

# Explanatory Memorandum

## CRIMINAL INVESTIGATION AMENDMENT (VALIDATION) BILL 2023

The Criminal Investigation Amendment (Validation) Bill 2023 (the Bill) will address impacts on the power of arrest provisions in section 128 of the *Criminal Investigation Act 2006* (CIA) arising from amendments to section 61 of the *Restraining Orders Act 1997* (Restraining Orders Act) that commenced on 7 April 2020.

The Bill will amend the definition of *serious offence* under section 128(1) of the CIA to include the offence of breaching a violence restraining order under section 61(1A) of the Restraining Orders Act. The Bill will ensure that the amended definition of *serious offence* will have retrospective application from 7 April 2020.

The Bill provides as follows:

### **Clause 1**      **Short title**

Clause 1 provides that, when the Bill receives the Royal Assent, it will be known as the *Criminal Investigation Amendment (Validation) Act 2023* (the Act).

### **Clause 2**      **Commencement**

Clause 2 provides that the Act, other than clause 4, will come into operation on the day that it receives the Royal Assent, and clause 4 will come into operation on the day after that day.

Clause 4 amends the definition of *serious offence*. The other provisions of the Bill include clause 5, which is concerned with retrospectively validating acts done during the validation period, being the period beginning on 7 April 2020 and ending on the day the Act receives the Royal Assent.

Under clause 2 and clause 5, the validation period will end on the day before the new definition of *serious offence* commences.

### **Clause 3**      **Act amended**

Clause 3 provides that the Act amends the CIA.

### **Clause 4**      **Section 128 amended**

Section 128 of the CIA provides that a police officer or public officer may arrest a person, without warrant, in certain circumstances. Section 128(1) defines the term *serious offence* for the purposes of the section. Section 128(2) provides that a police officer or public officer may arrest a person if the officer reasonably suspects that the person has committed, is committing, or is just about to commit, a serious offence.

Clause 4 amends the definition of *serious offence* in section 128(1) to include an offence under section 61(1A) of the Restraining Orders Act, being the offence of breaching a violence restraining order.

## **Clause 5     Part 15 inserted**

Clause 5 inserts Part 15 into the CIA.

### **Part 15 – Validation**

#### **Section 158 Validation relating to definition of *serious offence* in section 128(1)**

Proposed section 158 is aimed at restoring the position that would have been applicable if the definition of *serious offence* in section 128(1) of the CIA had been as set out in clause 4 during the validation period.

Proposed subsection 158(1) defines *validation period* as the period beginning on 7 April 2020 and ending on the day on which clause 5 comes into operation (i.e. the day the Act receives the Royal Assent).

Proposed subsection 158(2) sets out the primary validation provision for the Act. It provides that at all times during the validation period, the definition of *serious offence* in section 128(1) of the Act is taken to have included an offence under section 61(1A) of the Restraining Orders Act. This overrides the definition that was in place at the time, which included offences under sections 61(1) and 61(2a) of the Restraining Orders Act, but not section 61(1A).

Proposed subsection 158(3) explains how certain subsections within proposed section 158 interrelate. It clarifies that subsections (4), (5), (6), (8) and (9) supplement, and do not limit, the effect of subsection (2) or each other.

Proposed subsection 158(4) supplements subsection (2). It provides that a written law in force at any time on or after 7 April 2020 is taken to have, or have had, the same effect at that time as if the definition of *serious offence* in section 128(1), as amended by subsection (2), had been in place during the validation period.

Proposed subsection 158(5) supplements subsection (2). It ratifies anything done, or purportedly done, on or after 7 April 2020 as lawful, valid and effective as it would be, or would have been, if the definition in subsection (2) had been in place during the validation period.

Proposed subsection 158(6) supplements subsection (2). It provides that subsection (5) applies, for example, to the exercise, or purported exercise, during the validation period, of the power to arrest a person under section 128 or another power that may be exercised under any written law in relation to a person arrested under section 128.

Proposed subsection 158(7) clarifies that a reference in subsection (5) to the doing of anything includes a reference to an omission to do anything.

Proposed subsection 158(8) supplements subsection (2). It provides that the functions, rights and liabilities of all persons and bodies, and the State, are taken to be, and have always been, the same as if the definition in subsection (2) had been in place during the validation period.

Proposed subsection 158(9) supplements subsection (2). It is aimed at overriding section 11 of *The Criminal Code* in relation to the status of offences but also extends to other contraventions of written laws.

In subsections (4), (5), (6) and (9), the words “on or after 7 April 2020” are used rather than “during the validation period”. The intent is to cover anything occurring after the validation period; for example, an investigation in respect to items seized from an arrested person that is conducted after the validation period following the arrest of that person during the validation period.

Proposed subsection 158(10) expressly overrides section 6 of the CIA, which concerns the impact of the CIA on the operation of other written laws, as well as section 11 of *The Criminal Code*.