

2000

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
(No 4) 2000**

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries MLA
Attorney-General**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL (No 4) 2000

This Bill amends a number of Acts relating to justice and community safety, and for other purposes. It is the fourth bill in a series of amending bills dealing with legislation administered by the Attorney-General and Minister for Justice and Community Safety.

Notes on Clauses

Clause 1 Short Title

This clause explains that when the Bill becomes an Act, it will be known as the Justice and Community Safety Legislation Amendment Act 2000 (No 4). Note that the Bills have been numbered consecutively from the first such bill rather than within a year to preclude confusion between these bills.

Clause 2 Commencement

Amendments of the *Second-hand Dealers and Collectors Act 1906* and the *Sale of Motor Vehicles Act 1977* will commence on a day to be fixed by the Minister. The other amendments commence on notification of the making of this Act in the Gazette.

Clause 3 Acts amended - Schedule 1

This clause amends Acts as set out in Schedule 1.

Clause 4 Regulations amended - Schedule 2

This clause amends Regulations as set out in Schedule 2.

Attachment

Attached is an Overview of Amendments made by Schedules 1 and 2 in the Justice and Community Safety Legislation Amendment Bill 2000 (No 4).

OVERVIEW OF AMENDMENTS

Amendments in Schedule 1

Children and Young People

The amendment inserts a new section after section 61 of the *Children and Young People Act 1999*.

The section is applied to proceedings under the Children and Young People Act or to which that Act applies, and to proceedings under a State or Territory law that relates to the welfare of a child or young person.

The amendment provides that it is an offence to publish an account or report of the proceedings if that publication discloses the identity of the child or young person or a family member or allows the identity of any of those people to be worked out. The penalty is 100 penalty units, 12 months imprisonment, or both.

It also provides that proceedings under the section may only be commenced by, or with the consent of, the Attorney-General or Director of Public Prosecutions.

The amendment is based on, and is intended to have the same effect as, section 170 of the *Children's Services Act 1986*, which was replaced by the Children and Young People Act in May 2000. Section 170 was inadvertently omitted during the drafting of the current Act. It is appropriate to rectify the omission as it is in the public interest to protect children from unnecessary embarrassment and possible stigmatisation. This is consistent with the objects of the Act. The only substantive difference to the old section 170 is the penalty, which has been increased in line with section 51 of the *Magistrates Court Act 1930*, which also deals with restrictions on publication of court proceedings.

In addition, the amendment continues the protection of notifications made before the commencement of the *Children and Young People Act 1999*. Regulation 37 of 2000 (made on 21 September 2000) made provision for such protection (the Regulation expires on 8 December 2000). The amendment replicates the substantive provision of the regulation. While this provision can only apply to actions occurring before the commencement of the *Children and Young People Act 1999*, the provision serves to restore the legal protection that might otherwise be legitimately expected by those who made notifications under section 105 of the *Children's Service Act 1986*.

Crimes

This amendment repeals sections 428 and 470 of the *Crimes Act 1900* and corrects an error in the definition of domestic violence offence.

Section 428 enables a person on trial for an indictable offence to apply for the reservation of a question of law to 'the judges of the Supreme Court'. Once an application is made the Court is bound to so reserve the question of law.

It appears that section 428 is the successor to part of a package of reforms introduced in England to both enable a Court of Quarter Sessions to seek advice from, originally, Judges of Assize and, then, the Court of Kings' Bench and, subsequently, the Court of Crown Cases Reserved. It was, in effect, a method of appeal when no provision for appeal existed in relation to criminal trials.

Section 428 became part of the criminal statute of the ACT, as a result of the incorporation of the Crimes Act 1900 of NSW into Territory law, by the operation of the Seat of Government Acceptance Act 1911 (Cth). However, the following year NSW enacted the Criminal Appeals Act 1912, and repealed the section 428 method of appeal.

Section 428 has, however, remained part of ACT law. This is in spite of the fact that an appeals mechanism from decisions of the ACT Supreme Court to the Federal Court has been available since 1976. The appellate jurisdiction of the Federal Court includes provision for the Federal Court to consider a point of law reserved to it from the ACT Supreme Court.

As a result, it is not necessary to retain section 428 of the Crimes Act and this amendment will repeal it along with the related section 470."

Liquor

A number of drafting and technical amendments are made to the *Liquor Act 1975* to simplify the Act.

In addition, section 59 of the Act is amended to permit the payment of the annual liquor licence renewal fee by instalments. The instalment option will only be available to those licensees who are required to pay the maximum fee, currently \$2,000, and will only allow the payment to be split into two instalments. Licensees will be charged a surcharge for taking the instalment option (initially \$25.00 per payment). The change will reduce the impact on licensees of meeting the entire fee in one payment.

Magistrates Court

This amendment allows the Registrar of the Magistrates Court to exercise the powers of the Court to adjourn the hearing of an application for a restraining order where the respondent has not been served with the application.

Where a hearing of an application is adjourned by the Registrar, the Registrar would also have the power to adjourn and continue unserved interim restraining orders that had previously been granted by the Court. These powers of the Registrar are essentially non-discretionary "machinery" powers that assist in the efficient running of the Court.

Mental Health (consequential amendments)

This is a consequential amendment to the amendments to the Powers of Attorney Act 1956 set out below.

Sections 142 and 143 of the *Mental Health (Treatment and Care) Act 1994* set out the relationship between that Act and the *Guardianship and Management of Property Act 1991* and the *Powers of Attorney Act 1956* (respectively). In 1999, following an extensive review of the ACT's mental health legislation, the *Mental Health (Treatment and Care) Act 1994* was substantially amended, including changes to the consent requirements for psychiatric treatment. These 1999 amendments consequently changed the meaning of sections 142 and 143, because both of these sections refer to any consent "required by this Act". The amendments to sections 142 and 143 remove the words "required by the Act" and replace them with words which reflect those used in the mirroring sections in the guardianship and powers of attorney legislation.

The purpose of this amendment is to ensure that sections 142 and 143 provide an accurate description of the relationship between the mental health, guardianship and powers of attorney legislation.

Powers of Attorney

This amendment clarifies the interaction between the *Powers of Attorney Act 1956* and the *Mental Health (Treatment and Care) Act 1994*. Section 143 of the *Mental Health (Treatment and Care) Act 1994* specifically prohibits an attorney appointed under an enduring power of attorney from consenting on behalf of a person for any consent required under the mental health legislation. Following amendments in 1999 to some of the consent provisions in the *Mental Health (Treatment and Care) Act 1994*, doubts were raised about whether section 143 continued to be effective in preventing attorneys from being able to make decisions on behalf of the donor in regard to psychiatric treatment. This was contrary to the underlying policy of the mental health legislation that the Mental Health Tribunal, as a specialist and publicly accountable body, should be exclusively charged with making decisions about psychiatric treatment, in the absence of the consent of the person concerned.

This amendment provides that an enduring power of attorney cannot confer on an attorney the power to consent on behalf of the donor to treatment for psychiatric illness, convulsive therapy or psychiatric surgery. It further provides that an attorney does not have the power to consent to such treatment even if the enduring power of attorney purports to confer that power on the attorney. It also defines the terms "convulsive therapy", "psychiatric illness" and "psychiatric surgery" as being the same as those provided in section 4 of the *Guardianship and Management of Property Act 1991*. The *Guardianship and Management of Property Act 1991* contains an identical prohibition on the power of guardians, in relation to giving consent on another person's behalf to treatment for a psychiatric illness, convulsive therapy and psychiatric surgery.

Sale of Motor Vehicles

A number of amendments are made to the *Sale of Motor Vehicles Act 1977* to overcome difficulties with and simplify the Act.

The amendments:

- allow a broader range of matters to be taken into account in assessing suitability to participate in the industry (in particular, regard may be taken of breaches of the Act which do not result in a conviction);
- establish a new disciplinary process. (At present, disciplinary proceedings must be by way of formal inquiry convened under section 47 of the Act. These inquiries can involve both the Office of Fair Trading and a dealer in a time consuming and costly inquiry. The amendments replace this process with a form of "show cause notice" process. The amendments permit the Commissioner of Fair Trading, where there are reasonable grounds for believing that a person is not a suitable person to hold a licence, to issue a notice inviting the person to give reasons why the proposed disciplinary action should not be taken. The amendments detail the powers of the Commissioner.)

Second Hand Dealers

While the *Second Hand Dealers and Collectors Act 1906* is based on old imperial legislation to suppress smuggling, it still serves a purpose in constraining the sale of stolen property from second-hand dealers. Amendments will allow the legislation to better focus attention on dealers who sell second-hand goods of a type most likely to be stolen and will allow information collected from dealers to be used more effectively to deny the second-hand market as an outlet for stolen goods. Amendments also simplify the Act (removing archaic definitions and unnecessary business rules).

The amendments:

- maintain the requirement that a person who carries on business of dealing in or buying and selling second-hand goods must be licensed (note the definition of second hand goods below);
- remove the requirement for collectors to be licensed (the licensing of collectors is anachronistic; the provisions appear not to have been enforced for many years);
- provide that the licensing of dealers will undertaken by the Office of Fair Trading rather than the Magistrates Court (at present, dealers and collectors of old wares must apply to the Magistrate's Court for an annual licence);
- permit personal and corporate dealers (at present licenses are personal only);
- replace the former subjective "fit and proper person test" with a test of suitability for participation in the industry, founded on objective grounds such as, for example, whether the person has committed offences involving fraud or dishonesty or offences against the Act. A person who does not meet the requirements of the suitability test may nonetheless be licensed if the person satisfies the Magistrate's Court that the person is unlikely to reoffend.
- require the maintenance and provision of information in a prescribed form - regulations will detail the records to be maintained and how the records are to be provided to the AFP (at present the legislation requires dealers to keep information about dealings in

second hand goods, an important source of criminal intelligence concerning burglaries and theft, in book form);

- permit regulations to require market promoters to keep records (relevant to the purposes of the Act) about dealers who sell second hand goods through markets (in order to ensure that the Act applies broadly throughout the Territory, to markets as well as shops);
- provide for the prescription of second hand goods (permitting the second-hand goods targeted by the Act to be maintained by regulation to enable to periodic review to ensure the inclusion of goods of particular significance in relation to criminal activity); and
- retain, in amended form, provisions dealing with the display of dealer information, the inspection of records and goods, the retention for goods, the obligation to inform the police if goods are suspected of being stolen or fraudulently obtained, and the cancellation of licences.

Trade Measurement

A number of amendments are made to the *Trade Measurement Act 1991* to overcome difficulties with and simplify the Act.

The amendments give effect to the Territory's obligations under the 1990 *Uniform Trade Measurement Legislation and Administration Agreement*. They arise from a review of the Uniform Trade Measurement legislation agreed to by the Ministerial Council on Consumer Affairs in August 1995. The amendments received the unanimous endorsement of the Council, including the ACT, in August 1998. The amendments were implemented in Queensland, as lead State, by the *Trade Measurement Amendment Act 1999* and the *Trade Measurement (Amendment) Regulation (No. 1) 1999*.

The amendments:

- specify that a sale must be by net measurement (Consumers are disadvantaged where the weight of the product may include the packaging.)
- provide that Class 4 weighing instruments can only be used for trade purposes under the conditions specified in the National Standards Commission (NSC) Certificate of Approval (This will address the anomaly whereby some Class 4 weighing instruments may technically comply with section 13 of the Uniform Trade Measurement Act and be capable of verification or certification such that they could be used for applications that should require a (more accurate) Class 3 weighing instrument.)
- allow a correction period of up to 28 days for minor infractions of the Act : where compliance occurs within this period, there will be taken to have been no offence committed against the Act. (Presently, inspectors do not have the power to allow limited use of an instrument pending repair work and certification. In many cases, the non-conformance does not affect the instrument performance and removing the instrument from service does not seem logical. It may be the owner's only trade measuring instrument and sole method of income.)

- require that there be at least one trade approved measuring instrument on premises where articles are prepacked.
- require that each licensee under a service licence possess such denominations of reference standards of measurement as the administering authority provides and not merely the appropriate classes of such reference standards.
- correct a deficiency in the Act that effectively limits the offence of a price determined by reference to its measurement to a situation where a measuring instrument is used, thereby failing to deal with the situation where no measuring instrument is used (ie the measurement is estimated).
- require that the selling price of a pre-packed article be correctly computed by reference to its actual measurement and the stated price for each unit of measurement. (Presently, the relevant offence would not be committed if the price was correctly calculated from the stated price and the given weight (whether or not correct.)
- clarify that a batch tester of glass measures must hold a servicing licence.
- make it an offence for a person to breach any condition of a service licence. (Presently, it is only an offence to breach conditions relating to the certification, or purported certification of an instrument.)
- effectively allow a partnership to hold a service licence. (As a partnership is not a separate legal entity, it cannot be licensed as a person and it is unnecessarily costly for each partner to be licensed separately.)
- provide inspectors with the power to weigh vehicles for the purpose of investigating an offence against the Act. This will assist regulation of the firewood industry in the ACT.
- provide inspectors with the power to measure an article, which is for sale by reference to its measurement.
- specify, in the evidentiary provision relating to prepacked articles, that a batch number is to be evidence of the matters to which it relates.
- specify that the Regulations should contain a provision concerning the sealing of measuring instruments by servicing licensees.

Amendments in Schedule 2

A number of amendments are made to regulations under Acts amended in Schedule One.

Sale of Motor Vehicles

A number of technical changes are made to the Sale of Motor Vehicles Regulations.

Trade Measurement (Pre-packed Articles)

The Trade Measurement (Pre-packed Articles) Regulations are amended to simplify the regulations and, as part of the process outlined in Schedule One with respect to amendments to the *Trade Measurement Act 1991*, to:

- provide that an article exempt from the marking requirements must comply with all such requirements if the article is nevertheless marked.
- provide a definition of "ordinarily sold".
- clarify which agricultural products are exempt from the marking requirements.
- extend the range of permissible measurements, for the expression of the volume of an article ordinarily sold as a liquid, to include centilitres and decilitres. (Wines imported into Australia from the European Union frequently bear these measurement markings.)

Trade Measurement (Measuring Instruments)

The Trade Measurement (Measuring Instruments) Regulations are amended to simplify the regulations and, as part of the process outlined in Schedule One with respect to amendments to the *Trade Measurement Act 1991*, to:

- clarify that an inspector may direct the owner of a measuring instrument to provide and pay for any electricity, liquid or gas required as well as other material and equipment used by the inspector for the purpose of verifying or re-verifying the measuring instrument.
- amend the definition of 'glass measure' in Part 3 (which deals with the batch testing of glass measures used as drinking vessels for beer, stout and ale sold by volume) to provide also for the batch testing of appropriate glass and semi rigid measures, such as jugs and cups used at sporting fixtures. The new definition reflects the fact that measures are also used to sell spirits by volume.
- amend an error in the permissible verification scale interval for the measurement of precious stones (in paragraph 25(c)).