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

COURTS LEGISLATION AMENDMENT BILL 2010

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney General**

Courts Legislation Amendment Bill 2010

Increased summary jurisdiction – *Human Rights Act 2004* analysis

Effect of the Bill

Clause 1.35 of the Bill amends the definition of indictable offence such 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.

These changes are intended to reduce the Supreme Court trial backlog, and enable the Supreme Court to deal with more complex and serious cases.

Human Rights analysis

To the extent that the increased summary jurisdiction changes the procedural framework for the adjudication of certain offences, it is capable of enlivening the right to a fair trial.

The right to fair trial

Section 21(1) of the *Human Rights Act 2004* (HRA) provides that ‘everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing’.

Section 31(1) of the HRA specifies that international law, and the judgments of foreign and international courts and tribunals, relevant to a human right, may be considered in interpreting that right. Examination of the international case law indicates that the right to a fair hearing consists of the following, interrelated, minimum requirements:

- (a) equal access to, and equality before the courts
- (b) right to legal advice and representation
- (c) right to procedural fairness
- (d) right to a trial within a reasonable period or without undue delay
- (e) right to a public hearing
- (f) right to have the free assistance of an interpreter where necessary.

While the jury trial plays an important role in the criminal justice system, trial by jury is not a prerequisite component of the right to fair trial. International jurisprudence confirms that ‘[the International Covenant on Civil and Political Rights] does not confer the right to a trial in either civil or criminal proceedings, rather the touchstone is that all judicial proceedings, with or without a jury, comport with the guarantees of a fair trial’.¹

¹ Communication No. 1406/2005 *Weerawansa v Sri Lanka*, Views adopted on 17 March 2009, at paragraph 6.4; Communication No. 1239/2004, *Wilson v Australia*, Decision adopted on 1 April 2004 at paragraph 4.4

The right to be heard without undue delay

A key element of the right to fair trial is the right to a trial within a reasonable period or without undue delay. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) (upon which section 21 of the HRA is based), guarantees a right to a hearing within a reasonable time in both civil and criminal cases.

The Bill supports the right to fair trial by reducing undue delays in bringing matters to trial. The increased summary jurisdiction promotes greater accessibility to court proceedings through timely hearings. The rights to legal advice and representation, right to a public hearing and the right to an interpreter are unaffected by the proposed reforms. Procedural guarantees associated with the right to fair trial such as the opportunity for defendants to present their case are bolstered by ensuring defendants are brought before the court more promptly and are not left with the uncertainty of a lengthy remand period. The proposed reforms fortify the right to a fair trial by extending the jurisdictional competency of magistrates to deal with a greater range of offences, thereby reducing backlog and minimising procedural delays.

The right to a fair trial, as propounded in the international conventions and as formulated under the HRA, is concerned with the propriety of the adjudicative action, not the nature of the decision maker. It focuses on whether the decision maker has jurisdiction to examine all questions of fact and law relevant to the dispute before it, determines matters within its competence according to the rule of law and is impartial and independent.

ACT Magistrates meet the fair trial requirements of competent, independent and impartial adjudication. Through their demonstrated ability to deal summarily with a broad range of offences by consent (including indictable offences with greater penalties than those affected by the proposed increase to exclusive jurisdiction), experience in sentencing defendants in these matters and knowledge of the law, Magistrates possess the skills and experience to competently hear cases which would fall within their sole jurisdiction as a result of the proposed reforms.