

Serial 65
Criminal Code Amendment (Age of Criminal Responsibility) Bill 2022
Mr Paech

A Bill for an Act to amend the Criminal Code and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE AMENDMENT (AGE OF CRIMINAL RESPONSIBILITY)
ACT 2022

Act No. [] of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the Criminal Code and for related purposes

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 7 October 2024, it commences on that day.

Part 2 Amendment of Criminal Code

3 Act amended

This Part amends the Criminal Code.

4 Section 38 replaced

Section 38

repeal, insert

38 Child under 12 years of age

A child under 12 years of age is not criminally responsible for an offence.

38A Child 12 or 13 years of age

- (1) A child aged 12 or 13 years can only be criminally responsible for an offence if the child knows that the child's conduct is wrong.
- (2) The question whether a child knows that the child's conduct is wrong is one of fact.
- (3) The burden of proving that a child knows that the child's conduct is wrong is on the prosecution.

Note for section 38A

This section and section 43AQ are the same and intended to cover both acts and omissions.

5 Sections 43AP and 43AQ replaced

Sections 43AP and 43AQ

repeal, insert

43AP Child under 12 years of age

A child under 12 years of age is not criminally responsible for an offence.

43AQ Child 12 or 13 years of age

- (1) A child aged 12 or 13 years can only be criminally responsible for an offence if the child knows that the child's conduct is wrong.
- (2) The question whether a child knows that the child's conduct is wrong is one of fact.
- (3) The burden of proving that a child knows that the child's conduct is wrong is on the prosecution.

6 Part XI, Division 17, inserted

After section 463

insert

Division 17 Criminal Code Amendment (Age of Criminal Responsibility) Act 2022**464 Definitions**

charge includes the following:

- (a) a charge on an arrest;
- (b) a complaint under an Act;
- (c) a charge by a court;
- (d) an indictment.

commencement means the commencement of section 3 of the *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022*.

conviction means, in respect of an offence, a finding of guilt, or the acceptance of a plea of guilty, by a court, judge, magistrate or person who exercised the jurisdiction of a court, whether or not a conviction is recorded.

criminal process, in relation to a person for an offence committed or alleged to have been committed by the person, includes the following:

- (a) an investigation of the person;
- (b) the issue of a warrant for the arrest of the person or for a search in relation to the person;
- (c) the arrest of the person;
- (d) a charge against the person;
- (e) a trial of the person;
- (f) an appeal in relation to the trial or conviction of the person.

record means recorded information in any form (including data in a computer system) that is required to be kept by the following persons or bodies as evidence of the activities or operations of the

person or body, or its predecessor, and includes part of a record and a copy of a record:

- (a) the Police Force;
- (b) the Director of Public Prosecutions;
- (c) a court;
- (d) the archives service established to perform the archives functions for the Territory under the *Information Act 2002*.

465 Application of sections 38 and 43AP

- (1) Sections 38 and 43AP, as in force immediately after the commencement, apply in relation to offences committed after the commencement.
- (2) Sections 38(1) and 43AP, as in force immediately before the commencement, apply in relation to offences committed before the commencement.

466 Cessation of proceedings

- (1) This section applies in relation to any offence committed or alleged to have been committed by a child under 12 years of age, including offences committed before the commencement.
- (2) No criminal process may be started in relation to the offence.
- (3) Any criminal process in relation to the offence is discontinued.
- (4) The child is discharged from any ongoing order or obligation in relation to the offence.
- (5) All conditions imposed under section 27 of the *Bail Act 1982* in relation to the offence are discontinued.
- (6) To avoid doubt, this section does not apply in relation to a person 12 years of age or older who committed or is alleged to have committed an offence with a child under 12 years of age.

467 Release of child

- (1) Subject to subsection (2), any child in police custody, in detention or serving a sentence for an offence referred to in section 466(1) must be released as soon as practicable.

- (2) A child in police custody, in detention or serving a sentence for another offence is not to be released under subsection (1) if the other offence was committed or alleged to have been committed when the child was 12 years of age or older.
- (3) Reasonable steps must be taken to ensure the safe release of a child under subsection (1).

468 Expungement of charge or conviction

- (1) Any charge or conviction against a person for an offence committed or alleged to have been committed when the person was under 12 years of age is expunged.
- (2) Subject to sections 469 and 470, a person whose charge or conviction is expunged under this section is to be treated in law as if the person had never committed or been charged with, prosecuted for, convicted of or sentenced for the offence, as the case may be.
- (3) A reference in an agreement, an arrangement, any other Act or a statutory instrument to a charge or conviction is taken not to include one expunged under this section.
- (4) If a person's charge or conviction is expunged under this section:
 - (a) it is lawful for the person to claim, on oath or otherwise, including in a proceeding before any court, tribunal or entity, that the person was not charged with or convicted of the offence; and
 - (b) evidence is not admissible in a proceeding before any court, tribunal or entity to prove the person was charged with or convicted of the offence; and
 - (c) the person's criminal history no longer includes the charge or conviction; and
 - (d) the person is not required to disclose information about the charge or conviction; and
 - (e) a reference to the person's character, however expressed, does not require or allow anyone to take the charge or conviction into account; and

- (f) the charge or conviction, or non-disclosure of the charge or conviction, is not a ground for discriminating against, prejudicing or engaging in adverse conduct against the person in any way, including in respect of the following matters:
 - (i) any appointment, employment, exclusion or dismissal in respect of an office, profession, occupation or employment;
 - (ii) any grant, issuance, suspension, refusal or revocation of an approval, authorisation, licence, permit or registration; and
 - (g) the person may, without waiting any minimum period, reapply for any approval, authorisation, licence, permit or registration refused or revoked because of the charge or conviction before it was expunged.
- (5) Subsection (4) applies in respect of an indirect reference to an expunged charge or conviction, including a reference to any of the following that may have occurred in relation to the expunged charge or conviction:
- (a) an arrest;
 - (b) an investigation or prosecution;
 - (c) an appearance in court;
 - (d) a penalty, sentence or incarceration.
- (6) This section has effect despite any other law to the contrary, including:
- (a) sections 77(4), 79(3) and 135(3) of the *Health Practitioner Regulation National Law (NT)*; and
 - (b) the *Criminal Records (Spent Convictions) Act 1992*; and
 - (c) any other law that allows or requires the disclosure of information relating to a charge, conviction, criminal record or criminal history.
- (7) The archives service established under the *Information Act 2002* must not disclose to the public a record of a charge or conviction expunged under this section unless it first:
- (a) takes all reasonable steps to change the record to show that the charge or conviction is expunged; and

- (b) includes a warning in the record that it is an offence to disclose a charge or conviction that is expunged.
- (8) Any holder of a record of a charge or conviction expunged under this section, other than the archives service, must within a reasonable period of time:
 - (a) take all reasonable steps to change the record to show that the charge or conviction is expunged; and
 - (b) include a warning in the record that it is an offence to disclose a charge or conviction that is expunged.
- (9) The expungement of a charge or conviction from records under subsections (7) and (8) does not authorise the destruction of any information or document.

469 No entitlement to compensation or damages

No person is entitled to compensation or damages of any kind by reason that:

- (a) the person was charged with, or prosecuted for, an offence committed or alleged to have been committed when the person was under 12 years of age; or
- (b) the person was found guilty of, convicted of or sentenced for an offence committed or alleged to have been committed when the person was under 12 years of age; or
- (c) the person served a sentence for an offence committed or alleged to have been committed when the person was under 12 years of age; or
- (d) the person was required to pay a fine, costs, restitution, compensation or other money on account of being convicted of, or sentenced for, an offence committed or alleged to have been committed when the person was under 12 years of age; or
- (e) the person has a charge or conviction expunged under section 468; or
- (f) a charge or conviction is expunged under section 468; or
- (g) the person incurred any loss, or suffered any consequence, as a result of an event mentioned in paragraph (a), (b), (c), (d), (e) or (f).

470 Prior lawful acts not affected

Nothing in this Division affects anything lawfully done before a charge or conviction is expunged under section 468.

471 Application of sections 38A and 43AQ

- (1) Sections 38A and 43AQ, as in force immediately after the commencement, apply in relation to:
 - (a) offences committed before the commencement but for which a trial or hearing to determine guilt had not begun before the commencement; and
 - (b) offences committed after the commencement.
- (2) Sections 38(2) and 43AQ, as in force immediately before the commencement, apply in relation to offences committed before the commencement for which a trial or hearing to determine guilt had begun before the commencement.

472 Unlawful disclosure

- (1) A person commits an offence if:
 - (a) the person has access to a record of a charge or conviction; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the disclosure of information about a charge or conviction expunged under section 468 and the person is reckless in relation to that result.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) Strict liability applies to subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if:
 - (a) the disclosure is authorised or required under this Division; or
 - (b) the disclosure is necessary for the performance of a function or the exercise of a power under this Division; or
 - (c) the disclosure is made with the written consent of the person whose charge or conviction was expunged; or

- (d) the information was made available by an archive or library, or an authorised officer of an archive or library, in a form normally available for public use and in accordance with the normal procedures of the archive or library; or
- (e) the disclosure is for statistical or research purposes in a form that cannot identify the person whose charge or conviction was expunged.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

473 Immunity from civil and criminal liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith when acting, or purportedly acting, in the exercise of a power or performance of a function by the person under this Division.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

Part 3 Consequential amendments

Division 1 Anti-Discrimination Act 1992

7 Act amended

This Division amends the *Anti-Discrimination Act 1992*.

8 Section 4 amended (Interpretation)

Section 4(1), definition *irrelevant criminal record*, after paragraph (ab)

insert

- (ac) a record expunged under Part XI, Division 17, of the Criminal Code; or

Division 2 Care and Protection of Children Act 2007

9 Act amended

This Division amends the *Care and Protection of Children Act 2007*.

10 Section 190 amended (Provision of information)

Section 190(3), after "2018"

insert

or Part XI, Division 17, of the Criminal Code:

Division 3 Juries Act 1962

11 Act amended

This Division amends the *Juries Act 1962*.

12 Section 10 amended (Persons not qualified)

Section 10(2A), after "2018"

insert

or Part XI, Division 17, of the Criminal Code:

Division 4 Legal Profession Act 2006

13 Act amended

This Division amends the *Legal Profession Act 2006*.

14 Section 11 amended (Suitability matters)

section 11(3), after "2018"

insert

or Part XI, Division 17, of the Criminal Code

Division 5 Youth Justice Act 2005

15 Act amended

This Division amends the *Youth Justice Act 2005*.

16 Section 181 amended (Definitions)

Section 181(1), definition *interstate detainee*

omit

10

insert

12

Part 4 Repeal of Act

17 Repeal of Act

This Act is repealed on the day after it commences.