



## **Legislative Assembly for the Australian Capital Territory**

Standing Committee on Justice and  
Community Safety

# **Inquiry into the Crimes Legislation Amendment Bill 2023**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Justice and Community Safety

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Approved for publication

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Report 23  
10th Assembly  
March 2024



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

## Secretariat

Ms Kathleen de Kleuver, Committee Secretary

Ms Alicia Coupland, Assistant Secretary

Mr Peter Materne, Assistant Secretary (until 23 November 2023)

Ms Erin Dinneen, Assistant Secretary

Mr Satyen Sharma, Administrative Officer

## Contact us

**Mail** Standing Committee on Justice and Community Safety  
Legislative Assembly for the Australian Capital Territory  
GPO Box 1020  
CANBERRA ACT 2601

**Phone** (02) 6207 0524

**Email** [LACommitteeJCS@parliament.act.gov.au](mailto:LACommitteeJCS@parliament.act.gov.au)

**Website** [parliament.act.gov.au/parliamentary-business/in-committees](http://parliament.act.gov.au/parliamentary-business/in-committees)



## About this inquiry

The Crimes Legislation Amendment Bill 2023 was presented in the Assembly on 26 October 2023. It was then referred to the Standing Committee on Justice and Community Safety as required by clause 5 of the establishing resolution.

The committee decided to inquire into the Bill on 8 November 2023. On 28 November 2023 the Assembly agreed to a motion allowing the Committee to report on this inquiry by 14 March 2024.

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## Acronyms and abbreviations

Acronym or abbreviation	Long form
ACT	Australian Capital Territory
AFI	Advocacy for Inclusion
AFPA	Australian Federal Police Association
the Bill	Crimes Legislation Amendment Bill 2022
the Committee	Standing Committee on Justice and Community Safety
HRA	<i>Human Rights Act 2004</i>
MLA	Member of the Legislative Assembly
the Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

# Recommendations

## Recommendation 1

The Committee recommends that the Assembly pass the Crimes Legislation Amendment Bill 2023.



# 1. Introduction

## Conduct of the inquiry

- 1.1. The Committee received four submissions. These are listed in **Appendix A**.

## Background to the Bill

- 1.2. The Crimes Legislation Amendment Bill 2023 (the Bill) has been identified as 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 their compatibility with the Human Rights Act 2004.
- 1.3. The Bill was introduced in the Assembly on 26 October 2023 by Mr Shane Rattenbury MLA, Attorney-General. The Bill is an omnibus bill which amends criminal law legislation. In his opening statement, Mr Rattenbury stated that the Bill would ‘improve the operation of the criminal justice system in the ACT’.<sup>1</sup>
- 1.4. One amendment provided for in the Bill is the introduction of a criminal offence for juror misconduct. As noted in Mr Rattenbury’s opening statement, this issue was identified by the Chief Justice as a gap in the current ACT legal provisions after a recent instance of juror misconduct.<sup>2</sup> The introduction of a criminal offence for this behaviour is intended to rectify this gap in the legislation and to impress upon the community the importance of a juror’s obligations.<sup>3</sup>
- 1.5. Another significant amendment introduced by the Bill would allow majority verdicts, whereby 11 of 12 jurors could agree upon a verdict, rather than all 12. This amendment would allow majority verdicts for all territory offences without exception. The intention of this amendment is to reduce the number of hung juries, which were described by Mr Rattenbury as causing delays and ‘increased costs and emotional strain for accused persons, victims and other witnesses’.<sup>4</sup> The introduction of majority verdicts would also bring the ACT in line with other Australian jurisdictions, which have all adopted a system for such verdicts.<sup>5</sup>
- 1.6. According to the Explanatory Statement and Human Rights Compatibility Statement, the Bill makes amendments to the following Acts:
- a) *‘Bail Act 1992* to address an anomaly in timeframes in relation to the period for which a bail decision is stayed when an application is made for a review of bail;
  - b) *Confiscation of Criminal Assets Act 2003* to require a statutory review of the unexplained wealth scheme three years after the 2022 Review;

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<sup>1</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October, p 3437.

<sup>2</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October, p 3437.

<sup>3</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October, p 3437.

<sup>4</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October, p 3438.

<sup>5</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October, p 3438.

- c) *Crimes (Sentencing) Act 2005* to allow a non-parole period to be set for offences committed in custody.
- d) *Crimes (Sentencing) Act 2005* to clarify that the court may impose a fine in addition to, or instead of, any other sentence;
- e) *Crimes Act 1900* to remove the element requiring the prosecution to prove that damage to property does not exceed \$5000 in the minor property damage offence;
- f) *Juries Act 1967* to introduce an offence for juror misconduct;
- g) *Juries Act 1967* to introduce a model for majority verdicts by juries; and
- h) *Magistrates Court Act 1930* to improve enforceability of infringement notice offences;
- i) *Victims of Crime Act 1994* and *Crimes (Sentencing) Regulation 2006* to update relevant references to the new title of Domestic, Family and Sexual Violence Coordinator-General;<sup>6</sup>

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<sup>6</sup> Crimes Legislation Amendment Bill 2023, *Explanatory Statement and Human Rights Compatibility Statement*, p 2.

## 2. Legislative Scrutiny

- 2.1. The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Scrutiny Committee) considered the Bill in its *Scrutiny Report 37* of 21 November 2023.
- 2.2. The report raised a concern regarding the amendment to the Juries Act which would create a criminal offence of improper inquiry by a juror. As this amendment provides for a period of imprisonment, the Bill may limit the right to liberty in section 18 of the *Human Rights Act 2004* (HRA). The Scrutiny Committee suggested that by placing the evidential burden on the defendant to establish whether the inquiry was authorised by the court, the Bill could limit the presumption of innocence protected as a right in criminal proceedings in section 22 of the HRA.<sup>7</sup>
- 2.3. Additionally, the Scrutiny Committee suggested that by providing for a majority, rather than a unanimous, verdict, the Bill may limit the right to fair trial in section 21 of the HRA.<sup>8</sup>
- 2.4. The Scrutiny Committee drew this matter to the attention of the Assembly but did not require a response from the Minister.

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<sup>7</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), *Scrutiny Report 37*, 21 November 2023, p 2.

<sup>8</sup> Standing Committee on Justice and Community Safety Committee (Legislative Scrutiny role), *Scrutiny Report 37*, 21 November 2023, p 2.

### 3. Issues raised in evidence

#### Juries Act 1967

##### Majority verdicts

- 3.1. Currently in the ACT, jurors are used in cases where a person is accused of a serious crime and the trial is being heard in the Supreme Court. A jury is made up of 12 people, who must reach a unanimous verdict of acquittal or conviction.<sup>9</sup> The Bill seeks to change this to allow for majority verdicts, where 11 out of 12 jurors agree.
- 3.2. The Victims of Crime Commissioner supported the proposed changes to allow for majority verdicts, arguing that this could result in fewer hung juries and therefore fewer retrials which are resource intensive for the courts as well as for victims, survivors, and witnesses.<sup>10</sup>
- 3.3. The Commissioner also suggested that introducing majority verdicts could reduce the risk of ‘lone jurors’ refusing to come to a compromise with the other jurors due to their own preconceived notions about the verdict.<sup>11</sup>
- 3.4. Conversely, the ACT Law Society believed that the current model of unanimous verdicts should remain.<sup>12</sup> However, they did praise the inclusion of the following safeguards:
  - a) The definition of *majority verdict* is 11 out of 12 jurors.
  - b) Proposed subsection 38(2) which would require that the judge is satisfied that:
    - i) a period of at least six hours has passed for the jury to deliberate on the verdict.
    - ii) after examination of one or more jurors under oath, that the jury is not likely to reach a unanimous decision.<sup>13</sup>
- 3.5. ACT Law Society also suggested that juries should be given the direction to persevere in their attempt to meet a unanimous verdict before a judge is satisfied that the preconditions in section 38(2) are met.<sup>14</sup>
- 3.6. Additionally, they recommended that the Committee consider whether majority verdicts should not be allowed in court cases where the criminal offence carries a maximum penalty of life imprisonment. They noted that this would be in line with other jurisdictions, such as Queensland, where majority verdicts cannot be used in relation to murder; or Victoria, where they cannot be used in cases of murder, drug trafficking or treason.<sup>15</sup>

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<sup>9</sup> ACT Supreme Court, *Jurors*, <https://www.courts.act.gov.au/supreme/coming-to-court/jurors> (accessed on 28 November 2023).

<sup>10</sup> Victims of Crime Commissioner, *Submission 003*, pp 3–4.

<sup>11</sup> Victims of Crime Commissioner, *Submission 003*, p 4.

<sup>12</sup> ACT Law Society, *Submission 004*, p 2.

<sup>13</sup> ACT Law Society, *Submission 004*, p 2.

<sup>14</sup> ACT Law Society, *Submission 004*, p 2.

<sup>15</sup> ACT Law Society, *Submission 004*, p 3.

## Improper inquiry by a juror

- 3.7. Currently, the ACT Supreme Court's *Jury Handbook* states that jurors must not make any inquiries, or conduct any of their own research, in relation to a trial. Jurors are also encouraged to minimise their social media use.<sup>16</sup>
- 3.8. Section 42BA of the Bill would make it a criminal offence for a juror to make an unauthorised inquiry for the purpose of obtaining information about any matter relating to a trial. This would bring the ACT in line with New South Wales which makes it a criminal offence for a juror to make their own inquiries regarding the trial or the accused.<sup>17</sup>
- 3.9. In their submission, the Australian Federal Police Association (AFPA) strongly supported the insertion of Section 42BA into the *Juries Act 1967*, arguing that because trials are expensive, it is important to keep jurors accountable. They pointed out that the ACT currently has no criminal offences in place for a juror causing a mistrial, and that this would be addressed by section 42BA.<sup>18</sup>
- 3.10. In addition to the maximum penalty of two years imprisonment, AFPA indicated they would be supportive of introducing a financial penalty.<sup>19</sup>

## Crimes (Sentencing) Act 2005

### Non-parole periods for offences committed in custody

- 3.11. Under paragraph 64(2)(e) of the *Crimes (Sentencing) Act 2005*, a sentence of imprisonment imposed for an offence committed while in custody is excluded from provisions allowing the court to set non-parole periods. Section 72 of the Act requires that such a sentence must be served consecutively (that is, immediately following and additional to the current term of custody).<sup>20</sup>
- 3.12. The Bill would repeal this paragraph of the Act. This change would allow the court to set a non-parole period for a sentence imposed for an offence committed in custody, giving the court discretion to consider individual circumstances. This could allow more opportunities for parole.<sup>21</sup>
- 3.13. Advocacy for Inclusion (AI) were supportive of this change, drawing attention to the perceived behaviour of people with disabilities. They suggested that inadequate support for people with disabilities could increase cycles of offending and reincarceration. They also noted that behaviours associated with disability or undiagnosed health conditions may be

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<sup>16</sup> ACT Supreme Court, [Jury Handbook](#), 18 July 2023, p 13.

<sup>17</sup> *Jury Act 1977* (NSW), s 68C.

<sup>18</sup> AFPA, *Submission 001*, p 5.

<sup>19</sup> AFPA, *Submission 001*, p 5.

<sup>20</sup> *Crimes (Sentencing) Act 2005*, para 64(2)(e) and s 72.

<sup>21</sup> Crimes Legislation Amendment Bill 2023, *Explanatory Statement and Human Rights Compatibility Statement*, p 13.

interpreted as offending behaviour. Therefore, they believed that this amendment would be a welcome step for people with disabilities serving custodial sentences.<sup>22</sup>

## Magistrates Act 1930

### Infringement notice offences

- 3.14. Several changes to the *Magistrates Act 1930* are proposed by the Bill with the aim of improving the enforceability of infringement notice offences. These changes include making it easier for people to apply for an extension of time to pay a penalty, extending the time to begin a prosecution for an infringement notice offence, and clarifying powers and processes regarding infringement notice management plans.<sup>23</sup>
- 3.15. For example, the amendment clarifies that if a person is on an infringement notice management plan, they would still be liable for prosecution if they do not comply with the plan.<sup>24</sup>
- 3.16. Additionally, if a plan is cancelled, time limits on prosecuting the offence would extend by one year. In his presentation speech, the Attorney General explained that there are many reasons why it might be the best option to cancel an infringement notice management plan:

For example, they might wish to pay the penalty through an approved community work or societal development program instead of continuing with paying the penalty in instalments. The person's hardship might have become so excessive that waiving the penalty might be appropriate now even though it was not appropriate when the infringement notice management plan was originally agreed.<sup>25</sup>

- 3.17. In their submission, AFI indicated their support for allowing individuals to have additional time to pay penalties for a wide range of reasons. They also welcomed extending the time to begin a prosecution and offering alternate pathways to paying penalties and the discretionary waiving of penalties. They noted that people with disabilities are usually imprisoned in the lowest categories of offences, such as non-violent or traffic offences, and hoped that the courts would be encouraged to show discretion when assessing alternative pathways for people with disabilities.<sup>26</sup>

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<sup>22</sup> Advocacy for Inclusion, *Submission 002*, p 2.

<sup>23</sup> Crimes Legislation Amendment Bill 2023, *Explanatory Statement and Human Rights Compatibility Statement*, pp 17-18.

<sup>24</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October 2023, p 3439.

<sup>25</sup> Mr Shane Rattenbury MLA, Attorney-General, *Hansard*, 26 October 2023, p 3439.

<sup>26</sup> Advocacy for Inclusion, *Submission 002*, p 3.

## 4. Conclusion

- 4.1. The Committee makes one recommendation in relation to the Crimes Legislation Amendment Bill 2023.

### Recommendation 1

The Committee recommends that the Assembly pass the Crimes Legislation Amendment Bill 2023.

- 4.2. The Committee wishes to extend its appreciation to all those who made a submission to this inquiry for their valuable contributions in assisting and informing the Committee's deliberations.

Peter Cain MLA

March 2024

## Appendix A: Submissions

No.	Submission by	Received	Published
1	Australian Federal Police Association	28/11/2023	06/12/23
2	Advocacy for Inclusion	29/11/2023	06/12/23
3	Victims of Crime Commissioner	29/11/2023	06/12/23
4	ACT Law Society	30/11/2023	06/12/23