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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELEVENTH ASSEMBLY

CRIMES LEGISLATION AMENDMENT BILL (No.1) 2025

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

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CRIMES LEGISLATION AMENDMENT BILL 2025

The Bill **is** 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*.

OVERVIEW OF THE BILL

This Bill forms part of the reforms to raising the minimum age of criminal responsibility (MACR) which were effected through the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*. From 1 July 2025, the MACR will be 14 years (with the rebuttable presumption retained only for 12 and 13 year olds who commit murder, sexual assault in the first degree, an act of indecency in the first degree, or intentionally inflict grievous bodily harm).

Stakeholders have noted that it is not immediately apparent in the legislation that police officers had powers to stop, search, and detain people under the MACR, lawfully and safely for all persons involved. Although a person under the MACR may *commit* an offence, they cannot be held criminally *responsible* for it.

The current law provides that, in general, if a police officer has reasonable suspicion that an offence has been *committed*, they currently have powers to investigate (including powers to stop, search, or detain). Although there are some powers that are age-restricted (such as strip searching), most police powers do not expressly require consideration of the age of the person suspected of committing the offence.

This Bill seeks to address stakeholders' concern that the legislation should provide clearer guidance on the availability of police powers with regard to people under MACR. It also provides a new framework for the use of those powers which expressly requires consideration of the age of the person suspected of committing the offence (specifically, the fact that a person under a certain age cannot be charged for an offence). The Bill aims to provide greater clarity that police powers will be available where the police believe the use of powers is necessary for the safety of the community and/or the safety of the individual person.

Police powers amendments

This Bill amends the *Crimes Act 1900* to clarify the application of existing police powers with respect to a young person under the age of 14 years, and to provide additional limitations on the use of those powers. The relevant powers are:

- the preventative action powers of police acting under a warrant and without a warrant (clauses 7–8);
- the search and seizure powers of police acting under a warrant (clauses 9–10)
- the stop, search, or detain powers without a warrant (clause 11); and

- the discretionary power to transport a person under 14 years of age to their parent or another responsible person or appropriate agency, after stopping, searching, or detaining them (clause 11).

This Bill does not provide new powers to police officers.

In addition to clarifying the application of existing law, the Bill introduces new limits on the availability of those powers for persons under MACR. The most significant of these limitations is on the circumstances in which police may stop, search or detain a young person without a warrant, by providing a new 'seriousness threshold' that a police officer must consider prior to using their powers where they are unable to form the belief on reasonable grounds that a person is at least 14-years old. The new threshold is based on section 501Q of the *Children and Young People Act 2008* (CYPA)). This 'seriousness threshold' is in addition to existing statutory and common law limitations on the use of police powers, and in addition to a police officer's obligations (in section 40B of the *Human Rights Act 2004* (HRA)) as a public authority (per section 40 of the HRA).

It is important that police powers are readily ascertainable and the primary purpose of this Bill is to achieve that with respect to children and young people under the MACR. The law needs to be clear for police officers to use their powers. Legal practitioners also need clarity about the law so that they can support clients to seek redress where police are alleged not to have used their powers lawfully.

Ambiguity in the law is undesirable as it is important that members of the public can understand their rights regarding police action. Ambiguity can also cause reputational risk for both ACT Policing generally and individual police officers specifically, as well as for the ACT Government. People with mistaken beliefs about their rights regarding police officers may become unnecessarily hostile, or act unlawfully in resisting police action.

The primary policy goal of raising MACR is to reduce the level of contact between the criminal justice system and young people—a goal which all stakeholders are committed to realising through the development of robust arrangements. This policy goal was related to the desired outcome of reducing recidivism and encouraging diversionary strategies for young people. There remains, however, a community expectation that police will be able to perform their community policing functions, to manage disturbances of the peace, and to promote community safety. This Bill seeks to achieve these purposes and ensure that powers available to police when engaging with young people under the MACR can be exercised to the extent necessary for their safety and/or community safety.

Court proceeding amendments

Arising from the new inconsistency in the MACR between Australian jurisdictions, the Bill makes a minor technical change to a legislative provision about what information may be disclosed to the Court.

Section 442A of the *Crimes Act 1900* prohibits specified types of information from being put before a Court during a proceeding. The types of information specified were various particulars about youth offences (convictions or findings about youth offences; actions carried out by police in relation to a youth offence; &c.).

'Youth offence' is currently defined as an offence 'against a territory law committed or allegedly committed by the person when under 12 years old'. The Bill expands this to exclude offences against laws of the Commonwealth, States, or another Territory.

Spent Convictions Act 2000 amendments

The Bill also makes minor technical changes and corrections to legislation arising from the change to the MACR.

These changes:

- Correct the definition of a 'youth sexual offence conviction' so that it does not include people dealt with as an adult when they were convicted; and
- Ensure the correct information is available when a Working with Vulnerable People assessment is undertaken.

CONSULTATION ON THE PROPOSED APPROACH

In February 2021, the ACT Government commissioned an independent review, led by Professor Morag McArthur with Curijo Pty Ltd – an Aboriginal consulting company – and Dr Aino Suomi from the Australian National University, which reviewed the service system and outlined implementation requirements for raising the MACR in the ACT. The review found that raising the MACR would help address the risk factors of children that commit crimes and strongly advocated for a therapeutic response model to further address these risk factors. The report also made note that raising the MACR would help tackle the overrepresentation of Indigenous children in the criminal justice system.

The ACT Government Discussion Paper outlined the government's goal to raise the MACR to 14, as a way to respond to young offenders with an evidence-based approach rather than a punitive approach in appropriate cases (pg. 2). The paper prompted community discussion around several points:

1. what should the MACR be raised to, and should there be an exceptions model
2. it sought community feedback on alternative models for dealing with young offenders
3. the paper considered the rights of victims, and
4. it discussed what police powers would be like under new legislation and the transitional arrangement that would be needed.

The paper recognised the need for a comprehensive approach so that no child is left unsupported under new legislation (pg. 3).

The Listening Report summarised the responses from the submissions. While broadly supportive of raising the age, submissions identified the need for more support for young people when diverting them from the criminal justice system. The new legislation addressed these concerns through the introduction of the new therapeutic model as an alternative to a criminal justice response in appropriate cases.

Targeted consultation in October and November 2022 guided the design of an immediate service response to better support ACT Policing frontline officers to respond to children and young people in need. An intensive 6-week sprint with key government and community partners explored the elements necessary for an immediate service response. This included consideration of access to on-call youth workers, access to safe spaces, youth worker follow-up, and emergency accommodation for at-risk children and young people.

This process culminated in the release of a Position Paper in November 2022 by the ACT Government which outlined key policy decisions taken by the Government to date. The Justice and Community Safety Directorate (JACS) and Community Services Directorate (CSD) have had ongoing consultation with a broad range of stakeholders throughout the development of these reforms. The Minimum Age of Criminal Responsibility Reference Group was established, which included government and community representatives and academics, to provide strategic oversight of the implementation planning of a higher MACR in the ACT and met throughout 2021 and 2022. Stakeholders who have been engaged include:

- Aboriginal and Torres Strait Islander Elected Body;
- Aboriginal Legal Service (NSW/ACT);
- ACT Bar Association;
- ACT Corrective Services;
- ACT Courts and Tribunal;
- ACT Director of Public Prosecutions;
- ACT Health Directorate;
- ACT Human Rights Commission;
- ACT Law Society;
- ACT Policing;
- ACT Raise the Age Coalition;
- ACT Victims Advisory Board;
- Change the Record;
- Chief Minister, Treasury, and Economic Development Directorate;
- Community Services Directorate;
- Discrimination, Health Services, and Disability and Community Services Commissioner;
- Education Directorate;
- Gugan Gulwan Youth Aboriginal Corporation
- Justice Reform Initiative;
- Legal Aid ACT;
- MensLink;
- Public Advocate and Children and Young People Commissioner;
- Relationships Australia;
- Victims of Crime Commissioner;

- ACT Youth Advisory Council;
- Amnesty International Australia;
- Australian National University;
- Winnunga Nimmityjah Aboriginal Health and Community Services;
- Youth Coalition of the ACT.

Throughout 2024, a targeted list of stakeholders across the justice and community sectors were consulted on the preferred approach to making the existing law clearer and on new safeguards to align existing police powers with the objectives of MACR.

CLIMATE IMPACT

This Bill will not have any climate impact.

CONSISTENCY WITH HUMAN RIGHTS

This Bill is consistent with human rights. The Bill has been developed taking into consideration relevant human rights standards in the HRA and internationally. These include Australia's obligations under the United Nations (UN) Convention on the Rights of the Child (CRC) and the principles in the UN Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules').

Relevantly, the CRC provides that:

- the best interests of the child shall be a primary consideration (article 3(1));
- detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (article 37(b)); and
- a child recognised as having infringed penal law is to be treated in a manner …which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (article 40(1)).

The Beijing Rules provide that:

- the reaction taken by the State shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society (rule 17.1(a)); and
- the well-being of the juvenile shall be the guiding factor in the consideration of their case (rule 17.1(d)).

The MACR reforms, and the amendments in this Bill, reflect these obligations and standards, as their overarching purpose is to limit contact between children and young people under the MACR with the criminal justice system. Police officers are already required to use the minimum necessary power to ensure community safety and provide alternative responses, including diverting to other care and support

services, to address the underlying complex needs that drive harmful behaviour; these amendments provide additional considerations required when establishing the minimum use of power with respect to persons under the MACR.

Rights engaged

Broadly, the Bill engages the following HR Act rights:

- Section 8 – Right to equality and non-discrimination
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person
- Section 27B – Right to work

Rights Promoted

Police powers amendments

The Bill engages and promotes the following rights:

- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
  Section 18 – Right to liberty and security of person

The Bill promotes these rights by imposing additional requirements (that function as safeguards) in relation to the exercise of police powers that interfere with a young person's autonomy, freedom of movement or liberty, namely:

- when a search warrant may be issued;
- when the police may stop, search, or detain people under 14 years of age without a warrant; and
- when police may take a person under 14 years of age to their parent or another responsible person or appropriate agency, after stopping, searching or detaining them.

These rights of young people are promoted because the Bill introduces a new framework to ensure that these powers are used in a way which is necessary, proportionate, and well-adapted to achieve the dual purposes of limiting the contact of young people under the MACR with the criminal justice system and protecting community safety and public order.

For example, section 252AC of the Bill raises the threshold for the use of stop, search or detention powers for a person under 14 years old from reasonable suspicion to belief on reasonable grounds. This higher threshold aims to ensure police interactions with a person under 14 years occur with more caution. This promotes the rights to privacy, freedom of movement and liberty and security of

person, all of which are engaged when police exercise their powers. This meets the purpose of reducing children's interaction with police and criminal justice system.

The Bill complements other existing legal rules (in statute and common law) which protect children and young people from unreasonable or arbitrary interference with police (see further below).

By ensuring that police powers are specially adapted to the unique needs and vulnerabilities of persons under the MACR, the Bill promotes the right of the child to the protection they need by virtue of being a child, under section 11(2) of the HRA.

Ensuring that police officers retain powers with respect to young persons under the MACR aims to protect community safety in circumstances where a young person may have engaged in conduct that risks harm to others. This is intended to promote the rights of those other persons to be free from harm (the rights to security of person, life or privacy, depending on the gravity of the conduct).

Spent convictions amendments

The amendment to section 442A(2) of the *Crimes Act 1900* promotes the right to equality and non-discrimination in section 8 of the HRA. The amendment ensures that people who have a conviction from another jurisdiction for an offence that was committed when they were under the MACR will not be required to disclose this offence in an ACT criminal proceeding. This promotes the right to equality and non-discrimination because it treats convictions imposed within the ACT and outside the ACT alike in relation to the protected attributes of age and irrelevant criminal record.

The Bill will ensure that people are not treated differently in the courts based on their age at the time of commission of a prior offence (due to different jurisdictions having different minimum ages of criminal responsibility). It will also ensure that a youth offence conviction from another jurisdiction is treated as an irrelevant criminal record in the context of an ACT criminal proceeding (noting that youth offence convictions (subject to limited exceptions) are extinguished under section 19GB of the *Spent Convictions Act 2000* and are therefore irrelevant criminal records for the purposes of the *Discrimination Act 1991*).

Rights Limited

Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Police powers amendments

Although the Bill promotes rights by circumscribing existing powers, it nonetheless may also be seen as limiting rights because it sets new standards connected to

when police may exercise invasive powers. Police powers with respect to young persons under the MACR to:

- search under warrant
- stop, search or detain without warrant, or
- transfer them to another person or authority responsible for their care

engage and limit the following rights under the HRA:

- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 18 – Right to liberty and security of person.

The discussion below first describes the nature of these rights, and then assesses each category of police powers amended in the Bill under s28(2) of the HRA with respect to these three rights.

Nature of the rights limited (s 28 (2) (a))

The rights in sections 12, 13 and 18 of the HRA are not absolute and may be subject to permissible limitations.

Right to privacy and reputation (s 12)

Section 12 of the HRA states that everyone has the right:

(1) not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
(2) not to have their reputation unlawfully attacked.

Section 12 of the HRA protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from excessive government intervention and unsolicited intrusion by other individuals.[1]

Inter alia, it protects physical, psychological, and bodily integrity (including the protection of individuals against non-consensual contact, or invasive procedures such as body searches) and personal autonomy and private life.

In the view of the UN Human Rights Committee, the expression 'arbitrary interference' is considered independently from 'unlawful', as an interference might both be provided for in law while also being arbitrary: 'The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law

[1] UN Human Rights Committee, General Comment No. 16: Article 17, the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (1988) ('General Comment No. 16') [1].

should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'[2]

Freedom of movement (s 13)

Section 13 of the HRA states that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose their residence in the ACT.

The right is not absolute. It is based on Article 12 of the International Covenant on Civil and Political Rights which includes (at [3]): 'The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.'

Right to liberty and security of person (s 18)

Section 18 of the HRA states (in relevant part) that:

(1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.
(2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

The right to liberty prohibits the arbitrary and unlawful deprivation of liberty. It imposes a negative duty on public authorities to respect the right, and a positive duty to take appropriate measures to protect individuals from unlawful detention or involuntary restraint by others.

Deprivation of liberty occurs when a person does not freely consent to being detained or restrained.[3] Deprivation of liberty must not only be lawful, in accordance with pre-established legal procedures, but must not be 'arbitrary'. Arrest or detention may be 'arbitrary' if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances of the case or not in accordance with due process.[4] 'Arbitrariness' can also occur where detention is initially lawful but becomes arbitrary because it continues for an unreasonable time or in unjustified circumstances.[5]

[2] UN Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (1988).

[3] UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person) (2014)('General Comment No. 35'), [7].

[4] *Hugo van Alphen v. The Netherlands*, UN Human Rights Committee Communication No.305/1988 (1990), [5.8].

[5] *Aage Spakmo v Norway*, UN Human Rights Committee Communication No. 631/1995 (1999), [6.3].

Powers to search under warrant (clauses 9 and 10)

1. Nature of the limitation (s 28 (2) (c))

The Bill makes clear the existing law that a warrant may be issued for an ordinary search or frisk search for a person who is under 14 years old for the purposes of determining whether they are in possession of anything stolen, unlawfully obtained or evidential material.

As noted, this is not a new power in relation to people under 14. However, the conduct of a search of premises or an individual young person under the MACR in accordance with section 194 of the *Crimes Act 1900* will limit their right to privacy, both in terms of the privacy of their home and their bodily integrity. It may also limit their rights to freedom of movement and liberty and security of the person, for the short period in which they are restricted and their person interfered with while the search is conducted.

2. Legitimate purpose (s 28 (2) (b))

Searches are a necessary police power for the protection of the public, and in some cases, the person being searched, from harm. Searches are also important to ensure due process within the criminal justice system (eg. to obtain evidential material for prosecution of offences). The legitimate purposes of searches include that police may find:

- unlawfully obtained goods (which should be returned to the lawful owner)
- dangerous contraband items (which may pose a risk to the person and the wider community), or
- evidential material relevant to the commission of an offence by a person over the MACR.

The legitimate purpose of the amendment in the Bill is to create additional safeguards which will apply when a warrant is issued (see proportionality below). These are intended to ensure that the warrant is necessary and appropriate having regard to the child or young person's best interests.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitations on rights arise necessarily from the legitimate purpose. It is not possible to conduct a search of a person without limiting their rights.

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

The provisions governing the issue of search warrants in section 194 of the *Crimes Act 1900* in respect of young people under the MACR are proportionate because of a combination of existing and new safeguards:

- the issue of the warrant involves judicial oversight;

- police officers are required to provide information on oath to demonstrate their reasonable grounds for suspecting the person possesses (or will shortly possess) evidential material;
- the Bill includes a new consideration which requires the issuing officer expressly to consider the best interests of the child;
- the new provisions also allow the issuing officer to require that, prior to executing the warrant, the person applying for the warrant must give notice to the Aboriginal and Torres Strait Islander Children and Young People Commissioner ('the Commissioner') or the Public Advocate (as relevant), to enable them to offer support to the child following the execution of the warrant should this be appropriate; and
- the existing statutory and common law safeguards continue to apply (see clause notes for clause 9).

Consideration was given to whether it should be mandatory in all instances for the Commissioner and/or the Public Advocate to be notified prior to execution of the warrant. The Bill preserves the discretion of the issuing officer, as there may be some cases where it is not appropriate to require the police to disclose their intention to act under a warrant to third parties (for example, a highly sensitive investigation).

Stop, search and detain without warrant (clause 11, sections 252AA – 252AD)

1. Nature of the limitation (s 28 (2) (c))

The Bill places new conditions on the existing powers of police to stop, search, or detain a person (whether sourced in common law or statute). The exercise of those powers, as outlined in the analysis above, inherently limits the rights to privacy, freedom of movement and liberty and security of the person.

2. Legitimate purpose (s 28 (2) (b))

A power to stop, search or detain a person is a necessary police power to ensure the safety of the person and the safety of the broader community. The legitimate purposes of searches are cited above.

Detaining a person can be done for their safety or the safety of others.

The legitimate purpose of the amendment in the Bill is to create additional safeguards which will apply when an existing power to stop, search, or detain a person is used (see proportionality below). These are intended to provide additional considerations applicable when assessing whether the use of the power is necessary.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

As there is no other way to ensure the safety of the person or the safety of the broader community without a power for police to stop, search or detain in appropriate

circumstances, there is a necessary connection between the limitations on rights with the policy goal.

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

The approach taken is proportionate because:

- the new threshold operates in addition to existing limitations and safeguards on the use of police powers (including common law powers, statutory safeguards, and human rights obligations – see further clause notes for clause 11)
- the new threshold requires that a police officer hold relevant beliefs (rather than relevant suspicions) on reasonable grounds before using the powers
- placing more restrictions on the use of police powers may result in a greater range of scenarios where police are unable to meet reasonable and practical community expectations about maintaining public order and safety
- the new threshold is consistent with the policy objectives to have police refer young people to diversionary options (like the Therapeutic Support Panel); if the threshold is higher for the stop power, police may not have the required information to make the appropriate referrals for young people who engage in harmful conduct
- the use of police powers without warrant are for use in urgent, serious circumstances, so using the existing standard from section 501Q of the *Children and Young People Act 2008* (CYPA) ensures that police do not need bespoke tests for bespoke scenarios.

The two primary ways of achieving proportionality through the Bill are:

1. Raising the requisite state of mind required before police officers can exercise their powers in relation to people under 14-years old (from suspicion on reasonable grounds to belief on reasonable grounds); and
2. Introducing new mandatory considerations (s252AC) that the police officer must consider before exercising a power in relation to a person under 14-years old without a warrant (based on section 501Q of the CYPA) where the purpose is to prevent harm or serious or destructive behaviour. The intended meaning of the new threshold in s252AC is discussed in the clause notes for clause 11.

The exercise of common law powers and statutory powers is subject to constraints, such as doing only that which is reasonable and necessary (*The Queen v Rolfe* [2021] HCA 38; *R v Turner* [1962] VR 30; *Woodley v Boyd* [2001] NSWCA 35; *Dowse v New South Wales* [2012] NSWCA 337). The proposed Bill does not disturb those constraints.

The amendments advanced by this Bill require police to have a higher degree of satisfaction about certain facts before they can use their stop, search, and detain powers with regard to children who may have committed offences.

Maintaining police discretion in the use of their powers is necessary because of the wide range of possible circumstances that might face police officers. If the threshold is set too high, there may be circumstances where police are not able to meet community expectations about safety and public order. As the new threshold works in addition to existing common law, statutory, and human rights limitations, the use of this threshold is reasonable, well-adapted, and proportionate.

Because people under MACR are not able to be charged for offences, the threshold to search a person under MACR without warrant needs to be circumscribed to the legitimate purpose of protecting community safety and the safety of the individual. To achieve this, the Bill proposes a higher threshold than a police officer ordinarily requires in order to conduct a search. Ordinarily, a police officer needs to suspect on reasonable grounds that certain things are true prior to being able to search without warrant. This threshold is ordinarily proportionate and well-adapted because the police officer needs appropriate powers to investigate suspected offences or prevent destruction of evidential material, and because the use of the power is scrutinised by a judicial officer when charges are laid. The Bill proposes to lift this standard for people under 14 to *belief* on reasonable grounds that:

- the person has engaged or will engage in harmful conduct to themselves or others, serious damage to property or the environment, cruelty to animals, or any other serious or destructive behaviour (section 252AC(b)); or

- the exercise of the power is required to ensure the safety of the person (section 252AC(c)); or

- the person possesses evidence relevant to the investigation of an offence or possible offence committed by another person (section 252AD).

This higher threshold makes the power less prone to arbitrary use and shapes the use of the power to its legitimate purpose.

Where there is an investigation of an offence by a third party who is not under the MACR (new section 252AD), the ‘seriousness threshold’ is not used, but the officer must still form the belief (not the suspicion) on reasonable grounds that the person under 14 is in possession of evidentiary material. This is appropriate because police officers are investigating an offence that will likely be heard by a Court. The differing purpose and the judicial oversight justify the lower standard. In addition, creating a different (higher) standard for intervention by police to investigate third party offences may risk incentivising persons engaging in criminal conduct to place evidentiary materials in the possession of persons under the MACR.

Although the detention power is ‘a lower power’ than the arrest power, there is less judicial oversight of its use. To achieve compliance with human rights, the Bill proposes for people under 14 years of age a higher threshold than a police officer ordinarily requires in order to detain a person. Detention powers are ordinarily for the safety of the person or the safety of the community, but do not require the person to

be under arrest. As people under MACR are ordinarily unable to be arrested and there are existing provisions in the Act for the arrest of people under MACR, the Bill proposes to clarify the detention power to ensure its availability as a more appropriate alternative to arrest (for example, to stop offending conduct, to transport a person under MACR to a parent, guardian, or other appropriate person or agency, or to conduct a search under section 207 of the *Crimes Act 1900*). Prior to using a power to detain on people under 14 years of age, the police officer must believe (rather than merely suspect) on reasonable grounds that the seriousness threshold (section 252AC(b)) is met or that the detention is required to ensure the safety of the person (section 252AC(c)). This higher threshold makes the power less prone to arbitrary use and shapes the use of the power to its legitimate purpose.

Transfer of young person under the MACR (clause 11, section 252AE)

1. Nature of the limitation (s 28 (2) (c))

The Bill provides that a police officer may, after stopping, searching or detaining the person under 14 years old, take the person to a parent, carer, or other agency responsible for the person's welfare.

This provision does not create new powers but codifies the existing power of a police officer to take a young person to a responsible adult, guardian, or appropriate agency.

The use of this power necessarily divulges information about the activities of the young person to the parent, guardian, or appropriate agency, limiting their right to privacy.

In addition, the compulsory movement of the person limits their rights to privacy, freedom of movement, and liberty and security of the person.

2. Legitimate purpose (s 28 (2) (b))

Taking a young person to a parent, guardian, or appropriate agency is done with the interests of the safety of the child in mind. This purpose also emerges from other human rights obligations of the State. Section 11 of the HRA (Article 24 of the ICCPR) requires the State to provide measures of protection for children. In General Comment No 24 (CRC/C/GC/24), the UN Committee on the Rights of the Child wrote: 'Articles 18 and 27 of the [CROC] confirm the importance of the responsibility of parents or legal guardians for the upbringing of their children, but at the same time [CROC] requires States parties to provide the necessary assistance to parents (or other caregivers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations,but should also emphasise the promotion of the social potential of parents.'

The powers are also consistent with Article 12(3) of the ICCPR (permissible limitations on the right to liberty of movement) as they are necessary for public order and to protect the rights and freedoms of others.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitation arises necessarily from the legitimate purpose. It is not possible to transfer a young person without their consent into the care of another responsible person or authority without limiting their rights.

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

This approach is proportionate because it is itself part of the safeguard framework on other powers. Under section 252I of the *Crimes Act 1900*, police are already required to contact the 'responsible person' (parent or someone else who has daily care responsibility or long-term care responsibility for the child or young person) if they detain a child or young person. The proposed provision works in concert with the existing provision, codifying the existing discretion for the police officer to transport a person under the age of 14 after using a stop, search, or detain power.

Providing it as a discretionary power means that a police officer is not required to remain in contact with a person under 14 years old for more than is necessary or appropriate.

Where the transport power is used and it is considered neither practicable nor appropriate to take the person to a parent or somebody who has daily care responsibility or long-term care responsibility of the child, the police officer may take the person to another appropriate person or agency. If this occurs, the police officer must notify either the Aboriginal and Torres Strait Islander Children and Young Person Commissioner (if the person is known to be an Aboriginal or Torres Strait Islander person), or (in all other cases) the Public Advocate. This notification system is designed to provide for greater oversight of the exercise of this power and to ensure additional supports can be provided if needed.

Spent convictions amendments – right to work (section 27B, HRA)

The amendment to section 19H(4) of the *Spent Convictions Act 2000* provides that a person will be required to disclose an extinguished conviction for the purposes of an application to a scheme in another jurisdiction that is equivalent to the *Working With Vulnerable People (Background Checking) Act 2011*.

This may limit the right to work as this may affect the person's ability to volunteer or work in another jurisdiction. This limitation serves the legitimate purpose of protecting vulnerable people and is rationally connected to that purpose as the conviction may be relevant to their employment. The limitation is proportionate as the relevant legislation will contain basic principles of procedural fairness such as

safeguards for the review of decisions and the opportunity to be heard in relation to the application.

CRIMES LEGISLATION AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **CRIMES LEGISLATION AMENDMENT BILL 2025**. 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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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Preliminary

Clause 1 Name of Act

This clause provides that the name of this Act is the *Crimes Legislation Amendment Act 2025*.

Clause 2 Commencement

This clause provides for the commencement of the Act. This clause makes the commencement of this Act contingent upon the commencement of section 127 of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*. The *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* was the primary legislative vehicle for raising the minimum age of criminal responsibility. The amendments of this Act are subsequent to the amendments of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*. It is anticipated that this Act will commence on 1 July 2025.

Clause 3 Legislation amended

This clause identifies the legislation that will be amended:

- *Crimes Act 1900*
- *Spent Convictions Act 2000*.

Part 2 Crimes Act 1900

Clause 4 Definitions for pt 10
Section 185, new definitions

This clause is a consequential amendment to facilitate new section 252AE.

Clause 5 New section 185 (2)

This clause is a consequential amendment to facilitate new section 252AE.

Clause 6 Application of pt 10
Section 186 (1)

This clause is a technical change to section 186(1) to facilitate the application of new subdivision 10.7.1A to all Territory law (including common law).

Clause 7 Issue of warrant
Section 189 (1) (d)

This clause clarifies the alignment between:

1. the reasons for issuing a preventative action warrant in section 189(1)(a) (specifically, the reasonable grounds to suspect that a person has suffered or is in imminent danger of suffering physical injury at the hands of another person) with
2. the actions authorised by the warrant in section 189(1)(d) (which currently does not include the action that is necessary to prevent the physical injury described in section 189(1)(a)).

Aligning the reasons for the warrant with the powers authorised by the warrant is important for clarifying police powers with regard to people under MACR.

Section 189 of the *Crimes Act 1900* was, prior to being renumbered in 2001, section 394B. This section was inserted as part of reforms related to domestic violence. The section authorises 'preventative action warrants': a warrant that allows a police officer to enter where there are reasonable grounds to suspect that a person has suffered (or is in imminent danger of) physical injury at the hands of another person and needs assistance to prevent or deal with the injury.

In *Glavinic v Commonwealth* [2023] ACTSC 361, Mossop J explained that 'the mental threshold that must be satisfied is that the magistrate must be satisfied there are reasonable grounds to suspect the matters in s 189(1)(a)', that being:

(a) 'reasonable grounds to suspect that a person on the premises *has suffered* physical injury at the hands of another and needs assistance to *deal with* the injury; or
(b) reasonable grounds to suspect that a person on the premises *is in imminent danger* of physical injury at the hands of another and needs assistance *to prevent* the injury.'

The warrant authorises the police officer to enter the premises and authorises 'subject to any conditions specified in the warrant, to take the action that is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.' Although the warrant may be issued because of the suspicion on reasonable grounds that somebody may suffer physical injury, the warrant does not clearly empower the police officer to prevent the physical injury (unless the physical injury constitutes an offence, or the physical injury threatens life or property). Although the text of the current legislation does not clearly enable this, it is obviously a necessarily implication of the warrant.

Aligning the purposes of the warrant with the powers authorised by the warrant provides additional clarity to the warrant provision. Warrants are subject to the 'rule of strictness' (as discussed below), so it is important that warrant powers very clearly and accurately specify the details of the warrant.

The clause does not expand the grounds upon which a police officer may enter a property.

The clause does not expand police powers.

Preventative action warrants are not search warrants (which are covered by Division 10.3 of the *Crimes Act 1900*).

Further limitations and safeguards on warrants are discussed below.

Clause 8 Entry in emergencies
Section 190 (b)

This clause is analogous to the amendment in clause 7, except for emergency entry without a warrant.

The clause does not expand the grounds upon which a police officer may enter a property.

The clause does not expand police powers.

Clause 9 When search warrants can be issued
Section 194 (2)

This clause clarifies the existing law that a search warrant may be issued for a person under 14 years old. This provision does not change the existing law but makes it clear to the issuing officer that a warrant may be issued in respect of a person under 14 years old.

Clarity is necessary in this provision because courts adopt a 'rule of strictness' in expressing the law governing search warrants (*Macdonald v Beare* [1904] HCA 22; *NSW v Corbett* [2007] HCA 32). Amending this provision will make the law clearer to issuing officers, police informants, and the general public.

The clause also introduces a new requirement that the issuing officer must take into account the best interests of the person under 14 years old if the issuing officer receives an application to issue a warrant under which a person under 14 years old may be searched or may be present at premises that may be searched.

The clause also enables the issuing officer to require the person applying for the warrant to contact the Aboriginal and Torres Strait Islander Children and Young Person Commissioner or the Public Advocate prior to executing the warrant.

This clause provides new safeguards on the power to issue a search warrant and the power to execute a search warrant. This clause does not provide police new powers.

Search warrants: current law

Unless otherwise provided by law, a police officer may not enter a private dwelling for the purposes of seeking evidence of an offence. Legislatures have sought to

balance two competing ideas: on the one hand, there is a person's private interest in the inviolability of his house (his ‘castle and fortress’ (*Semayne's Case* (1604) 5 Co Rep 91); on the other, there is the public interest in ‘gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law’ (*George v Rockett* [1990] HCA 26).

A search warrant is one way a police officer might be authorised to enter a person’s home for the purposes of undertaking a search.

Search warrants must be sufficiently particular in their details about which property is being searched, for what material, and for what reason. A warrant which does not identify a particular object of the search is known as a ‘general warrant’, which are not lawful. General warrants have been described as ‘totally subversive of the liberty of the subject’ (*Wilkes v Wood* (1763) 98 ER 489).

When interpreting warrants, Courts have insisted on a ‘rule of strictness’. ‘[I]n construing and applying such statutes, it needs to be kept in mind that they authorize the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect’ (*George v Rockett* [1990] HCA 26).

The reasons behind the rule of strictness include (as set out by Kirby J in *NSW v Corbett* [2007] HCA 32):

1. The protection of the ordinary quiet and tranquillity of the places in which people live and work and of their possessions as a precious feature of our type of society and the happiness of its people;
2. The avoidance of disruption and the occasional violence that can arise in the case of unwarranted or excessive searches and seizures;
3. The beneficial control of the agents of the State exerted because of their awareness that they will be held to conformity with strict rules whenever they conduct a search and will require statutory or common law that clearly supports their searches and seizures;
4. The incentive that strict rules afford for the maintenance of respect for the basic rights of individuals who become subject to, or affected by, the processes of compulsory search and seizure; and
5. The provision in advance to those persons of a warrant signifying, with a high degree of clarity, both the lawful ambit of the search and seizure that may take place and the assurance that an independent office-holder has been persuaded that a search and seizure, within that ambit, would be lawful and has been justified on reasonable grounds.

The ‘rule of strictness’ and the prohibition on ‘general warrants’ are read into section 194. A warrant to search a premises (section 194(1)) or a warrant to search a person (section 194(2)) require the issuing officer to be:

- Satisfied
- By information on oath
- That there are reasonable grounds for suspecting that

- There is or will be
- Any evidential material.

The issuing officer is:

1. a judge, the registrar or a deputy registrar of the Supreme Court; or
2. a magistrate; or
3. the registrar or a deputy registrar of the Magistrates Court (if authorised by the Chief Magistrate to issue such search warrants).

In addition to the common law constraint on issuing warrants, so far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights (*Human Rights Act 2004* section 30). Further, the issuing officer is not the Court within the meaning of section 40(2) of the *Human Rights Act 2004*. The power to issue a warrant is an administrative power conferred upon judicial officers (and registrars) is administrative (*Grollo v Palmer* [1995] HCA 26) and, as such, the issuing officers are public authorities and must act consistently with human rights (*Human Rights Act 2004* section 40A).

People who are affected by search warrants (either by being the target of the warrant or being the owner or occupier of the premises targeted by the warrant) are able to challenge the lawfulness of the decision to issue the warrant.

New safeguard: best interests test

In addition to the existing common law, statutory, and human rights protections on issuing a warrant, this clause adds an additional requirement that the issuing officer must take into account the best interests of the person under 14 years old if:

1. The issuing officer is considering an application for a warrant under which a person under 14 years old may be searched; or
2. The issuing officer is considering an application for a warrant to search a premises where a person under 14 years old may be present.

When issuing a warrant under which a person under 14 years old may be searched or may be present at premises that may be searched, the issuing officer must take into consideration the best interests of the child.

Article 3 of the Convention on the Rights of the Child requires that ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.

The UN Committee on the Rights of the Children stated that the ‘concept of the child's best interests is complex and its content must be determined on a case-by-case basis.’ Using the standard allows the issuing officer to tailor its reasoning ‘on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual

decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child.'

The concept of 'best interests of the child' is already used extensively in Territory law (for example, *Court Procedures Act 2004*, *Bail Act 1992*, and the *Freedom of Information Act 2016*).

Strictly, this consideration was already required of an issuing officer.
The amendment makes the requirement clearer and more precise.

New safeguard: notification

This clause also provides the discretionary power to require the person applying for the warrant, prior to its execution, to give notice to:

1. The Aboriginal and Torres Strait Islander Children and Young People Commissioner ('the Commissioner') if the person under 14 years old is known to be an Aboriginal or Torres Strait Islander person; or
2. The Public Advocate.

This power is discretionary because there may be situations in which it is inappropriate for them to be notified of the warrant prior to its execution.

The power provides an additional pathway to redirect young people out of the criminal justice system and into therapeutic options. By notifying the Commissioner or Public Advocate prior to executing the warrant, there is the option for them to provide additional support to the person under 14 years old who might be adversely affected by the execution of the warrant.

Clause 10 Section 194 (3A)

This clause creates a new obligation on the person applying for the warrant to notify the issuing officer if they know or suspect that a person under 14 years old may be searched or may be present at premises that may be searched.

If the person knows or suspects that a person under 14 years old may be searched or may be present at premises that may be searched, then the person applying for the warrant must state that knowledge or suspicion and the grounds for the knowledge or suspicion in the information.

This clause does not require police officers (or those making applications) to make specific inquiries into whether or not a person under 14 years old is at the premises being searched or may be subject to a search. The clause does require police officers (or those making applications) to turn their minds to whether a person under 14 years old may be at the premises or may be searched.

The purpose of this clause is to ensure the issuing officer has information presented to them to consider the best interests of the child and provide them with the option to require a Commissioner to be notified.

This clause does not expand police powers.

Clause 11 New subdivision 10.7.1A

This clause inserts a new subdivision into the *Crimes Act 1900* that is intended to apply to every power to stop, to search, or to detain a person under Territory law (including common law), other than those powers exercised under a warrant or other order of a Court or the ACT Civil and Administrative Tribunal (ACAT).

The key statutory source for the powers to stop, search, and detain without a warrant are in section 207 of the *Crimes Act 1900*.

A power to stop is a power to interrupt a person going about their business. The police officer is permitted to ask questions, but the person stopped is not required to provide that information unless required by another law (for example, *Crimes Act 1900* section 211).

A power to search is a power to explore a person, vehicle, or property for a relevant thing that is concealed. The nature of the search (for example, an 'ordinary search') is determined by the relevant law authorising the search.

A power to detain is a power to stop a person and prevent their departure without placing the person under arrest. The power to detain a person is often needed in order to search a person. A police officer may use reasonable force necessary and appropriate to give effect to the detention.

It is common for statute to authorise the use of these powers if the police officer *suspects* on reasonable grounds that an offence might have occurred. In section 207, the powers are available without a warrant because the officer suspects on reasonable grounds that the use of power is necessary and that the circumstances are serious and urgent. This standard is used so that police may investigate and find evidence to support (or dispel) their suspicions for the purposes of laying charges, balanced against protecting the principle of common law trespass against the person.

With people under MACR, there is little justification for allowing investigations of suspected offences as the person is unable to be charged. As charges cannot be laid, the police powers are only to be used in the interests of the safety of the community and the safety of the individual person.

Because there is little justification for allowing investigations of suspected offences committed by people under MACR and because the powers are not being exercised under a warrant, the new provisions more regularly use the standard of 'belief on reasonable grounds'. This framework is consistent with similar areas of the *Crimes Act 1900*. For example, a search warrant may be issued by an issuing officer (judge, magistrate, or—in some circumstances—a registrar) if there are *reasonable grounds for suspecting* that there is, or there will be within the next 72 hours, any evidential

material at the premises (section 192). The warrant must state the kinds of evidential material that are to be searched for under the warrant. If, during the execution of the warrant, the police officer notices things other than the type described in the warrant, they can only seize those things if they *believe on reasonable grounds* that the thing is:

- evidential material in relation to an offence to which the warrant relates; or
- a thing relevant to another offence that is a serious offence; or
- target material or tainted property.

Because the additional trespass against the person is not clearly within the authority granted by the warrant, the police officer must form a higher degree of confidence about the nature of the materials before seizing them while executing a search warrant.

Additional protections for minors are also included throughout the *Crimes Act 1900*. For example, if an adult is unimpaired and in custody, a police officer of or above the rank of sergeant may take a print of the person's fingers (section 230(3)(b)(ii). If the person is instead under 16, an order from a magistrate is required.

The distinction is also seen in the arrest power. To arrest a person lawfully without warrant under section 212 of the *Crimes Act 1900*, must *suspect on reasonable grounds* that (inter alia) the person has committed or is committing an offence. To arrest a person under the minimum age of criminal responsibility, the police officer must *believe on reasonable grounds* that (inter alia) the person committed the physical elements of the offence.

Judicial oversight is a well-established safeguard on the use of police powers that involve trespass upon the person. The lower standard of 'suspicion on reasonable grounds' is justifiable for many police powers as they are provided with a view to laying charges. The Bill lifts the threshold to 'belief on reasonable grounds' for the 'seriousness threshold' to avoid the investigation of children without warrant only on suspicion on reasonable grounds. Consistently with this, the subdivision has a carve-out for powers used under a warrant or order of a Court or ACAT. Where a Court or ACAT directs a police officer to use a power to detain a person, additional consideration of the 'seriousness threshold' is inappropriate.

A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a slight opinion, but without sufficient evidence (*Queensland Bacon v Rees* (1966) 115 CLR 266).

Belief is a higher standard. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition. The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief. (*George v Rockett* [1990] HCA 26).

When a statute prescribes that there must be ‘reasonable grounds’ for a state of mind—including suspicion and belief—it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person (*George v Rockett* [1990] HCA 26).

New subdivision 10.7.1A is not a source of new police powers. This provision makes it clear that existing powers do apply where a person under 14 has committed (or is suspected of committing) an offence, and then applies new safeguards to the use of those powers.

The use of the phrase ‘person under 14 years old’ (and its variants) is used instead of the phrases ‘child’, ‘child or young person’, and ‘… under MACR’ to provide greater certainty to police officers.

‘Child’ and ‘young person’ are defined in different ways across ACT legislation to meet different policy goals and outcomes. Using the phrase ‘person under 14’ makes it immediately clear to the ordinary reader without needing to navigate the different definitions.

Phrases including ‘… under MACR’ are not used in these provisions to avoid interpretive issues that arise from the contingent nature of MACR. From 1 July 2025, people under 14 will not be criminally responsible for offences that they commit, unless:

1. They commit the offence of murder, sexual assault in the first degree, act of indecency in the first degree, or intentionally inflicting grievous bodily harm (‘the four schedule offences’); **and**
2. The prosecution proves that the child knew that their conduct was wrong.

A person is considered under the age of criminal responsibility for an offence if the person is not criminally responsible for the offence. This contingent definition makes it confusing to apply in practice if a 12 or 13 year old is suspected of having committed one of the four schedule offences. If the prosecution later fails to prove that the 12 or 13 year old knew that their conduct was wrong, the question arises if police used their powers appropriately given the person was, therefore, under MACR.

Using the phrase ‘person under 14 years old’ removes this ambiguity. As explained in more detail below, a 12 or 13 year old who has committed one of the four schedule offences will still fall within the scope of the lawful use of police powers.

Proposed section 252AB states that a police officer must not exercise their powers to stop, search, or detain a person under 14 years old except in accordance with this subdivision. This prohibition does not extend to other officials who have powers under Territory laws to stop, search, or detain. For example, it does not prevent a conservation officer’s powers under section 343 of the *Nature Conservation Act 2014* to seize a distressed native bird if in the possession of a person under 14 years old.

Proposed section 252AC provides the new ‘seriousness threshold’ that applies in addition to existing common law, statutory, and human rights constraints on the use of police powers.

Prior to the application of the ‘seriousness threshold’, the police officer must turn their mind to the age of the person they wish to stop, search, or detain. Because it is not possible for a police officer to know the age of every person they encounter, the test here does not require certainty. Instead, the police officer must form the belief on reasonable grounds that the person they wish to stop, search, or detain is at least 14 years old.

In the majority of situations, the belief on reasonable grounds will be informed by the appearance of the person. The belief on reasonable grounds might also be informed by the officer’s previous knowledge of the person, knowing that they are 15 years old, for example.

The physical maturity of people between the ages of 10 and 18 vary wildly. A police officer might form the belief on reasonable grounds that a person is at least 14 years old because of their facial hair and because they were smoking a cigarette. Following the lawful use of their stop power, it might become apparent to the police officer that the person is not at least 14 years old but is, instead, 13 years old. At that point, the police officer cannot continue to use their powers without contemplating the ’seriousness threshold’.

Where a police officer cannot form (or no longer forms) the belief on reasonable grounds that the person is at least 14 years old, the police officer must turn their mind to the immediate situation and apply the ‘seriousness threshold’. The police officer must form the reasonable belief that the person is at risk of engaging in, or has engaged in, any of the following conduct:

- harm to themselves or someone else;
- serious damage to property or the environment or cruelty to an animal; or
- any other serious or destructive behaviour.

Further, police can use the power to stop, search, or detain if the exercise of the power is required to ensure the safety of the child.

This ‘seriousness threshold’ is adopted from section 501Q of the *Children and Young People Act 2008*. In that Act, this threshold was used as the test to refer children and young people to the Therapeutic Support Panel. It was developed as a legislative statement of the circumstances in which State intervention was considered appropriate. It is necessarily broad in scope in order to accommodate the wide range of factors that might arise. For example, ‘serious damage’ might depend upon the nature of the damage, the location of the damage, and the significance of the damage. Damage to, for example, the War Memorial might be considered more serious than the same amount of damage done to a rubbish bin or underside of a bridge.

The term ‘harm’ is defined in the *Criminal Code 2002* as:

> (a) physical harm to a person, including unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that a person might reasonably object to in the circumstances (whether or not the person was aware of it at the time); and
>
> (b) harm to a person’s mental health, including psychological harm, but not including mere ordinary emotional reactions (for example, distress, grief, fear or anger);
>
> whether temporary or permanent, but does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

The term is used extensively throughout the *Crimes Act 1900* and *Criminal Code 2002*. It is the broadest definition of harm before ‘serious harm’ (defined in the *Criminal Code 2002* and used in the *Crimes Act 1900*), actual bodily harm (see sections 23 and 24 of the *Crimes Act 1900*, for example), and grievous bodily harm (see sections 13 and 19 of the *Crimes Act 1900*, for example).

Serious damage to property is already a standard used by the *Crimes Act 1900* and *Criminal Code 2002*. It is used in the *Crimes Act 1900* specifically with reference to children and young people. For example, a police officer’s powers to interview a child or young person under section 252H of the *Crimes Act 1900* depends upon, *inter alia*, the police officer’s belief on reasonable grounds that it is necessary to interview the child or young person without delay to avoid a risk of death or serious injury of a person or serious damage to property.

Serious damage to the environment is intended to capture those activities where the damage might not strictly be to property. For example, activities that involve setting fires, threaten native wildlife, or ‘trail biking’ along nature walks might, depending upon the specific circumstances, constitute serious damage to the environment.

Cruelty to an animal is intended to capture those activities where the conduct does not result in harm to a person or serious damage to the environment, but has a strong negative effect on the well-being of an animal. As defined by section 6A of the *Animal Welfare Act 1992*, cruelty in relation to an animal, includes the following:

- doing, or not doing, something to an animal that causes, or is likely to cause, injury, pain, stress or death to the animal that is unjustifiable, unnecessary or unreasonable in the circumstances;
- abusing, terrifying or tormenting the animal.

‘Any other serious or destructive behaviour’ is intended to capture those activities which fail to be covered by the other categories. For example, creating an obstacle on a roadway is serious, but it might not be obvious that the obstacle would cause

harm to a person or serious damage to property. Serious behaviour might also, in context, involve shouting racist obscenities, even though the likelihood of harm might be difficult for a police officer to determine.

For the avoidance of doubt, committing an offence where the maximum penalty includes a term of imprisonment is defined as a serious behaviour. This includes activities like theft.

The ‘seriousness threshold’ does not apply where the police officer is using their power to stop, search, or detain where the exercise of the power is required to ensure the safety of the person. This situation might arise if there is an environmental hazard, natural disaster, or other emergency and the person under 14 is unaccompanied.

Having met the seriousness threshold, the police officer must turn their mind to other limitations on the use of their powers. These include the common law requirement that the power being used is necessary and appropriate. There are also requirements related to young people that continue to apply; for example, there is a requirement in section 252I that if a person is detained and the person is not yet an adult, the police officer must promptly take all reasonable steps to inform the parent of the person, or the person who has daily care responsibility, or long-term care responsibility, for the person. These requirements continue to apply.

In addition to other limitations on the detention power, section 252AC(2) makes it clear that the detention must not be longer than is necessary and reasonable to satisfy the purpose of the detention.

Section 252AD provides an exception to the consideration of the ‘seriousness threshold’. In circumstances where a police officer is investigating an offence committed (or suspected of being committed) by another person. There is no additional requirement to meet the ‘seriousness threshold’ if the police officer believes on reasonable grounds that the person under 14 years old possesses evidence relevant to the investigation. If the person being investigated is under 14 years old, the police officer must necessarily have met the ‘seriousness threshold’ in relation to that person in order to conduct the investigation.

This provision is designed to avoid creating a legislative incentive for people to hide evidentiary material on children. Simply being in possession of evidentiary material might not meet the ‘seriousness threshold’.

Further, where police are investigating offences, this is likely to result in charges being laid and judicial oversight of the police conduct. That oversight justifies not using the ‘seriousness threshold’ in the interaction with the person under 14 years old.

Section 252AE codifies an existing power of police officers to ensure the safety of a person by transporting them to a safe location. This is a discretionary power as

ongoing contact between the police officer and the person under 14 years old might not be appropriate or reasonable. The police officer may take the person under 14 years old to a parent of the person or somebody who has daily care responsibility or long-term care responsibility for the person. If the parent or another carer is not practicable or appropriate, the police officer may take the person to another appropriate person or agency. If the police officer takes the person to another appropriate person or agency, the police officer must notify the Aboriginal and Torres Strait Islander Children and Young People Commissioner or the Public Advocate. The information requirements listed in section 252AE(3) are to support the Commissioner or the Public Advocate to provide additional support to the young person, and to support them to fulfil their functions. This provides for greater oversight and allows for additional supports to be provided if needed. Failure to provide the notification is not intended to invalidate the police officer's action, as stipulated at section 252AE(4).

Clause 12 Record of youth offence particulars not to be disclosed in court proceedings
Section 442A (2), definition of *youth offence*

This clause is a technical change to the *Crimes Act 1900* to ensure that youth offence particulars relating to conduct in the ACT is treated the same way as youth offence particulars relating to conduct outside of the Territory. This ensures greater equality in the application of the law (especially to those who live in 'border communities'), and consistently applies the policy purpose of raising MACR.

Clause 13 Dictionary, note

This clause is a consequential amendment to facilitate new section 252AE.

Clause 14 Dictionary, new definitions

This clause is a consequential amendment to facilitate new section 252AE.

Part 3

Clause 15 Meaning of *youth sexual offence conviction*—pt 2
Section 14A, definition of *youth sexual offence conviction*, paragraph (a)

This clause is a technical amendment to correct an error introduced by the *Justice (Age of Criminal Responsibility) Legislation Act 2023*. This amendment ensures that the option to apply for a spent conviction for a youth sexual offence applies only to those who were not dealt with as an adult when convicted.

Clause 16 Consequences of conviction becoming extinguished Section 19H (4)

This clause is a technical amendment to ensure that relevant information about extinguished convictions are treated the same way for people applying for a Working with Vulnerable People (WWVP) check in the ACT as for people applying for a WWVP check outside of the ACT. This is important for those who live in 'border communities' to ensure there is no disadvantage to applying within the ACT or outside of the ACT.