

2010

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

COURTS LEGISLATION AMENDMENT BILL 2010

EXPLANATORY STATEMENT

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Courts Legislation Amendment Bill 2010

Overview of the Bill

As part of the 2010 Access to Justice Initiative, the Government is introducing a range of legislative reforms with respect to the jurisdiction of the Magistrates Court.

The Courts Legislation Amendment Bill 2010 has the effect that offences under ACT law with a maximum penalty of five years or less will be dealt with in the summary jurisdiction of the Magistrates Court (presently, defendants charged with offences with maximum penalties from 2 to 5 years imprisonment may elect to have these matters dealt with summarily in the Magistrates Court or heard on indictment in the Supreme Court). The Bill increases the civil jurisdiction of the Magistrates Court from \$50,000 to \$250,000. The Bill also formally establishes in legislation the Family Violence Court and Galambany Court.

Increased summary jurisdiction

The Bill has the effect of increasing the threshold for matters that must be dealt with summarily in the Magistrates Court, to include offences with a maximum penalty of five years or less imprisonment. These changes will free the Supreme Court to deal with more complex and serious cases.

Increased civil jurisdiction of the Magistrates Court

The *Magistrates Court Act 1930* is amended to increase the civil jurisdiction of the Court from \$50,000 to \$250,000.

Family Violence Court

The *Magistrates Court Act 1930* is amended to give statutory recognition to the Family Violence list created by the Magistrates Court. Legislating for a specialised FV Court acknowledges the specialisation and integration of the Family Violence Court and recognise the complexities, vulnerabilities and special interest in protection of individual victims and the community as a whole. The proposal is consistent with the goals of the ACT Family Violence Intervention Program (FVIP), a coordinated ACT Government criminal justice and community response to criminal family violence.

Galambany Court

The specialist Aboriginal and Torres Strait Islander sentencing process, known as 'Ngambra Circle Sentencing Court' has existed as part of the ACT Magistrates Court practice since 2004. The purpose of the Circle Court is to provide a culturally relevant sentencing option in the Magistrates Court jurisdiction for eligible Aboriginal and Torres Strait Islander people who have offended.

Amendments to the Magistrates Court Act will give statutory recognition to the ACT Circle Sentencing Court, and rename the Court 'Galambany'. The Aboriginal and

Torres Strait Islander Elected Body recommended the name. It means 'We all, including you'.

Clause Notes

Part 1 Preliminary

Clause 1 Name of Act

This clause states that the Act is the *Courts Legislation Amendment Act 2010*.

Clause 2 Commencement

The Act (except for schedule 1, part 1.22 and amendment 1.55) is to commence on a day fixed by the Minister by written notice.

Schedule 1, part 1.22 and amendment 1.55 contains amendments to the *Victims of Crime Act 1994*. These amendments are to commence on the later of the commencement of this Act, section 3 and the commencement of the *Victims of Crime Amendment Act 2010*.

Clause 3 Legislation amended

This clause states that this Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

Part 1.1 Aboriginal and Torres Strait Islander Elected Body Act 2008

Clause 1.1 Schedule 1, part 1.2, modification 1.5, section 103(1)(b), and note

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The word ‘indictable’ has been removed from the section to maintain the current threshold for eligibility to be a member of ATSIEB.

Clause 1.2 Schedule 1, part 1.2, modification 1.7, section 105(2A)(b), and note

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The word ‘indictable’ has been removed from the section to maintain the current threshold for eligibility for nomination as a candidate for election as a member of ATSIEB.

Clause 1.3 Schedule 1, part 1.2, modification 1.8, section 105(4)(d)(ii)

This amendment is required for consistency with clauses 1.1 and 1.2.

Clause 1.4 Schedule 1, part 1.2, modification 1.8, section 105(4)(da)(ii)

This amendment is required for consistency with clauses 1.1 and 1.2.

Clause 1.5 Dictionary, note 2

This amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Part 1.2 Associations Incorporation Act 1991

Clause 1.6 Section 63(1)(a)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The amendment replaces the term ‘indictable’ with ‘punishable by imprisonment for longer than 2 years’, to maintain the current threshold for disqualification from office.

Part 1.3 Bail Act 1992

Clause 1.7 Section 9B(d)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold set in section 9B.

Clause 1.8 Section 22(2)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold set in section 22.

Clause 1.9 Dictionary, note 2

This amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Bail Act 1992*.

Part 1.4 Children and Young People Act 2008

Clause 1.10 Section 32(b) and (c)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold for ending the appointment of a member of the Children and Youth Services Council.

Clause 1.11 Dictionary, note 2

The amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Children and Young People Act 2008*.

Part 1.5 Civil Law (Wrongs) Act 2002

Clause 1.12 Section 94(1)(a)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold in section 94(1)(a).

Part 1.6 Confiscation of Criminal Assets Act 2003

Clause 1.13 Section 13(2), definition of *relevant offence*, paragraph (b), note

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The amendment of the definition requires the note in section 13(2)(b) to be updated.

Part 1.7 Coroners Act 1997

Clause 1.14 Division 5.5 heading

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to allow the Coroners Court to maintain its current procedures.

Clause 1.15 Section 58 heading

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to allow the Coroners Court to maintain its current procedures.

Clause 1.16 Section 58(1)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to allow the Coroners Court to maintain its current procedures.

Clause 1.17 Section 58(3)(a)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable

offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to allow the Coroners Court to maintain its current procedures.

Clause 1.18 Dictionary, note 2

This amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Coroners Act 1997*.

Part 1.8 Courts Procedures Act 2004

Clause 1.19 Section 72(4), definition of *circle sentencing*

The definition of ‘circle sentencing’ is included to refer the reader to the revised definition contained in section 291M of the *Magistrates Court Act 1930*. This amendment is consequential to the establishment of the Galambany Court.

Part 1.9 Crimes (Sentencing) Act 2005

Clause 1.20 New section 43(1)(b)(iva)

This clause amends the powers of assessors in relation to preparing a pre-sentence report. The amendment allows the assessor, in preparing the pre-sentence report for an offender to be sentenced for a domestic violence offence, to ask for a report from an approved crisis support organisation under the *Domestic Violence Agencies Act 1986*. Approved crisis support organisations include the Domestic Violence Crisis Service Incorporated.

Clause 1.21 Section 43(7), new definition of *domestic violence offence*

A definition of ‘domestic violence offence’ is inserted, consequential to the amendment contained in clause 1.20.

Part 1.10 Criminal Code 2002

Clause 1.22 Division 3.2.3 heading

The division heading must be relocated as a result of the changed definition of ‘indictable offence’ in the *Legislation Act 2001*.

Clause 1.23 Section 650

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current definition of ‘criminal activity’.

Clause 1.24 Section 651(1), definition of *criminal group*, paragraph (a)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current definition of ‘criminal group’.

Clause 1.25 Part 7.2 heading

The part heading must be changed as a result of the changed definition of ‘indictable offence’ in the *Legislation Act 2001*.

Clause 1.26 Part 7.3 heading

The part heading must be changed as a result of the changed definition of ‘indictable offence’ in the *Legislation Act 2001*.

Part 1.11 Electoral Act 1992

Clause 1.27 Section 103(4), and note

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The word ‘indictable’ has been removed from the section to maintain the current threshold for eligibility to be a Member of the Legislative Assembly.

Part 1.12 Firearms Act 1996

Clause 1.28 Section 207(2)(d)

This clause relates to where a police officer enters premises under a condition of a licence or permit. This amends the existing section by replacing ‘indictable offence’ with ‘an offence punishable by imprisonment for longer than 1 year’. This change restores the power to seize a thing to the same threshold as existed before the passage of the *Crimes Legislation Amendment Act 2008*.

Clause 1.29 Section 209(4)

This clause relates to where a police officer enters premises with the occupier’s consent. This amends the existing section by replacing ‘indictable offence’ with ‘an offence punishable by imprisonment for longer than 1 year’. This change restores the power to seize a thing to the same threshold as existed before the passage of the *Crimes Legislation Amendment Act 2008*.

Clause 1.30 Dictionary, note 2

This amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Firearms Act 1996*.

Part 1.13 Government Procurement Act 2001

Clause 1.31 Section 16(3)(b)(iv)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold for ending the appointment of a member of the Government Procurement Board.

Part 1.14 Interactive Gambling Act 1998

Clause 1.32 Section 60(c)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current threshold for grounds for suspension or cancellation of a licence.

Clause 1.33 Dictionary, note 2

This amendment removes the term ‘indictable offence’ from the dictionary, as the term is no longer used in the *Interactive Gambling Act 1998*.

Part 1.15 Legal Profession Act 2006

Clause 1.34 Dictionary, definition of *serious offence*

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2 years’, to maintain the current definition of ‘serious offence’.

Part 1.16 Legislation Act 2001

Clause 1.35 Section 190(1)

This clause amends the definition of indictable offence for the purpose of ACT legislation. Previously, an indictable offence was defined an offence punishable by imprisonment for longer than 2 years. The definition of an indictable offence has been amended to mean offences with a maximum period of imprisonment longer than 5 years.

Clause 1.36 Dictionary, new definition of *Family Violence Court*

A definition of ‘Family Violence Court’ is added to the dictionary of the *Legislation Act 2001*, consequential to the establishment of the Family Violence Court in the *Magistrates Court Act 1930*.

Part 1.17 Magistrates Court Act 1930

Clause 1.37 Section 257

The effect of this amendment is to increase the jurisdiction of the Magistrates Court in relation to a personal action at law. The jurisdiction is increased from \$50,000 to \$250,000.

Clause 1.38 Section 261

The effect of this amendment is to increase the jurisdiction of the Magistrates Court in relation to disputed debts. The jurisdiction is increased from \$50,000 to \$250,000.

Clause 1.39 New chapters 4B and 4C

Chapter 4B – The Family Violence Court

The Family Violence Intervention Program (FVIP) is a coordinated criminal justice and community response to criminal family violence. It was recommended by the ACT Community Law Reform Committee in 1995 and accepted by Government in 1996. The FVIP commenced in May 1998. It is a fully integrated community and criminal justice program in Australia and has been recognized nationally, receiving Australian Violence Prevention Awards (ACT) on 3 occasions and the Community benefit Award for ACT from the Australian Institute of Project Management.

The FVIP includes ACT Policing, the Domestic Violence Crisis Services, the Office of the ACT Director of Public Prosecutions, ACT Corrective Services, The Victims of Crime coordinator, the criminal law policy area of my Department, the Domestic Violence Project Coordinator, the Office of Children and Youth Family Support, the Magistrates Court and the Legal Aid (ACT) Office.

The FVIP enlists a phased, developmental and problem solving approach to problems confronting the criminal justice response to family violence. It is collaborative in that all relevant participation agencies participate in on-going policy, procedural and operation development of issues confronting them and their clients. It is also unique in the transparency of operations and the publication of monitoring data.

A key component of the success of the FVIP lies in the specialisation of the FV list created by the Magistrates Court. This list, and the specialised FV magistrate rely on the goodwill of the ACT Magistrates Court together with a practice direction. This Chapter provides a legislative basis for the Family Violence Court.

In March 2009, the National Council to Reduce Violence Against Women and their Children handed down its report, *Time for Action: The National Council's plan for Australia to Reduce Violence against Women and their Children 2009-2021*. The report identified that the establishment of specialist domestic and family violence courts recognises that problems caused by domestic violence are multiple and complex; and that addressing the issue involves services and intervention by multiple agencies to provide a vast range of culturally appropriate services to victims, not merely an appropriate criminal justice response.

On 17 July 2009, the Attorney-General of Australia, the Hon Robert McClelland MP, asked the Australian Law Reform Commission (ALRC) to conduct an Inquiry together with the New South Wales Law Reform Commission (NSWLRC) into particular questions in relation to family violence that had arisen from the Time for Action report. The ALRC/NSWLRC has come to the preliminary view, that state and territory governments should establish and foster specialised family violence courts in their jurisdictions.

Part 4B.1 Preliminary

Clause 291H Meaning of *domestic violence offence* – Act

This clause applies the definition of s13(2) of the *Domestic Violence and Protection Order Act 2008* (DVPO Act) which provides that a domestic violence offence means an offence against—

- (a) section 90 of the DVPO Act (which is about contravening protection orders); or
- (b) a provision mentioned in an item in schedule 1 to the DVPO Act.

For the offence to be a domestic violence offence not only does the offence need to fall within the definition of s13(2) of the DVPO Act but the victim of the offence needs to be a relevant person under the DVPO Act in relation to the person who committed the offence.

The definition of relevant person can also be found in the DVPO at s 15 and includes:-

- a domestic partner or former domestic partner of the victim; or
- a relative of the victim; or
- a child of a domestic partner or former domestic partner of the victim; or
- a parent of a child of the victim;
- or someone who is or has been in a relevant relationship with the victim.

A relevant relationship means an intimate relationship between 2 people other than a domestic partnership. A definition of domestic partnership is contained in s 169 of the Legislation Act and includes a civil partnership.

Clause 291I Purpose – ch4B

This clause sets out the purpose of the chapter which is to establish a specialised criminal court to deal with domestic violence offences. The purposes recognise that the nature of domestic violence and the particular needs involved in protecting victims is complex; and great social harm results from domestic violence and domestic violence offences take places in the context of a special relationship between people.

The specialised court is important component of the FVIP and provides a credible foundation, acknowledging the specialisation and integration of the FV Court while recognising the complexities, vulnerabilities and special interest in protection of victims and the community as a whole.

It should be viewed in conjunction with the current Practice Direction No. 2 of 2009 of the Magistrates Court of the ACT relating to the Family Violence List and the 2004

Memorandum of Agreement for the Family Violence Intervention Program of the ACT of which ACT Policing, ACT DPP, ACT Magistrates Court, Corrective Services, Department of Justice and Community Safety, Office for Children, Youth and Family Support, Victims of Crime Co-ordinator and the Domestic Violence Crisis Service are all signatories to.

Part 4B.2 The Family Violence Court

Clause 291J The Family Violence Court

This clause creates the Family Violence Court by reference to jurisdiction. The Magistrates Court is to be known as the Family Violence Court when it is exercising the jurisdiction of the Magistrates Court in relation to proceedings mention in clause 291K.

The Family Violence Court uses the Magistrates Court seal.

Although the Magistrates Court currently has a specialised Family Violence Magistrate, this clause does not make provision for a statutorily appointed family violence magistrate. When a magistrate sits as the Family Violence Court, the magistrate may be referred to as the Family Violence Court Magistrate. This provides greater flexibility for the Magistrates Court in the conduct of its business and acknowledges that more than one Magistrate may be sitting as the Family Violence Court Magistrate at any one time.

As with all Court listing arrangements, the Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Family Violence Court.

Clause 291K Jurisdiction of Family Violence Court

This clause sets out the jurisdiction of the Family Violence Court. The jurisdiction is one of a criminal nature and the Family Violence Court has jurisdiction in the follow matters:

- any criminal proceeding against a person in relation to a summary domestic violence offence if the person was 18 years old or over at the time of the alleged offence;
- any criminal proceeding against a person in relation to an indictable domestic violence offence if the person was 18 years old or over at the time of the alleged offence;
- a proceeding in relation to bail for an adult charged with a domestic violence offence;
- a proceeding in relation to a breach of a sentence imposed by the Magistrates Court of the Family Violence Court on a person for a domestic violence offence.

The intention of the provision is that domestic violence offences alleged against children and young people will continue to be dealt with in accordance with the jurisdiction of the children's court.

The intention of the provision is that for adults against whom a domestic violence offence is alleged, all summary matters will fall within the jurisdiction of the Family Violence Court and all indictable offences where summary disposal is consented to by virtue of section 375 of the *Crimes Act 1900* will also fall within the jurisdiction of the Family Violence Court.

The intention of the provision is that proceedings relating to bail, to which the Magistrates Court would have jurisdiction, will fall within the jurisdiction of the Family Violence Court if a domestic violence offence is alleged.

Where allegations include domestic violence offences and other offences, the jurisdiction may be exercised. It will be a matter for the court to determine how and if the charges will be split across jurisdictions.

Chapter 4C Galambany Court

This chapter establishes the Galambany Court, which replaces the former Ngambra Circle Sentencing Court.

Clause 291L Definitions – ch 4C

This clause relocates definitions for ‘Aboriginal or Torres Strait Islander offender’ and ‘circle sentencing’ (formerly contained in section 309(4) of the *Magistrates Court Act 1930*, reproduced with minor grammatical edits).

Clause 291M Galambany Court

This clause creates the Galambany Court by reference to jurisdiction. The Magistrates Court is to be known as the Galambany Court when it is sitting to provide circle sentencing.

Clause 291N Directions about procedure for Galambany Court

This clause relocates former section 309(2)-(3), in the context of the establishment of Galambany Court.

Clause 1.40 Section 309

Section 309 is substituted with former section 309(1), plus a note referring the reader to new section 291N.

Clause 1.41 New section 320A

New section 320A formalises the requirement that the Registrar must give the domestic violence project coordinator certain domestic violence statistical information for the previous financial year, by 31 July each year. The specific information to be disclosed may be determined by the Minister, by way of a notifiable instrument. The provision of domestic violence statistical information has occurred to date by way of an informal arrangement between the Registrar and the Domestic Violence Project Coordinator, and that arrangement is now being given statutory underpinning.

Clause 1.42 New chapter 13

New chapter 13 inserts transitional provisions for the amended summary jurisdiction. The amendments will apply to all cases that have been commenced, unless a hearing has already commenced. It will not be relevant when the charges were laid, or the offence occurred, but if a hearing or sentencing proceeding has commenced, then the new provisions will not apply. A transitional regulation power is included in the chapter. The chapter expires 1 year after commencement.

Clause 1.43 Dictionary, new definitions

Definitions for ‘Aboriginal or Torres Strait Islander offender’, ‘circle sentencing’ and ‘domestic violence offence’ are amended, consequential to the establishment of the Family Violence Court and Galambany Court.

Part 1.18 Prohibited Weapons Regulation 1997

Clause 1.44 Section 5(6), definition of *prescribed offence*

This clause amends the existing section by replacing ‘indictable offence’ with ‘an offence punishable by imprisonment for longer than 1 year’. This change restores the power to seize a thing to the same threshold as existed before the passage of the *Crimes Legislation Amendment Act 2008*.

Clause 1.45 Section 7(3)

This clause amends the existing section by replacing ‘indictable offence’ with ‘an offence punishable by imprisonment for longer than 1 year’. This change restores the power to seize a thing to the same threshold as existed before the passage of the *Crimes Legislation Amendment Act 2008*.

Part 1.19 Supreme Court Act 1933

Clause 1.46 New part 11

New part 11 inserts transitional provisions for the amended summary jurisdiction. Changes to the definition of indictable offence will not apply to cases where an offence that was indictable prior to the commencement of the Bill, has already been committed to the Supreme Court, although under the Bill the offence may now be considered to be a summary offence. A transitional regulation power is included in the part. The part expires 1 year after commencement.

Part 1.20 Territory Records Act 2002

Clause 1.47 Section 36(c)

The amendment contained in this clause is consequential to the amendment of the definition of ‘indictable offence’ in the *Legislation Act 2001*. The term ‘indictable offence’ is replaced with ‘offence punishable by imprisonment for longer than 2

years', to maintain the current threshold for ending the appointment of the Director of Territory Records.

Clause 1.48 Section 47(2)(c)

The amendment contained in this clause is consequential to the amendment of the definition of 'indictable offence' in the *Legislation Act 2001*. The term 'indictable offence' is replaced with 'offence punishable by imprisonment for longer than 2 years', to maintain the current threshold for ending the appointment of a member of the Territory Records Advisory Council.

Part 1.21 Victims of Crimes Act 1994

Clause 1.49 Section 22G(3)(d)

The amendment contained in this clause is consequential to the amendment of the definition of 'indictable offence' in the *Legislation Act 2001*. The term 'indictable offence' is replaced with 'offence punishable by imprisonment for longer than 2 years', to maintain the current threshold for ending the appointment a member of the Victims Advisory Board. Note that section 22G is inserted by the *Victims of Crime Legislation Amendment Act 2010*.

Part 1.22 Victims of Crime Regulation 2000

Clause 1.50 Section 42(b)

The amendment contained in this clause is consequential to the amendment of the definition of 'indictable offence' in the *Legislation Act 2001*. The term 'indictable offence' is replaced with 'offence punishable by imprisonment for longer than 2 years', to maintain the current threshold for suspending approval of a service provider.

Clause 1.51 Section 43(c)

The amendment contained in this clause is consequential to the amendment of the definition of 'indictable offence' in the *Legislation Act 2001*. The term 'indictable offence' is replaced with 'offence punishable by imprisonment for longer than 2 years', to maintain the current threshold for cancelling approval of a service provider.