

Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023

Statement of Compatibility

For

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Community Safety

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Mark Ryan, Minister for Police and Community Safety make this statement of compatibility with respect to the amendments during consideration in detail (ACiD) of the Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023 (the Bill).

In my opinion, the amendments are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The Bill was introduced on 29 November 2023 and contained a number of legislative measures to advance essential reforms designed to promote community safety, reduce youth offending and minimise the risks associated with knives and other dangerous items.

The ACiD will amend the Bill to support the initiatives relevant to the minimisation and detection of knife related crime and other weapons related offences.

Modifying the application of the Anti-Discrimination Act 1991

The new section 19J of the *Summary Offences Act 2005* (SO Act) as inserted by clause 6 of the Bill provides that for the purposes of section 46 (Discrimination in goods and services area) of the *Anti-Discrimination Act 1991* (AD Act), a person is not taken to discriminate against another person merely because the seller refused to sell a controlled item because of their obligations under sections 19G(1) or 19I(2), which prohibit the sale of controlled items to minors.

As the new offences under sections 19G and 19I commence on a date to be fixed by proclamation alongside the associated section 19J, the new transitional provision will restrict the application of section 46 of the AD Act in relation to the sale of controlled items to minors from the date of Assent of the Bill. This amendment will provide retailers with flexibility in

implementing restrictions on the sale of controlled items to minors prior to the commencement of the relevant offences in the new section 19G and 19I of the Bill by proclamation.

The amendment is considered necessary, noting retailers may wish to cease selling controlled items to minors in the intervening period between Assent of the Bill and commencement of the new obligations imposed under sections 19G and 19I. In such circumstances, the amendment will provide assurance to retailers that such action will not raise implications under the AD Act. An additional benefit of the ACiD is that it will allow retailers to implement and test procedures in contemplation of the commencement of the offence provisions in the Bill.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Modifying the application of the *Anti-Discrimination Act 1991*

In my opinion, the human right of recognition and equality under section 15 of the HR Act is limited by this ACiD.

If human rights may be subject to limitations if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HR Act)

Modifying the application of the *Anti-Discrimination Act 1991*

a) the nature of the right

The right to recognition and equality before the law in section 15 of the HR Act encompasses the right to recognition as a person before the law and the right to enjoy the person's human rights without discrimination. Section 15(4) provides a right to equal and effective protection against discrimination and entitles every person to a separate and positive right to be effectively protected against discrimination.

This right is reflected in section 46 of the AD Act which seeks to protect a person's right to purchase goods or services without discrimination, and the analogous section 28 of the *Age Discrimination Act 2004* (Cth). This right includes a person's right to purchase goods and not be discriminated against because they are under the age of 18.

b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The amendment restricts the application of section 46 of the AD Act by enabling retailers to restrict the sale of controlled items to minors at an earlier date than already provided for under the new section 19J. The purpose of the limitation is to improve community safety by reducing knife and weapon-related crime committed by young people. To promote early compliance with the policy objectives in the Bill, the ACiD is limited to ensuring that a retailer is not taken to discriminate based on the attribute of age by refusing to sell a controlled item to a minor until commencement of the new section 19J.

c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The restrictions on the sale of knives and other items imposed by the new sections 19G, 19I and 19J of the Bill are designed to reduce the accessibility of these dangerous items to young people and disrupt and deter associated violent offending. The use of knives and other controlled items is significantly detrimental to society.

d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The ACiD is the only way of promoting early compliance with the new sections 19G and 19I of the SO Act in a way that provides assurances to retailers that they will not be taken to discriminate against a minor if they voluntarily elect to refuse to sell a controlled item to a minor.

e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Preservation of the right to liberty is important and any limitation must take a balanced approach. Whilst a limitation on this right is acknowledged, it is considered the approach taken strikes a fair balance between fulfilling the purpose of the limitation and the limitation imposed.

f) any other relevant factors

Nil.

Conclusion

In my opinion, the amendments to the Bill are compatible with human rights under the *Human Rights Act 2019* because they limit a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Mark Ryan MP
Minister for Police and Community Safety