is also empowered to order under an ITO that a child or young person be confined at an Intensive Therapy Place (ITP). The operating entity for an ITP may detain a child or young person to prevent them from causing harm to themselves or to someone else (section 592).

Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Government Amendments

Detail

Clause 1 — Clause 2 Page 2, line 5

This amendment omits clause 2 of the Bill and includes a new commencement provision. The new commencement provision for the Bill details that the Act, other than the provisions mentioned in subsection (2) and (3) commences on the 7th day after its notification.

Subsection 2 provides that Parts 2, 4, 10 (other than section 130 and 131) and schedule 1 commence on 27 March 2024 or if before 27 March 2024, a date fixed by written notice of the Minister. The provisions relating to raising the age of criminal responsibility to 14 years, continue to commence from 1 July 2025.

Clause 2 — Proposed new clauses 6A and 6B Page 5, line 7

This amends the definition of ‘young offender’ in section 114 of the *Children and Young People Act 2008* (CYP Act), inserting a new paragraph (b). This new paragraph confirms a young offender is someone aged under 18 years when the offence was committed, but not under the MACR.

The amendment also adds a new section 114(2), which defines ‘under the age of criminal responsibility’.

This definition of ‘young offender’ only applies to part 5.2 of the CYP Act, which deals with interstate transfers. This clarifies that the ACT will not make transfer arrangements with other jurisdictions for individuals who are subject to orders in relation to an offence they committed in another jurisdiction when under the MACR.

The purpose of the amendment is to ensure consistency in the treatment of all young people under the MACR, ensuring the same approach applies to current ACT residents and those who move to the Territory.

Clause 3 — Clause 10 Proposed new section 501E (2) (a) (va) Page 9, line 22

This clause adds an item to the list of qualifications, experience or expertise in section 501E(2)(a), which provides guidance on the appointment of Panel members. The Minister must be satisfied a person has expertise in one or more of the listed areas, in order to appoint them as a member of the Panel. The clause adds ‘working with culturally and linguistically diverse children and young people’ to the list.

The purpose of this addition is to support the Panel's ability to ensure the needs of culturally and linguistically diverse children and young people referred to the Panel are properly understood, so appropriate care can be provided.

Clause 4 — Clause 10 Proposed new section 501Q (1) Page 16, line 4

This clause adds further grounds for an entity to refer a child or young person to the Panel. This covers circumstances where they are at risk of engaging in, or have engaged in, serious damage to property or the environment, cruelty to an animal, or any other serious or destructive behaviour.

The purpose of these amendments is to cover conduct that causes serious harm but is not directed at the child or young person themselves or another person.

Clause 5 — Clause 10 Proposed new section 501T (1) Page 19, line 4

This clause amends the Panel's power to report to the Minister by introducing a requirement that the Panel must report to the Minister at least once each calendar year.

Under the amended provisions, the Panel retains a discretionary power to report to the Minister when it deems necessary, so it is not confined to reporting only once each calendar year.

Clause 6 – Clause 12 Proposed new section 575 (3) and (4) Page 50, line 7

This clause inserts a new subsection (3) into section 575 of the CYP Act that provides the Childrens Court with the power to order a child or young person to submit to the jurisdiction of the ACAT for a mental health assessment under an ITO or interim ITO.

This amendment is in addition to section 575(1). That subsection provides the Childrens Court with the power to order a child or young person to submit to the jurisdiction of the ACAT as part of a proceeding for an ITO or interim ITO.

The purpose of this amendment is to clarify that the Childrens Court may make a mental health referral to the ACAT both during proceedings and under a final order.

This clause also inserts a new subsection (4). This subsection requires the Childrens Court, when making an order under subsection (1) or an order with a requirement mentioned in subsection (3), to include a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT to decide whether they have a mental disorder or mental illness and, if so, to make recommendations.

The purpose of this amendment is to ensure an order by the Childrens Court under section 575 includes all necessary information to enliven the ACAT's powers under section 178 of the *Mental Health Act 2015* (MH Act).

Clause 7 – Clause 12 Proposed new section 578 Page 52, line 2

This clause adds two new items to the definition of ‘accredited person’ in section 578 of the CYP Act. Accredited people have a right to visit a child or young person who is in intensive therapy at an intensive therapy place (ss 579-580).

New subsection (1)(d) adds ‘a health practitioner providing a health service to the child or young person.’ This is intended to cover a range of health professionals who might support a child or young person, such as a general practitioner, psychologist, or psychiatrist.

New subsection (1)(k) adds the Senior Practitioner to the list of accredited people. New subsection (2) defines ‘senior practitioner’ by reference to the dictionary of the *Senior Practitioner Act 2018*. The purpose of this amendment is to clarify that the Senior Practitioner has a role in overseeing and monitoring any use of restrictive practices in an intensive therapy place.

Clause 8 – Clause 12 Proposed new section 587 (2), example 2 Page 57, line 9

This amendment alters the wording of example 2 in section 587(2) by changing the word ‘dumping’ to ‘disposing’.

Clause 9 – Clause 12 Proposed new section 589 (2) (a) Page 58, line 9

This clause amends the requirement in section 589(2)(a) in relation to the director-general declaring a place to be an intensive therapy place. It clarifies that an intensive therapy place must not be a current or former detention place and must not be located in any part of a place that also accommodates young detainees.

The purpose of this amendment is to emphasise that confinement for intensive therapy is distinct and separate to confinement for the purpose of imprisonment.

Clause 10 – Clause 57 Proposed new section 628 Page 81, line 25

This clause will amend clause 57 of the Bill, new section 628 of the *Crimes Act 1900* to provide that identification material, forensic material, and any information obtained from the forensic material, as well as any record of the identification material, forensic material or information obtained from the forensic material, must be destroyed, where the material, information or record was collected from a person who was alleged to have committed an offence when they were under 12 years old, but was never charged with committing the offence or proven to have committed the offence.

Clause 4 – Clause 58 Proposed new section 640 Page 87, line 7

This clause will amend clause 58 of the Bill, new section 640 of the *Crimes Act 1900* to provide that identification material, forensic material, and any information obtained from the forensic material, as well as any record of the identification material,

forensic material or information obtained from the forensic material, must be destroyed, where the material, information or record was collected from a person who was alleged to have committed an offence when they were 12-14 years old, but was never charged with committing the offence or proven to have committed the offence. This provision will commence on 1 July 2025.

Clause 12 – Proposed new clauses 92A to 92C Page 120, line 13

This clause will introduce new clauses 92A to 92C into the Bill.

New clause 92A will amend section 47(5) of the *Criminal Code 2002*, to clarify that a person may be found guilty of the offence of incitement if the child they incited to commit the offence was under the age of criminal responsibility (which is defined by new section 47(8)). The offence of incitement includes urging the commission of an offence, and urging to aid, abet, counsel, procure, be knowingly concerned in or a party to, the commission of an offence, by another person. This amendment ensures that a person who incites a child under the age of criminal responsibility to commit an offence can still be found guilty of committing the offence of incitement, even when the child incited cannot be held criminally responsible for committing the offence because they are under the age of criminal responsibility.

New clause 92B inserts subsection (8) into section 47 of the *Criminal Code 2002*. New subsection (8) defines a person ‘under the age of criminal responsibility’ as a person who is not criminally responsible under section 25 of the *Criminal Code 2002*. On commencement of the Bill, the age of criminal responsibility under section 25 of the *Criminal Code 2002* will be 12 years old. On 1 July 2025, the age of criminal responsibility under section 25 of the *Criminal Code 2002* will be 14 years old.

New clause 92C will insert subsection (2A) into section 655 of the *Criminal Code 2002*. New subsection (2A) will operate with subsection (2) to clarify that a person commits an offence if the person recruits a child under the age of criminal responsibility to carry out or assist in carrying out a criminal activity. New subsection (2A) provides an additional definition for ‘criminal activity’ in relation to a child under the age of criminal responsibility as, conduct that makes up the physical elements of an indictable offence engaged in by a person who is under the age of criminal responsibility for the offence. This definition clarifies that a person who recruits a child under the age of criminal responsibility to commit an indictable offence can still be found guilty of committing an offence against section 655, even when the child recruited cannot be held criminally responsible for committing the offence because they are under the age of criminal responsibility.

Clause 13 – Proposed new clauses 110A to 110D Page 135, line 10

This clause will introduce new clauses 110A to 110D to the Bill.

New clause 110A will amend section 92(1) of the *Personal Violence Act 2016*, to legislate that recognised orders (corresponding protection orders made under another State, Territory, or New Zealand) against a child under 12 years old cannot be registered in the ACT. Usually, a person with a recognised order may apply to the registrar to register their order. The registrar must then register the order. Once the recognised order is registered, it is enforceable in the ACT and may be amended or revoked. The amendment to section 92(1) means that new applications to register recognised orders cannot be approved if the respondent to the recognised order is a child under 12 years old.

Similarly, new clause 110B will amend section 92(1) of the *Personal Violence Act 2016*, to legislate that recognised orders (corresponding protection orders made under another State, Territory, or New Zealand) against a child under 14 years old cannot be registered in the ACT.

New clause 110C will amend section 95(1) of the *Personal Violence Act 2016* to legislate that orders against a child under 12 years old that have been registered in the ACT must be revoked. This applies to recognised orders that are currently registered. Once this provision commences, the registrar must cancel all registered recognised orders against children under 12 years old, meaning that they will no longer be recognised as an order in the ACT (however, the orders will continue to have effect in other States and Territory).

New clause 110D will amend section 95(1) of the *Personal Violence Act 2016* to legislate that orders against a child under 14 years old that have been registered in the ACT must be revoked. This applies to recognised orders that are currently registered. Once this provision commences, the registrar must cancel all registered orders against children under 14 years old, meaning that they will no longer be recognised as an order in the ACT (however, the orders will continue to have effect in other States and Territory). This clause will commence on 1 July 2025.

Clause 14 – Proposed new clause 126A Page 150, line 17

This clause inserts new section 14AA into the *Victims of Crime Act 1994*. This amendment ensures a victim of the harmful behaviour of a child under the minimum age criminal responsibility is protected by the same rights, such as privacy rights, as other victims as defined by section 6 of the Act.

Clause 15 – Clause 129 Proposed new section 15CA (1), definition of *victim*, Page 152, line 6

This clause amends the definition of ‘victim’ as set out in clause 129 of the Bill. The amendment expands the range of individuals characterised as a secondary victim in the *Victims of Crime Act 1994* in circumstances where a primary victim dies because of the harmful behaviour of a child under the minimum age of criminal responsibility. This will provide the Therapeutic Support Panel or Victims of Crime Commissioner

with an appropriate degree of discretion when determining whether a person is a secondary victim. The amendment implements recommendation 17 from the Inquiry into the Bill by the Standing Committee on Justice and Community Safety in *Report No. 18 Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*.

Clause 16 – Clause 129 Proposed new section 15CE(2) Page 154, line 15

This clause amends section 15CE(2) which is inserted into the *Victims of Crime Act 1994* by clause 129 of the Bill. The amendment replaces the word ‘maker’ with the word ‘victim’ to ensure consistency with existing provisions in the *Victims of Crime Act 1994*.

Clause 17 – Clause 129 Proposed new section 15CF(2) (b) Page 155, line 10

This clause amends section 15CF(2)(b) which is inserted into the *Victims of Crime Act 1994* by clause 129 of the Bill. The amendment replaces the words ‘maker of the statement’ with the word ‘victim’ to ensure consistency with existing provisions in the *Victims of Crime Act 1994*.

Clause 18 – Clause 129 Proposed new section 15CG (1) (d) (i) Page 155, line 21

This clause amends section 15CG(1)(d)(i) which is inserted into the *Victims of Crime Act 1994* by clause 129 of the Bill. The amendment ensures that victims are aware that a statement the victim provides will not be provided to the child without the victim’s consent. This amendment implements recommendation 18 from *Report No. 18 Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*.

Clause 19 – Schedule 1, part 1.8 Amendment 1.32 Proposed new section 37 (1) (c) Page 167, line 7

This clause replaces the proposed amendment to section 37(1)(c) of the MH Act. Section 37(1) outlines when the ACAT may order an assessment of a person.

The new paragraph (c) covers circumstances where a person is required to submit to the jurisdiction of the ACAT under one of the following:

- an ACAT mental health provision in a care and protection order or interim care and protection order
- a referral by the Childrens Court in a proceeding for an ITO or interim ITO
- a requirement of an ITO or interim ITO.

The purpose of this clause is to confirm that the ACAT’s power to order an assessment matches the Childrens Court’s power to make a mental health referral to the ACAT. Specifically, the ACAT’s powers cover referrals in the context of proceedings for an ITO or interim ITO, as well as due to a requirement in an ITO or interim ITO.

Clause 20 – Schedule 1, part 1.8 Amendment 1.33 Page 167, line 10

This clause amends section 178(1) of the MH Act. Section 178 outlines what the ACAT must do when the Childrens Court orders a person to submit to the ACAT's jurisdiction to determine whether the person has a mental disorder or mental illness.

This amendment replaces a reference to an 'interim therapeutic protection order' with a reference to an ITO or interim ITO, or a mental health referral in a proceeding for an ITO or interim ITO.

The purpose of this amendment is to ensure the ACAT's powers reflect the changes to the Childrens Court's ability to make a mental health referral under the CYP Act.

Clause 21 – Schedule 1, part 1.8 Amendment 1.34 Page 168, line 1

This clause inserts definitions for 'intensive therapy order' and 'interim intensive therapy order' into the dictionary of the MH Act.

Intensive therapy order is defined by reference to section 532 of the CYP Act.

Interim intensive therapy order is defined by reference to section 543 of the CYP Act.