

2000

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
(No 2) 2000**

EXPLANATORY MEMORANDUM

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

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This Bill amends a number of Acts relating to justice and community safety, and for other purposes. It is the fifth bill in a series of portfolio bills amending legislation administered by the Attorney-General.

Notes on Clauses

Clause 1 Short Title

This clause provides for the short title of the law.

Clause 2 Commencement

The Bill commences 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.

Attachment

Attached is an Overview of Amendments made by Schedule 1.

OVERVIEW OF AMENDMENTS

Amendments in Schedule

Crimes (Forensic Procedures) Act 2000

This amendment makes a technical correction to the *Crimes (Forensic Procedures) Act 2000*.

Subsection 95(3) provides a definition of "excluded forensic material". The amendment removes the words towards the end of paragraph (b) "if the suspect is subsequently convicted of the serious offence;" because these words are meaningless in terms of defining in the section what constitutes "excluded forensic material".

Crown Proceedings Act 1992

The *Crown Proceedings Act 1992* provides for proceedings by or against the Crown. In particular, it provides a "right" for a person to sue the Crown. Such a right does not exist under the common law.

A number of drafting and technical amendments are made to the *Crown Proceedings Act 1992* to simplify the Act.

A substantive change is made to section 12 of the Act, which exempts the Territory Crown from paying court fees and charges and, if the Crown becomes entitled to costs, provides for the Crown to receive these fees and charges as if they had been paid. For the purposes of the exemption, "Crown" is defined in the Act to include a Minister, instrumentality or agency of the Crown and prescribed persons.

The exemption in section 12 provides the Crown with a competitive advantage when it carries on a business activity because litigants take fees and charges into account in deciding whether to pursue a matter through the courts. This competitive advantage has already been removed in respect of certain business activities carried on by the Crown. The Housing Commissioner must pay fees and charges for applications for relief to the Residential Tenancies Tribunal (such applications are part of the routine business of the Commission in managing the public housing portfolio). A Territory Owned Corporation is not exempted from paying any tax, duty, fee or charge payable under an Act and, accordingly, is required to pay court fees and charges. However, the exemption (and competitive advantage) remains in relation to other Territory Authorities.

Accordingly, this Bill amends section 12 of the Act to provide that the exemption does not apply to a Territory Authority when it carries on a business. Territory Authority is given the same meaning as in the *Financial Management Act 1996*.

Contractors' Debts Act 1897

The old NSW *Contractors' Debts Act 1897* continues to apply in the ACT. The objectives of the *Contractors' Debts Act 1897 (NSW)* are twofold. Firstly, it limits the liability of contractors for work, labour or materials to the equivalent of 60 days wages. Secondly, it provides a mechanism for workers to recover moneys owed to them by the contractor from the contractee.

A number of drafting and technical amendments are made to the *Contractors' Debts Act 1897* to simplify the Act.

A number of substantive provisions of the Act have been removed.

Section 5, which purports to cap the liability of contractors for their employees to 60 days' wages, has no practical operation because it is inconsistent with Commonwealth industrial awards that set wages and conditions in the building and construction industry. Commonwealth awards prevail over ACT laws such as section 5 because of section 28 of the *Australian Capital Territory (Self-Government) Act 1988*.

Section 6 which purported to limit the period in which a worker can make a claim for wages to 3 months has been overtaken by later generic limitations provisions in the *Limitations Act 1985*.

Accordingly, sections 5 and 6 of the Act are repealed.

Interpretation Act 1967

The *Interpretation Act 1967* includes a dictionary of terms used in ACT law. Technical amendments are made to the dictionary amendments of Attorney-General and Treasurer.

Justices of the Peace Act 1989

Justices of the Peace ("JPs") in the ACT are appointed by the Minister under sub-section 3(1) of the *Justices of the Peace Act 1989*. Under sub-section 4 of the Act, the Registrar of the ACT Supreme Court maintains a Register of JPs. The Department of Justice and Community Safety also keeps a database of names and contact details of registered JPs, which it updates through regular survey mail-outs to all registered JPs.

The amendment permits information about JPs to be used in a way which, although beneficial to the community, would otherwise amount to an interference with privacy for the purposes of the *Privacy Act 1988 (Cth)*, which binds ACT government agencies. In particular, the amendment allows the Minister to authorise:

- the use of JP's names and contact details to give JPs information about the ACT Justices of the Peace Association ("the Association"). This will allow the Department to include application forms for membership of the Association with survey mail-outs. This will bring the Association's

- existence to the attention of JPs and allow them to give consideration to joining it.
- the disclosure of JP's names and contact details to the Association. This will allow the Association to publish names and contact details of registered JPs, for example, by placing lists of this information in post offices and libraries. This will assist members of the community to locate JPs in their area.

Partnership Act 1963

The *Partnership Act 1963* provides for the formation of partnerships, the relations of partners among themselves and others, and the dissolution of partnerships.

A number of drafting and technical amendments are made to the *Partnership Act 1963* to simplify the Act.

A substantive change is made to section 14 of the Act.

Section 14 provides that a firm is liable for a partner's wrongful act or omission when acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners. In circumstances where the partners agree to one of their number accepting a directorship of a company, this provision exposes the co-partners to liability for the acts of a partner even though those acts are committed by the partner in his/her capacity as a director of a corporation, rather than in his/her capacity as a partner. This may discourage ACT partners from accepting directorships in corporations.

This concern has been addressed in other jurisdictions such as New South Wales and Victoria. These amendments make it clear that when a firm gives consent to a partner as a director, it does not ordinarily intend to grant the firm's authority for every act or omission of that partner as a director. Rather, the firm is only consenting to the director spending part of what would be professional time as a director. Of itself, a firm's consent to a partner accepting directorship in a corporation does not make a firm liable for a commercial judgment exercised by that partner in his/her capacity as corporate director.

The amendment operates only as a presumption against liability. The presumption may be displaced depending upon the circumstances of the case. A court, in examining the relationship between a director who is a partner of a firm and his/her firm, will consider whether the director has been acting within the course of ordinary business of the firm or with the authorisation of the co-partners. If the later case prevailed, the firm would be liable for the acts or omission of the director-partner.

Unlike interstate legislation, the amendment extends both to activities in relation to Corporations Law of corporations and bodies corporate under an ACT law. This will have the beneficial effect of removing a disincentive to ACT partners from accepting positions on government statutory authorities.