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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2013  
(No 2)**

**EXPLANATORY STATEMENT**

**Presented by  
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## **JUSTICE & COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2013 (NO 2)**

### **Overview of the Bill**

The Justice and Community Safety Legislation Amendment Bill 2013 (No 2) (the Bill) amends a number of laws administered by the Justice and Community Safety Directorate.

### **Human Rights Implications**

There are no human rights implications associated with this Bill.

### **Confiscation of Criminal Assets Act 2003**

This Bill amends relevant sections of the *Confiscation of Criminal Assets Act 2003* ('the COCA Act') which provide for a restraining order issued by a court on application by the DPP which restrict dealings with tainted property.

Section 50(4)(a) will be amended to give legislative recognition to the current practice used by the Land Titles Office when registering restraining orders over land and will ensure the purpose of the COCA scheme is achieved.

### **Crimes Act 1900**

This Bill amends a section of the *Crimes Act 1900* relating to inquiries into convictions. Section 430(4) will be clarified to ensure consistency with a corresponding subparagraph in section 430(2) relating to an order by the Supreme Court to quash a conviction without ordering a retrial.

### **Land Titles Act 1925**

Section 124 of the *Land Titles Act 1925* prohibits the registrar-general making any entry in the register of any notice of trust, whether express, implied or constructive. This provision is intended to prevent a declaration of any trust being registered on the actual land titles register.

On a strict interpretation of the section any instrument, including commercial leasing agreements which commonly refer to trusts in their contract terms, cannot be registered. This creates uncertainty for lessees under commercial and retail leases in particular who wish for their lease agreements to be registered on the title.

References to trusts in the terms of contracts have become a common practice in commercial leasing arrangements.

This Bill clarifies that the prohibition in section 124 is designed to prevent notice of trusts on the register itself but is not designed to prevent the registration of instruments that make references to trusts.

The change will not permit registration of a deed which creates a trust which has an actual or potential effect on title.

## **Legal Aid Act 1977**

### The Auditor-General

Section 92 of the *Legal Aid Act 1977* provides for the people who are subject to the secrecy provisions of the Act. The Auditor-General is not listed as a person who is subject to those provisions. This prevents the Auditor-General from being able to access protected information necessary to carry out a performance audit or special financial audit, notwithstanding the Auditor-General's powers under the *Auditor-General Act 1996* to access Territory records.

This Bill amends section 92 to provide that the auditor-general and any person acting under the direction of the auditor-general in relation to a performance audit or special financial audit is a person subject to the secrecy provisions. This clarifies the auditor-general's powers to carry out a performance audit or special financial audit.

### Membership of Panels and Review Committees

Section 31E of the *Legal Aid Act 1997* provides for panels of private legal practitioners to be established by the Legal Aid Commission. The definition of "private legal practitioner" is currently defined to mean only principals of law practices.

The Chief Executive Officer of the Legal Aid Commission has indicated that this is an unnecessary restriction on the suitably qualified practitioners who may be appointed to the panels of the Legal Aid Commission.

The Bill amends the Act to broaden the category of legal practitioners who may be appointed to panels of private legal practitioners to Australian legal practitioners who are employed by law practices.

The definition of "private legal practitioner" in the dictionary to the Act is amended by this Bill to mean principals of law practices and Australian legal practitioners employed by law practices.

Section 37 provides for the review committee of the Legal Aid Commission. Section 37(4) provides that the chief executive officer of the Legal Aid Commission must appoint no more than nine private legal practitioners nominated by the council of the ACT Law Society.

The Chief Executive Officer of the Legal Aid Commission has indicated that he wishes to be able to appoint to the review committee suitably qualified Australian legal practitioners, including those employed by private firms, Government lawyers who hold practising certificates and those employed in community legal centres who hold practising certificates. This Bill achieves this end by substituting the term "private legal practitioner" in section 37(4) with the term "Australian legal practitioner".

## **Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012**

The Bill amends the *Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012* to ensure consistency with other infringement notice schemes and to ensure the protection of personal information in cases where the identity of the inspector is to be protected. Under the proposed amendments, the authorised person will be required to provide only his or her name or his or her identification number provided under the Regulation when serving an infringement notice or reminder notice.

## **Unclaimed Money Act 1950, Legal Profession Act 2006, Agents Act 2003**

The Public Trustee receives unclaimed money under the *Unclaimed Money Act 1950*, *Agents Act 2003* and the *Legal Profession Act 2006*. The process by which an eligible person is able to recover unclaimed money paid to the Public Trustee differs depending on which provision the unclaimed money is received under, and the processes prescribed are unnecessarily cumbersome.

The Bill seeks to simplify and make uniform the legislative process by which unclaimed money may be recovered.

This is achieved by inserting a new part into the *Unclaimed Money Act 1950* to provide for applications to the public trustee for claimants of unclaimed money received under the three enactments. The processes to obtain unclaimed money in the three enactments will be replaced by the new part and references to the new part of the *Unclaimed Money Act 1950* are made in each of the enactments.

The decision of the public trustee to pay or refuse to pay unclaimed money is a reviewable decision which may be reviewed by the ACAT on application by the claimant or any other person whose interests are affected by the decision.

## **Unclaimed Money Act 1950 – Unclaimed Superannuation Payments**

This Bill will remove current part 5 of the Act, which provides for the administration of unclaimed superannuation accounts. The responsibility for the administration of unclaimed superannuation money has been transferred to the Commonwealth by agreement of the Commonwealth, States and Territories. Superannuation held by the public trustee has been paid to the Commonwealth Commissioner for Taxation. The part is now unnecessary.

## **Unit Titles (Management) Act 2011**

This Bill further clarifies the sinking fund plan provisions which have been recently introduced by the *Unit Titles (Management) Act 2011*. The provisions were clarified by amendments made to the Act by the *Justice and Community Safety Legislation Amendment Bill 2012 (No. 2)* which introduced examples to assist the reader to understand the intended operation of the sinking fund provisions.

The amendments in this Bill remove all doubt that yearly contributions in the sinking fund plan should be sufficient to meet not only the expected sinking fund expenditure for that year but also an appropriate amount necessary to be accumulated to meet expected sinking fund expenditure over at least the remaining years of the plan.

## Clause Notes

### Clause 1 Name of Act

This clause provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2013 (No 2)*.

### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the 7<sup>th</sup> day after its notification day.

### Clause 3 Legislation Amended—sch 1

This clause provides that the legislation mentioned in schedule 1 is amended by the Act.

## Schedule 1 Legislation amended

### Part 1.1 Agents Act 2003

#### Clause 1.1 Section 124 (2), note

A new note for section 124 (2) of the *Agents Act 2003* will provide that a person who claims to be entitled to money that has been paid to the Public Trustee may apply to the Public Trustee for payment of the money under new section 27 of the *Unclaimed Money Act 1950*.

#### Clause 1.2 Sections 125 and 126

Sections 125 and 126 relate to applications to recover money and decisions on recovery applications.

These sections provide an unnecessary process for claiming unclaimed money under the *Agents Act 2003*.

These sections are omitted as proposed new part 5 of the *Unclaimed Money Act 1950* provides a streamlined process for applying for unclaimed money.

## **Part 1.2      Confiscation of Criminal Assets Act 2003**

### **Clause 1.3      Section 50(2)**

Currently, section 50(4)(a) provides that a restraining order made by a Court in relation to tainted real property can be lodged with the Registrar-General under section 104, division 10.4 of the *Land Titles Act 1925* by the responsible authority.

Division 10.4 of the *Land Titles Act 1925* provides for caveats over land to prevent dealings with land where a person has an interest in the land. It is intended to prevent dealings with land temporarily where a person has a private interest which the person is seeking to protect.

To enable lodgement under section 104 of the *Land Titles Act 1925*, section 50(4)(b) of the COCA Act provides that the responsible authority, on behalf of the Territory, is 'taken' to have an interest in the land.

Under section 106 of the *Land Titles Act 1925*, any caveat that has been entered under division 10.4 lapses 14 days from the date that notice is given to the caveator, except where the caveat is lodged by the settler, a beneficiary under a will or the Registrar-General.

Given that the Territory only has an interest in the land through a legislative provision and that the lapsing provision under section 106 may apply to the caveat, division 10.4 is not an effective mechanism to give effect to a court order intended to prevent dealings in tainted property.

To give effect to the court's order, it is more appropriate for the Registrar-General to issue a caveat under section 14(1)(g) to prevent an improper purpose. Such a caveat would not be subject to the lapsing provisions in section 106.

New section 50(2)(a) removes reference to section 104 of the *Land Titles Act 1925* and instead provides that a restraining order, or details of a restraining order, may be recorded in the land titles register by the responsible authority giving a copy of the restraining order to the Registrar-General.

A note is included in section 50(2)(a) which references the power that the Registrar-General has under section 14(1)(g) of the *Land Titles Act 1925* to enter a caveat for the prevention of any fraud or improper dealing with the land.

### **Clause 1.4      Section 50(4), (5) and (6)**

As a result of the issues discussed in clause 1.3, existing subsections 50(4), (5) and (6) are omitted. They are substituted with section 50(4) which requires that where property is no longer restrained, the responsible authority must inform the Registrar-General or, for property that is not land, the registrar-general must apply for the cancellation of the restraining order in the statutory property register.

### **Part 1.3      Crimes Act 1900**

#### **Clause 1.5      Section 430 (4)**

Section 430 provides for the action that the Full Court must take when considering the report provided by a board into an enquiry. Section 430(2) provides that, having regard to the report, the Full Court must (a) confirm the conviction, (b) confirm the conviction and recommend to the Executive that the person be pardoned or that his or her penalty be remitted, (c) quash the conviction without ordering a retrial or (d) quash the conviction and order a retrial.

Section 430(4) provides that section 430 does not give a convicted person a right to an order of the Full Court under (b) or (d) or an Executive pardon or remission.

It appears that section 430(4) inadvertently did not include a reference to paragraph (c) in addition to (b) and (d). No corresponding provision to section 430(2)(c) was included in section 430(4). This has the potential to create confusion.

Subsection 430(4) is intended to prevent the court being compelled to quash a conviction or the Executive being compelled to grant a pardon or remit a sentence as a result of a recommendation in the report.

This clause will insert a reference to paragraph (c) after (b) in section 430(4) to clarify this apparent oversight.

### **Part 1.4      Land Titles Act 1925**

#### **Clause 1.6      Section 124 (1)**

This clause inserts new section 124(1) which clarifies that the prohibition in section 124 is designed to prevent notice of trusts on the register itself but is not designed to prevent the registration of instruments that make references to trusts.

This amendment gives statutory recognition to the fact that references to trusts in commercial agreements is now commonplace and that a reference to a trust in an agreement which does not have an effect on the title should not be excluded from registration.

The change will not permit registration of a deed which creates a trust which has an actual or potential effect on title.

### **Part 1.5      Legal Aid Act 1977**

#### **Clause 1.7      Section 37 (4)**

The term ‘private legal practitioner’ in section 37(4) is substituted with ‘Australian legal practitioner’. This will allow the Chief Executive Officer of the Legal Aid Commission to appoint any suitably qualified member of the Law Society who holds a practising certificate to be appointed to the review committee.

### **Clause 1.8 Section 37 (4) (a) and (b)**

This clause substitutes “private legal practitioners” with “Australian legal practitioners” for the purposes explained in clause 1.7.

### **Clause 1.9 Section 92 (1)(b)**

This clause will amend subsection 92(1)(b) to include specific reference to the auditor-general, or a person acting under the direction of the auditor-general, in relation to a performance audit or special financial audit under the *Auditor-General Act 1996*.

This is intended to remove all doubt that the auditor-general has power to carry out a performance audit or special financial audit in relation to the Legal Aid Commission but will also ensure that the auditor-general and any person acting under the direction of the auditor-general is subject to the same secrecy requirements about personal or sensitive information as an officer of the commission.

### **Clause 1.10 Section 92 (2)**

This clause amends subsection 92 (2) to insert reference to the *Auditor-General Act 1996*. This will ensure consistency with the amendments in clause 1.8 of this Bill.

### **Clause 1.11 Dictionary, note 2**

This clause inserts reference to the auditor-general in the dictionary in note 2, which indicates that the definition of certain terms is provided for in the *Legislation Act 2001*.

### **Clause 1.12 Dictionary, new definition of *Australian legal practitioner***

This clause will insert ‘Australian legal practitioner’ into the dictionary in the *Legal Aid Act 1977*. The definition refers to the definition of Australian legal practitioner in the *Legal Profession Act 2006*.

### **Clause 1.13 Dictionary, definition of *private legal practitioner***

This clause substitutes the definition of ‘private legal practitioner’ with a new definition which includes an Australian legal practitioner employed by a law practice.

## **Part 1.6 Legal Profession Act 2006**

### **Clause 1.14 Section 259 (2), new note**

This clause inserts a new note to section 259 (2), which directs the reader to new part 5 of the *Unclaimed Money Act 1950* for the process of claiming unclaimed money.

### **Clause 1.15 Section 259 (3) and (4)**

Section 259 (3) and (4) will be omitted as the amendment to section 259(2) will substitute the provisions relating to a person claiming unclaimed money under the *Legal Profession Act 2006*.

Section 259 (3) provides that a person may apply to the court for an order declaring that the person is entitled to the unclaimed money. Section 259 (4) provides that the public trustee must pay a person the amount if satisfied that he or she is entitled to it or if the court has declared that the person is entitled to the amount.

In practice people who claim that they are entitled to unclaimed money under the *Legal Profession Act 2006* apply to the Public Trustee who pays the person the amount if satisfied that he or she is entitled.

## **Part 1.7      Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012**

### **Clause 1.16   Sections 9 and 11**

Regulation 9 requires an authorised person for an infringement notice offence under the *Working With Vulnerable People (Background Checking) Act 2011* to both provide his or her name and also any unique number given to the person under the Regulation.

Similarly, Regulation 11 requires an authorised person when giving a reminder notice to provide both his or her name and unique number given to the person under the regulation.

Under other infringement notice schemes, the authorised person may provide either his or her name or his or her unique identification number.

This amendment brings the scheme in line with other enforcement schemes and protects the personal information of the authorised person by providing that the authorised person only be required to provide his or her name or identity number provided under the Regulation.

## **Part 1.8      Unclaimed Money Act 1950**

### **Clause 1.17   Section 4**

This clause substitutes reference to ‘Territory’ with ‘public trustee’. This is designed to provide clarity as to who specifically unclaimed money is to be paid to and ensures consistency in terminology used in relevant sections of the *Unclaimed Money Act 1950*, *Agents Act 2003* and *Legal Profession Act 2006* which provide for depositing unclaimed money.

### **Clause 1.18   Section 5**

This clause omits section 5.

Section 5 provides for payment of claims for unclaimed money paid deposited with the Territory by liquidators. The section provides for payment of the amount by order of the Supreme Court or if the Minister is otherwise satisfied that the person is entitled to the amount.

Section 5 will be substituted with proposed new part 5, which provides for a streamlined, consistent process for claims for payment of unclaimed money.

### **Clause 1.19 Sections 10 and 11**

This clause substitutes the term ‘Territory’ in sections 10 and 11 with the term ‘public trustee’ to provide clarity about the entity unclaimed money is to be deposited with. It also ensures consistency of terminology with relevant sections in the *Unclaimed Money Act 1950*, *Agents Act 2003* and the *Legal Profession Act 2006* which provide for unclaimed money.

### **Clause 1.20 Section 13**

This clause omits section 13.

Section 13 provides for payment of unclaimed money deposited with the Public Trustee by companies.

Section 13 is substituted with new part 5, which provides for a streamlined, consistent process for claims for payment of unclaimed money.

### **Clause 1.21 Part 5**

This clause omits existing part 5 of the *Unclaimed Money Act 1950* which is a redundant part and substitutes a new part.

The current part provides for unclaimed superannuation, which by agreement of the Commonwealth, States and Territories are to be administered by the Commonwealth. Unclaimed superannuation money held by the Public Trustee has been transferred to the Commonwealth Commissioner for Taxation.

The clause inserts a new part 5 which provides a uniform process for claiming unclaimed money held by the Public Trustee under the *Unclaimed Money Act 1950*, *Agents Act 2003* and the *Legal Profession Act 2006*.

The new part provides for applications to be made to the Public Trustee by people claiming to be entitled to unclaimed money. The Public Trustee must either make a decision to pay the unclaimed money to the person claiming to be entitled to the money or refuse to pay the unclaimed money.

A decision to pay or refuse to pay unclaimed money is reviewable by the ACAT and a reviewable decision notice must be given to the applicant. The applicant or any other person whose interests are affected by the Public Trustee’s decision may apply to the ACAT for a review of the Public Trustee’s decision.

### **Clause 1.22 Dictionary, note 2**

This clause inserts ‘reviewable decision notice’ into the dictionary under note 2 for terms contained in the *Legislation Act 2001*.

### **Clause 1.23 Dictionary**

This clause omits terms in the dictionary relating to unclaimed superannuation money. This amendment is consequential on the omission of existing part 5 which provides for unclaimed superannuation money.

### **Clause 1.24 Dictionary, new definition of *unclaimed money***

This clause inserts a definition of ‘unclaimed money’ by reference to new section 26, which provides for unclaimed money to be paid to the Public Trustee under the *Unclaimed Money Act 1950*, *Agents Act 2003* and *Legal Profession Act 2006*.

### **Clause 1.25 Dictionary, definition of *unclaimed RSA money***

This clause omits a term in the dictionary relating to unclaimed superannuation money. This amendment is consequential on the omission of existing part 5 which provides for unclaimed superannuation money.

## **Part 1.9 Unit Titles (Management) Act 2011**

### **Clause 1.26 Section 72, definition of *total sinking fund amount***

This clause omits the definition of “total sinking fund amount”. References to the term are omitted where they appear in the Act.

The term may create confusion for users of the legislation.

In addition, the current definition of “total sinking fund amount” in the Act may potentially allow some unit owners to raise a technical argument that it limits the amounts that may be raised each year to the amount expected to be spent in that year. Such an interpretation would be erroneous.

To remove all doubt about the intended operation of the sinking fund plan provisions, the term “total sinking fund contribution” is used instead of “total sinking fund amount” which refers to new section 82(3)(b) (discussed below in clause 1.28).

### **Clause 1.27 Section 72, new definition of *total sinking fund contribution***

This clause provides a definition for the new proposed term “total sinking fund contribution” and refers the reader to new section 82(3)(b).

### **Clause 1.28 Section 82 (2), examples and notes**

This clause substitutes existing section 82(2) with a new section 82 (2) which simply provides that a 10-year sinking fund plan must be approved by the owners corporation, by ordinary resolution, starting from the first day of the financial year following the approval.

Note 1, which provides for existing sinking fund plans, is retained.

This clause introduces new section 82(3). The new section clarifies the existing provisions which require that the plan includes amounts that are to be raised by members each year.

The new section removes all doubt that these amounts should be sufficient to meet not only the expected sinking fund expenditure for that year but also an appropriate amount necessary to be accumulated to meet expected sinking fund expenditure over at least the remaining years of the plan.

Example 2 in existing section 82(2) is moved to new section 82(3).

An additional example is included to illustrate to the reader how amounts may be accumulated each year to meet ongoing expected expenditure.

#### **Clause 1.29 Section 86**

Section 86 is amended to clarify that the sinking fund plan may be amended at any time, by ordinary resolution of the owners corporation, to ensure that the plan is not only reflective of expected sinking fund expenditure but also that it ensures adequate funding to meet the expected expenditure.

#### **Clause 1.30 Section 88, note 1**

Note 1 of section 88 is amended to reflect the re-wording of section 86 as described in clause 1.29.

#### **Clause 1.31 Section 89 (2)**

This clause substitutes reference to the “total sinking fund amount” with “total sinking fund contribution”.

#### **Clause 1.32 Section 89 (2), note**

This clause amends the note in section 89(2) to reflect the change in terminology from “total sinking fund amount” to “total sinking fund contribution” and directs the reader to new section 82(3)(b).

#### **Clause 1.33 Section 90 (2) (c) and (d)**

This clause substitutes references to the “total sinking fund amount” with “total sinking fund contribution”.

#### **Clause 1.34 Dictionary, definition of *total sinking fund amount***

This clause omits the term “total sinking fund amount” as it is proposed to be replaced with the new term “total sinking fund contribution”.

#### **Clause 1.35 Dictionary, new definition of *total sinking fund contribution***

This clause inserts a definition in the dictionary for the new term “total sinking fund contribution” for division 5.2 which directs the reader to new section 82(3)(b).