

2023

**Legislative Assembly for the
Australian Capital Territory**

Amendments to the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023

Supplementary Explanatory Statement

Presented by

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Legislative Assembly for the Australian Capital Territory

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This supplementary explanatory statement relates to amendments to the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023 in presented to the Legislative Assembly for the Australian Capital Territory (ACT). 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.

OVERVIEW OF THE AMENDMENTS

Purpose

The purpose of these amendments is to amend the Bill to legislate a minimum age of criminal responsibility for a crime of 12 years of age, with a sunset clause for an independent statutory review of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (the Act) two years into its effect.

Background

The Bill seeks to create the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* to raise the minimum age of criminal responsibility (MACR) to 14 years of age, with carveouts for children aged 12 or 13 years old convicted of severe crimes such as murder or sexual assault. The Bill also establishes the Therapeutic Support Panel for Children and Young People and makes available for the courts Intensive Therapy Orders. The Bill allows for treatment orders available to rehabilitate young offenders who have experienced trauma or abuse. The Bill intends to legislate the commencement of the MACR of 12 years old following passage of Bill, and then raise it further to 14 years old, with carveouts, on the day of 1 July 2025.

The amendments proposed in this Bill seek to amend the Government Bill to create the Act for a blanket age of 12 years old with no reference to further raising the age to 14, while introducing a sunset clause to take effect two years following the commencement of the Act. The sunset clause will trigger a statutory review into exploring where there is a case for further raising the age, and the effectiveness of the therapeutic support regime as available to the courts.

Consultation

Extensive consultation was drawn from the Inquiry undertaken into the Bill by the Committee for Justice and Community Safety. The Committee received 23 submissions from community stakeholders. The Chair of the Committee, Mr Peter Cain MLA, made a Dissenting Report to the final report recommending a blanket MACR of 12 years old with a sunset clause for a review of the legislation two years following its effect.

CONSISTENCY WITH HUMAN RIGHTS

The amendments to this Bill are anticipated to engage and interact with several human rights as they exist in the *Human Rights Act 2004*.

The Bill will grant protection for offenders aged 10 and 11 from the possibility of trial, conviction and prison sentences where found responsible for harmful behaviour in violation of criminal law. This Bill upholds therapeutic intervention against young people by approaching instances of criminal offence with medical, not criminal, treatment.

The amendments will further protect civilians of all ages from theft, robbery, murder, manslaughter, sexual assault and violent assault executed by young persons aged 12 and 13 years old, consistent with community expectations for what is an appropriate, fair and sensible MACR.

The amendments maintain the existing human rights regime of upholding young persons aged 12 and 13 years old as criminally responsible for violations of the law and capable of trial and conviction of a crime.

Finally, the Bill and amendments will expunge young persons aged 10 and 11 years old from the chance of any criminal wrongdoing – providing the most measured and evidence-based increase from the existing MACR regime of 10 years old as consistent in all other states and territories, now excluding the Northern Territory.

CLAUSE NOTES

Clause 1 – Commencement

This clause provides that the Act will commence on the 7th day after its notification day while omitting reference to the provision mentioned in subsection (2).

Clause 2 – Oppose Section 56.

This amendment opposes the commencement of section 56 on 1 July 2025 that a record of a youth offence under 14 years old not be disclosed in court.

Clause 3 – Oppose Section 58.

This amendment opposes the clause 58 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 4 – Oppose Section 92.

This amendment opposes the clause 92 that amends section 25 that will raise the MACR to 14 at a later date than the commencement date, as to maintain consistency with a MACR of 12 years old.

Clause 5 – Introduce new wording

This amendment will clarify that the review of the effectiveness of the Act should explicitly consider ‘whether the minimum age of criminal responsibility should be raised above 12 years old.

Clause 6 – Introduce new wording

This amendment will implement the sunset clause of two years for a review of the legislation following the commencement of the MACR, changing it from the Bill’s current regime of five years.

Clause 7 – Introduce new wording

This amendment will legislate for the findings of the report to be tabled in the Assembly within a year of the review’s beginning.

Clause 8 – Introduce new wording

This amendment will legislate for expiry of this section in four years, not seven years, following its commencement.

Clause 9 – Oppose section 94.

This amendment opposes clause 94 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 10 – Oppose section 96.

This amendment opposes clause 96 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 11 – Oppose section 98.

This amendment opposes clause 98 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 12 – Oppose section 100.

This amendment opposes clause 100 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 13 – Oppose section 102.

This amendment opposes clause 102 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 14 – Oppose section 104.

This amendment opposes clause 104 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 15 – Oppose section 106.

This amendment opposes clause 106 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 16 – Oppose section 108.

This amendment opposes clause 108 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 17 – Oppose section 110.

This amendment opposes clause 110 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 18 – Oppose section 112.

This amendment opposes clause 112 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 19 – Oppose section 116.

This amendment opposes clause 116 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 20 – Oppose section 118.

This amendment opposes clause 118 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 21 – Oppose section 120.

This amendment opposes clause 120 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 22 – Oppose section 130.

This amendment opposes clause 130 in alignment with the intended amendments to maintain a MACR of 12 years old.

Clause 23 – Oppose section 131.

This amendment opposes clause 131 in alignment with the intended amendments to maintain a MACR of 12 years old.