

Crimes (Questioning of Suspects) Bill

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EXPLANATORY MEMORANDUM

- Clause 1 provides that the main purpose of the Bill is to amend the **Crimes Act 1958** so as to make further provision for the questioning and investigation of certain persons who are suspected of having committed an offence.
- Clause 2 sets out the commencement provision for this Bill, which is the day after the day of Royal Assent.
- Clause 3 provides that the **Crimes Act 1958** is called the Principal Act in this Bill.
- Clause 4 sets out the circumstances in which an investigating official can apply for an order to question a person in custody, and sets out the matters a court must have regard to before making such an order. This clause makes various amendments to section 464B of the Principal Act, including removing the requirement that a person must consent to questioning or investigation where the person is held in custody.

Clause 4(1)(b) expands the class of people who may be the subject of an application for questioning or investigation. An application can be made in respect of a person who is in a prison or police gaol (section 464(2) of the Principal Act defines "prison" to include a youth training centre) and in respect of a person who is held in custody because of their connection with the criminal justice system even though they may not be detained in a prison or police gaol.

Clause 4(1)(c) amends section 464B(1)(b) of the Principal Act to provide that an application under sub-section (1) can only be made in respect of a child where that child is reasonably suspected of having committed an indictable offence.

Clause 4(4) inserts several new sub-sections in section 464B of the Principal Act and substitutes existing sub-section (5).

New sub-section (4A) provides that the court must not hear an application under sub-section (1) unless the person who is the subject of the application is present.

New sub-section (4B) sets out the entitlement of a person to legal assistance on the hearing of an application under sub-section (1) and ensures that an order will not be made under this section unless a person has received legal advice or has refused legal advice.

New sub-section (4C) provides that the court can order Victoria Legal Aid to provide legal assistance to a person who is the subject of an application.

New sub-section (5) provides that the court can make an order for the questioning or investigation of a person if the court is satisfied that it is in the interests of justice to do so. It also provides that if the court makes an order it must specify a maximum period in which questioning or investigation is to take place. That period must be reasonable.

New sub-section (5A) provides that the court must have regard to the matters specified in section 464A(4) in determining what constitutes a reasonable period of time in which questioning or investigation is to take place. Further, in the case of a child, the court must have regard to his or her age.

New sub-section (5B) provides that on making an order the court may make any further order that it thinks fit as to the place and the circumstances under which the questioning or investigation may occur but it must not order that the questioning or investigation take place somewhere other than the place at which the person is usually held unless it is not practicable for questioning or investigation to take place there.

New sub-section (5C) provides that the court must not make an order with respect to a person who is mentally impaired unless the court has considered any known likely psychological effect of any questioning on that person and is satisfied on the balance of probabilities that the person is fit to be questioned.

New sub-section (5D) sets out the criteria the court must consider in determining whether a person is fit to be questioned.

New sub-section (5E) provides that, if the subject of an order is mentally impaired, an independent person must be present during any questioning or investigation. Further, the court may make any other order necessary for the well-being of the person.

New sub-section (5F) provides that the court is not required to make an order requiring the presence of an independent person if the person who is the subject of the order applies to the court for that condition not to be included and the court is satisfied that, in all the circumstances, it is appropriate not to include it.

New sub-section (5G) provides that the court must inform a person of their right to silence.

New sub-section (5H), provides that any questioning ordered under sub-section (5) must be video-recorded.

Clause 4(5) makes a consequential amendment to section 464B(6) of the Principal Act.

Clause 4(6) amends section 464B(8) of the Principal Act to remove the requirement of consent in relation to an application for an extension of questioning or investigation.

Clause 4(7) inserts two new sub-sections in section 464B of the Principal Act.

New sub-section (8A) provides that the court must not extend a period of questioning unless satisfied that there is a reasonable prospect that further questioning will assist in determining the involvement of the person in the commission of the offence.

New sub-section (8B) provides that in determining the length of any extension of a period of custody the court must have regard to the matters set out in section 464A(4). Where the person is a child, the court must also have regard to his or her age.

Clause 4(8) makes consequential amendments to section 464B(9) of the Principal Act.

Clause 4(9) inserts a new sub-section (10) in section 464B of the Principal Act. The new sub-section provides that, in relation to a person suspected of having committed an offence, a child means a person who at the time of the suspected commission of the offence was under the age of 17 years but does not include any person who is of or above the age of 18 years at the time of the making of an application in respect of him or her under

section 464B. This is to align the section with the Children's Court's criminal jurisdiction under the **Children and Young Persons Act 1989**.

- Clause 5 amends section 464C(3) of the Principal Act, the effect of which is to provide that a person who is the subject of questioning or investigation has a right to communicate with a friend or relative.
- Clause 6 amends section 464H of the Principal Act to provide that any confessions or admissions obtained pursuant to questioning or investigation under a section 464B order must be video-recorded.
- Clause 7 inserts transitional provisions. The Principal Act as amended is intended to apply in respect of persons suspected of committing offences irrespective of when the offence is alleged to have been committed.
- Clause 8 provides for consequential amendments to the Principal Act and the **Corrections Act 1986**.