

2023

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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023

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

**Presented by
Shane Rattenbury MLA
Attorney-General**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023

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 2023* 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 a range of legislation, primarily in the Attorney-General's portfolio, including:

- *Court Procedures Act 2004*
- *Crimes (Sentence Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Gaming Machine Act 2004*
- *Land Titles (Unit Titles) Act 1970*

The Bill makes consequential amendments to the *Freedom of Information Act 2016*, *Road Transport (Drivers Licensing) Regulation 2000*, and the *Territory Records Act 2002*.

CONSULTATION ON THE PROPOSED APPROACH

ACT Government Directorates, independent agencies, the ACT Law Society and the ACT Bar Association were consulted on the amendments to the *Court Procedures Act 2004*, *Gaming Machine Act 2004*, and *Land Titles (Unit Titles) Act 1970*.

SUMMARY OF AMENDMENTS

Court Procedures Act 2004

The Bill amends the Court Procedures Act to change the title of the Principal Registrar and Chief Executive Officer of ACT Courts to the Chief Executive Officer of ACT Courts.

The Court Procedures Act establishes the role of the Principal Registrar and Chief Executive Officer of ACT Courts and Tribunals. Notwithstanding the title, the role is not included in the definition of a registrar and therefore has no registrar functions

and is expressly prohibited from directing a registrar or a deputy registrar in the exercise of a function of the Court.

The amendment will remedy any confusion arising from the current title. To ensure consistency, the Bill also makes consequential amendments to the Freedom of Information Act, Road Transport (Drivers Licensing) Regulation and the Territory Records Act to reflect the change in title.

Crimes (Sentence Administration) Act 2005 and Crimes (Sentencing) Act 2005

The amendments to the *Crimes (Sentence Administration) Act 2005* (CSAA) and *Crimes (Sentencing) Act 2005* (CSA) are proposed to resolve a legislative inconsistency for interstate detainees on life sentences whose parole orders have been transferred to the ACT under the CSAA. Parolees transferred to the ACT that are subject to an interstate life sentence currently do not have their non-parole period recognised by ACT Law because of the operation of 168 of the CSAA and sections 64 and 65 of the CSA.

A feature of ACT sentencing law is that a life sentence of imprisonment does not allow for parole (or to use the terminology of the legislation, a non-parole period may not be set for a life sentence). The CSAA provides for ACT offenders on life sentences to apply for release on licence, rather than parole. However, these CSAA provisions only apply to offenders who have committed an offence against a Territory law.

If a transferred parolee on a life sentence breaches the order and commits further offences in the ACT, the transferred parolee is returned to custody on the life sentence and there is currently no mechanism for a court to set further non-parole periods and no mechanism for the person to apply for parole under the CSAA.

The proposed changes amend the CSA and the CSAA to ensure that a new non-parole period can be set for a life sentence transferred parolee if the parolee reoffends and receives a further sentence of imprisonment. The amendments would allow the CSA to cover future cases where interstate life sentenced parolees came before the ACT courts in relation to new offences. To cover current parolees, a retrospective amendment is proposed to section 168 of the CSAA.

Gaming Machine Act 2004

The Bill amends the Gaming Machine Act to extend the time for licensees to redeem land, lease and planning, and development charge offsets granted under the Pathway to 4000 to 1 April 2028.

In 2018, the Government inserted Part 2A into the Gaming Machine Act providing a licensee of a gaming facility could voluntarily surrender gaming machine authorisations in exchange for a land, lease or planning and development charge offset. However, the financial downturn caused by the COVID-19 pandemic has

prevented licensees from undertaking planned development and accessing these offsets.

Currently, Part 2A is due to expire on 1 April 2026. The proposal extends this timeframe by 2 years, allowing licensees to access these offsets until 1 April 2028.

Land Titles (Unit Titles) Act 1970

The Bill amends the Land Titles (Unit Titles) Act to replace two erroneous references to the Magistrates Court with the correct references to the ACT Civil and Administrative Tribunal (ACAT).

In 2012, the Unit Titles (Management) Act 2011 came into effect, appointing the ACAT as the body responsible for making an administration order in relation to an owner's corporation and the making of a final building damage order. Prior to this, the Magistrates Court was responsible for making these orders.

However, corresponding amendments to the Land Titles (Unit Titles) Act were not made. This has resulted in a legislative inconsistency, with the registrar-general presently required to register a final building damage order or administration order made by the Magistrates Court.

These errors have the potential to cause confusion for the Land Titles Office, and people seeking to register final building damage and administration orders. The amendment will remove the possibility of this confusion.

CONSISTENCY WITH HUMAN RIGHTS

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth, noting governments must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.^[1]

The proposed amendments to the CSA and CSAA support the right to liberty and security of the person in section 18 of the *Human Rights Act 2005*. These amendments resolve a legislative inconsistency in situations where offenders on life sentences have had their parole orders transferred to the ACT.

As discussed above, the proposed amendments will allow the interstate non-parole period to be recognised under ACT law, and provide a pathway for these offenders to apply for parole.

The proposed changes to section 168 of the CSAA will have retrospective effect. This is necessary to ensure that interstate non-parole periods that have been set prior to commencement are recognised under ACT law. New section 168(3) provides that if a parole order for a sentence of life imprisonment imposed by a person under a law of a State or another Territory was registered under section 167 before the day of commencement of s168(3), the interstate non-parole period is taken to have been validly set by the appropriate ACT court as the non-parole period for the sentence despite any ACT law to the contrary. New section 168(3) also provides that a primary sentence imposed on the person after the order was registered but before the commencement day is taken not to have resulted in the cancellation of the interstate non-parole period because of the operation of the *Crimes (Sentencing) Act 2005*, section 66(3).

This retrospective provision is clearly indicated, as required by section 75B of the *Legislation Act 2001*. This provision has a non-prejudicial effect and ensures that current and future transferred interstate parolees benefit from the resolution of legislative inconsistency.

The other provisions of the Bill do not have any human rights impacts.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023

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 2023**. 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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Shane Rattenbury 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 2023*.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause identifies the legislation that will be amended is the:

- *Court Procedures Act 2004*
- *Crimes (Sentence Administration) Act 2005*
- *Crimes (Sentencing) Act 2005*
- *Gaming Machine Act 2004*
- *Land Titles (Unit Titles) Act 1970*

Part 2 Court Procedures Act 2004

Clause 4 Advisory committee Section 11 (2) (d)

This clause omits the reference to the 'principal registrar' and replaces it with a reference to the 'chief executive officer' in section 11(2)(d).

Clause 5 Part 2A heading

This clause substitutes 'Chief executive officer of courts' as the heading of Part 2A.

Clause 6 Section 11A heading

This clause substitutes 'Appointment of chief executive officer' as the heading of Section 11A.

Clause 7 Section 11A (1)

This clause omits 'Principal Registrar and' from section 11A(1). This has the effect of replacing a reference to the 'Principal Registrar and Chief Executive Officer' with a reference to the 'Chief Executive Officer.'

Clause 8 Section 11A (1)

This clause omits the current shortened form of the role ‘(*the principal registrar*)’ from section 11A(1) and replaces it with ‘(the **chief executive officer**).’

Clause 9 Section 11A (1), notes 1 and 2

This clause substitutes notes 1 and 2 in section 11A(1) with ‘For laws about appointments, see the Legislation Act, pt 19.3.’

Clause 10 Section 11A (2) and (3)

This clause omits ‘principal registrar’ from sections 11A(2) and (3) and replaces it with ‘chief executive officer.’

Clause 11 Section 11A (3), note

This clause omits the note from section 11A(3).

Clause 12 Section 11A (4)

This clause omits ‘principal registrar’ from section 11A(4) and replaces it with ‘chief executive officer.’

Clause 13 Section 11A (4), note

This clause omits the note from section 11A(4).

Clause 14 Section 11B heading

This clause substitutes ‘Administrative functions of chief executive officer’ as the heading of Section 11B.

Clause 15 Section 11B (1) and (2)

This clause omits ‘principal registrar’ from sections 11B(1) and (2) and replaces it with ‘chief executive officer.’

Clause 16 Section 11B (3)

This clause omits ‘principal registrar’s’ from section 11B(3) and replaces it with ‘chief executive officer’s.’

Clause 17 Section 11B (3), note

This clause omits ‘principal registrar’ from the note in section 11B(3) and replaces it with ‘chief executive officer.’

Clause 18 Section 11BA heading

This clause substitutes 'Delegation by chief executive officer' as the heading of Section 11BA.

Clause 19 Section 11BA

This clause omits 'principal registrar' from section 11BA and replaces it with 'chief executive officer.'

Clause 20 Section 11BA

This clause omits 'principal registrar's' from section 11BA and replaces it with 'chief executive officer's.'

Clause 21 Section 11BA, note

This clause substitutes the note in section 11BA with 'For laws about appointments, see the Legislation Act, pt 19.3.'

**Clause 22 Leave of absence
Section 11BB**

This clause omits 'principal registrar' from section 11BB and replaces it with 'chief executive officer.'

Clause 23 Section 11BC heading

This clause substitutes 'Chief executive officer must not do other work' as the heading of Section 11BC.

Clause 24 Section 11BC and 11BD

This clause omits 'principal registrar' from sections 11BC and 11BD and replaces it with 'chief executive officer.'

Clause 25 Section 11C heading

This clause substitutes 'Ending chief executive officer's appointment' as the heading of Section 11C.

Clause 26 Section 11C (1)

This clause omits 'principal registrar' from section 11C and replaces it with 'chief executive officer.'

Clause 27 Section 11C (2), note

This clause omits the note from section 11C(2).

Clause 28 Section 11D heading

This clause substitutes ‘Chief executive officer not to direct registrars in relation to court functions’ as the heading of Section 11D.

Clause 29 Section 11D and 11E

This clause omits ‘principal registrar’ from sections 11D and 11E and replaces it with ‘chief executive officer.’

Clause 30 Dictionary, new definition of *chief executive officer*

This clause inserts a new definition of ‘chief executive officer’ into the dictionary. The definition provides section 11A(1) defines the ‘chief executive officer.’

Clause 31 Dictionary, definition of *principal registrar*

This clause omits the definition of ‘principal registrar’ from the dictionary.

Part 3 Crimes (Sentence Administration) Act 2005

Clause 32 Section 168(3)

This clause substitutes section 168(3) of the Crimes (Sentence Administration) Act (CSAA). Section 168 of the CSAA provides that when an interstate parole order is transferred to the ACT, ACT law applies in relation to the order and the parolee.

New section 168(3) provides that if a parole order for a sentence of life imprisonment imposed by a person under a law of a State or another Territory was registered under section 167 before the day of commencement of s168(3), the interstate non-parole period is taken to have been validly set by the appropriate ACT court as the non-parole period for the sentence despite any ACT law to the contrary. New section 168(3) also provides that a primary sentence imposed on the person after the order was registered but before the commencement day is taken not to have resulted in the cancellation of the interstate non-parole period because of the operation of the *Crimes (Sentencing) Act 2005*, section 66(3).

Clause 33 New section 168(6)

This clause inserts new section 168(6) into the CSAA. New section 168(6) features the definitions of ‘appropriate ACT court’ that are currently included in section 168(3) of the CSAA. This is a consequential amendment related to clause 32 above.

New section 168(6) also includes new definitions of ‘commencement day’, ‘interstate non-parole period’ and ‘primary sentence’. ‘Commencement day’ is defined as the day that section 32 of the *Justice and Community Safety Legislation Amendment Act 2023* commences. The definition of interstate non-parole period refers to the sentence imposed on a person under a law of another State or Territory, and is defined as the period for which the person is ineligible to be released on parole

under a law of the State or other Territory. The definition of 'primary sentence' cross-references the definition of primary sentence in section 66(1)(b) of the Crimes (Sentencing) Act.

Part 4 Crimes (Sentencing) Act 2005

Clause 34 Application – pt 5.2

Section 64(2) definition of excluded sentence of imprisonment, paragraph (f)

This clause substitutes section 64(2)(f) of the Crimes (Sentencing) Act (CSA). Section 64(2) of the CSA provides that a Court cannot set a non-parole period for an 'excluded sentence of imprisonment'. Section 64(2)(f) currently states that a sentence of life imprisonment is an excluded sentence of imprisonment.

This clause provides that a sentence of life imprisonment is not an excluded sentence of imprisonment if the sentence was imposed by a court of a State or another Territory, in relation to which a parole order is registered under section 167 of the CSAA. This is related to the amendment to section 65(5) of the CSA below.

Clause 35 Nonparole periods – court to set

Section 65(5)

This clause substitutes section 65(5) of the CSA. Section 65(5) currently states that a Court must not set a non-parole period for any sentence of imprisonment if the offender is subject to a sentence of life imprisonment.

New section 65(5) amends the CSA to provide that the Court may set a non-parole period if the sentence of life imprisonment to which the offender is subject was imposed by a court of a State or another Territory and a parole order for the sentence of life imprisonment is registered under section 167 of the CSAA. This allows a Court to set a non-parole period if a transferred interstate parolee reoffends in the ACT.

Part 5 Gaming Machine Act 2004

Clause 36 Voluntary surrender agreement New section 10C (2A)

This clause inserts a new subsection (2A) into section 10C. The section provides that the term of any voluntary surrender agreement is extended until 1 April 2028, despite anything to the contrary in any agreement.

Section 10C provides for voluntary surrender agreements generally.

A voluntary surrender agreement is an agreement between the Territory and a licensee of a gaming facility, which the Territory and licensee could enter into if a licensee submitted a voluntary surrender notice to the Minister before 8 February 2019. They cover matters such as:

- An entitlement to the deemed payment or partial payment of an offset amount for the licensee;
- The process by which the entitlement is to be claimed by the licensee; and
- Any other matters agreed by the parties.

Clause 37 Offsets
Section 10H(1)(a) and (c)

This clause omits ‘1 April 2026’ from sections 10H(1)(a) and (c) and replaces these references with ‘1 April 2028.’ This allows licensees an extra two years to redeem offsets.

Clause 38 Section 10U

This clause substitutes section 10U.

Section 10U(1) provides that part 2A expires on 1 April 2028.

Section 10U(2) provides that section 10G and section 10U(2) expire on 1 April 2024.

Part 6 Land Titles (Unit Titles) Act 1970

Clause 39 Relationship with Land Titles Act
New section 4 (3) (c)

This clause inserts a new subsection 4(3)(c) before the notes. This subsection provides that a copy of an ACAT order, lodged with the registrar-general under the *Land Titles (Unit Titles) Act*, need not be attested to by a witness. This provides flexibility when lodging orders.

Clause 40 Registration of final building damage orders
Section 20 (1) and note

This clause omits ‘Magistrates Court’ from section 20(1) and the note, and substitutes it with ‘ACAT.’ This ensures the section and note reference the correct entity responsible for making final building damage orders.

Clause 41 Section 20 (1) and (2)

This clause omits ‘an office copy’ from sections 20(1) and (2), and substitutes it with ‘a copy.’

This updates the terminology to reflect the ACAT's practices in relation to orders, as well as ensuring flexibility.

**Clause 42 Appointment of administrator – registration
Section 28 and note**

This clause omits 'Magistrates Court' from section 28(1) and the note and substitutes it with 'ACAT.' This ensures the section and note reference the correct entity responsible for making final building damage orders.

Clause 43 Section 28

This clause omits 'an office copy' from sections 28 and substitutes it with 'a copy.'

This updates the terminology to reflect the ACAT's practices in relation to orders, as well as ensuring flexibility.

Clause 44 Dictionary, note 2

This clause omits 'Magistrates Court' from note 2 in the Dictionary and substitutes it with 'ACAT.'

Schedule 1 Consequential amendments

Part 1.1 Freedom of Information Act 2016

[1.1] Dictionary, definition of *principal officer*, paragraph (b)

This clause omits 'principal registrar' from the definition of a principal officer and substitutes 'chief executive officer.'

Part 1.2 Road Transport (Driver Licensing) Regulation 2000

[1.2] Section 12 (10), definition of *judicial officer*

This clause omits 'principal registrar' from the definition of a judicial officer and substitutes 'chief executive officer.'

Part 1.3 Territory Records Act 2002

[1.3] Section 8, definition of *principal officer*, paragraph (c)

This clause omits 'principal registrar appointed under the *Court Procedures Act 2004*, section 11A' and substitutes 'chief executive officer appointed under the *Court Procedures Act 2004*, section 11A(1).'