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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2011
(NO 3)**

EXPLANATORY STATEMENT

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JUSTICE & COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2011 (NO 3)

Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2011 (No 3) (the Bill) amends a number of laws administered by the Justice and Community Safety Directorate.

Crimes (Sentence Administration) Act 2005

In 2010, the ACT introduced a new legislative scheme for the enforcement of court fines. As part of the scheme, a new chapter 6A was inserted, which sets out the legislative framework for the scheme. The new section 116N, contained within chapter 6A, reflects the original intention of the section, which was to require reporting by the courts to a credit agency of a defendant's:

- a. failure to pay a fine; or
- b. default on an arrangement to pay a fine by instalments.

Section 116N of the *Crimes (Sentence Administration) Act 2005* required the Director-General to give notice to a credit-reporting agency of the details of a fine defaulter. However, there have been difficulties with the implementation of this provision which were not anticipated.

A primary difficulty with the provision was its interaction with the *Road Transport (Driver Licensing) Act 1999*. Under section 37 of this Act, a court imposed fine could result in the revocation of a fine defaulter's driver's licence, as the road transport authority is able to access information in relation to such fines.

Since the new scheme commenced, ACT courts had been negotiating with a credit reporting agency. These negotiations highlighted uncertainty as to whether unpaid fines represent the kind of information that should be disclosed to a credit reporting agency.

The Office of the Commonwealth Privacy Commissioner has since indicated its view that a fine was probably not a loan within the terms of the *Privacy Act 1988* (Cwth), and was therefore ineligible to be listed on a credit report.

As a result of this uncertainty, the Bill therefore omits section 116N of the *Crimes (Sentencing Administration) Act 2005*. It also omits section 116I(1)(d)(iii) and amends section 116ZS to remove the reference to “relevant credit reporting agency.”

This is a very small part of the entire fines enforcement scheme, but it will help to ensure the integrity of the scheme. ACT courts continue to work with the Government and credit reporting agencies on implementation and improvement of the scheme.

These amendments ensure that confidential information in relation to court fines is not disclosed to a credit reporting agency, which enhances the rights of individuals who are subject to those fines. The amendments do not, therefore, adversely affect human rights.

Fair Trading (Australian Consumer Law) Act 1992

The *Fair Trading (Australian Consumer Law) 1992* (the Act) provides power to the Fair Trading Commissioner (the Commissioner) and investigators to undertake investigations under ‘fair trading legislation’, as defined in the Act.

Section 36 of the Act provides that the Commissioner’s functions may be carried out by the Commissioner or a person authorised in writing by commissioner (‘investigator’).

Section 33 sets out the functions of the Commissioner. It is intended to provide a broad power to the Commissioner and investigators to carry out investigations under ‘fair trading legislation’, which is defined in the Act to mean stated laws administered by the Office of Regulatory Services.

However, section 33 does not state generally that the Commissioner has the function of carrying out investigations. Section 33(1)(d) provides that the Commissioner may inspect records and accounts that must be kept under fair trading legislation.

This may unintentionally narrow the scope of investigatory power that the Commissioner and investigators have under the fair trading legislation. Also, necessary actions taken by the Commissioner or investigators might be challenged as being beyond power.

It is therefore necessary to amend section 33(1) of the *Fair Trading (Australian Consumer Law) Act 1992* to clarify the powers of the Commissioner and investigators to investigate compliance with the fair trading legislation generally.

These amendments give effect to the original intent of the legislation, and do not adversely affect human rights.

Criminal checks: Office of Regulatory Services

There are a number of inconsistencies in different Acts regulating the Office of Regulatory Services' (ORS) administration of licence applicants when they obtain criminal checks.

Some Acts require an Australian Federal Police (AFP) check to be carried out; one requires a CrimTrac check, while others provide for inquiries by police officers.

An AFP or CrimTrac search uses the same database information and will provide the same results. A CrimTrac search is more expensive but is faster to obtain. It is therefore desirable for licence applicants to be able to choose between an AFP check or a CrimTrac check, and for the legislation to be consistent in this regard.

It is therefore necessary to amend a number of Acts to provide that references to the "AFP" or a "police officer" include a reference to "CrimTrac".

In order to give effect to this arrangement, the following legislation will be amended by this Bill:

- a) *Agents Act 2003*
- b) *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
- c) *Liquor Act 2010*
- d) *Pawnbrokers Act 1902*
- e) *Prostitution Act 1992*
- f) *Sale of Motor Vehicles Act 1977*
- g) *Second Hand Dealers Act 1906*

These are technical amendments which confer rights, in the sense that they allow licence applicants to choose which criminal check they utilise. The amendments do not, therefore, adversely affect human rights.

Road Transport (General) Act 1999

The recent changes to the Administrative Arrangements giving effect to the Hawke Review recommendations has meant that the JACS Directorate has become the administrative unit for some road transport legislation.

Some RTA functions are transferring to JACSD, however some functions, such as management of the ACT's road assets and traffic management, are remaining with the TAMS Directorate.

In order to clarify which Directorate has responsibility for each section of the road transport legislation, section 16 of the *Road Transport (General) Act 1999* will be amended by this Bill to reflect these administrative changes.

These are technical amendments to the legislation to give effect to the intent of the changes in the administration of Road Transport legislation in the Territory.

Clause Notes

Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2011 (No 3)*.

Clause 2 Commencement

This clause provides for the Act, section 3 and schedule 1, parts 1.2, 1.3, 1.5 and 1.9 to commence on the day after this Act's notification day.

The amendments in part 1.2 (*Crimes (Sentence Administration) Act 2005*) and part 1.3 (*Fair Trading (Australian Consumer Law) Act 1992*) are technical amendments and can commence promptly.

Schedule 1, parts 1.1, 1.4, 1.6 to 1.8, 1.10 and 1.11 commence on the later of:

- a) the commencement of the *Statute Law Amendment Act 2011 (No 3)*, section 5; and
- b) the commencement of the Act, section 3.

These remaining amendments commence on the day after notification of the Act unless the Statute Law Amendment Act 2011 (No 3), section 5 has not commenced. In that case, the amendments commence on the commencement of that section. That section introduces a definition of "CrimTrac" into the *Legislation Act 2001*, so the provisions of the Act which insert references to CrimTrac are contingent on that term being first defined by the Statute Law Amendment Act 2011 (No 3).

Clause 3 Legislation Amended

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 Dictionary, note 2

The word "CrimTrac" is inserted into the dictionary, note 2 of the Act, indicating it is defined by the *Legislation Act 2001*.

The inclusion of Crim Trac into the Act supports consistency in the legislation that governs the Office of Regulatory Services (ORS) administration of licence applicants when obtaining criminal checks. The Act is amended so that either a CrimTrac search or an AFP police check can be obtained.

Clause 1.2 Dictionary, definition of police certificate

‘CrimTrac’ is inserted into the dictionary definition of police certificate in line with the reasons set out in clause 1.1

Part 1.2 Crimes (Sentence Administration) Act 2005

Clause 1.3 Section 116I(1)(d)(iii)

Section 116I(1)(d)(iii) is omitted from the Act. The section required the Director-General to give notice to a credit reporting agency about a default, as part of a range of fine enforcement measures that may or must be imposed on a defaulter if the Director-General commences fine enforcement action.

There have been a number of difficulties with the implementation of this requirement. A credit reporting agency has refused to act as the Court’s credit reporting agency on the basis of advice from the Australian Privacy Commissioner.

Furthermore, there is uncertainty as to whether a fine, or an arrangement to pay-by-instalments, can be characterised as a loan. There is also uncertainty as to whether the fine imposed by a court can be characterised as a court judgment.

Therefore the requirement is omitted.

Clause 1.4 Section 116N

As with clause 1.3, section 116N is omitted from the Act. This section set out the procedure for the Director-General to notify a credit reporting agency about a default if fine enforcement action is imposed on a defaulter. As set out in clause 1.3, there were a number of difficulties with implementing this requirement and it is therefore omitted from the Act.

Clause 1.5 Section 116ZS

As with clause 1.2 and 1.3 the words “relevant credit reporting agency” were omitted as the omission of section 116(1)(d)(iii) and section 116N makes them no longer relevant.

Part 1.3 Fair Trading (Australian Consumer Law) Act 1992

Clause 1.6 New section 33(1)(ba)

Section 33(1)(ba) contains a broad power for the Commissioner and investigators to carry out investigations under fair trading legislation. Previously, the Commissioner and investigators

may have been restricted to “inspect records and accounts that must be kept under the fair trading legislation.” The section did not include a general power to carry out investigations under the fair trading legislation.

Section 33, may arguably have been construed to limit the powers of the Fair Trading Commissioner. This was never the intention of the legislation. This amendment makes it clear.

Clause 1.7 Section 36(1)

Section 36 of the Act provides that the fair trading commissioner’s functions may be carried out by the Commissioner or a person authorised in writing by Commissioner (‘investigator’).

This section was amended to include section 33 (1)(ba) as required by changes in clause 1.6.

Part 1.4 Fair Trading (Motor Vehicle Repair Industry) Act 2010

Clause 1.8 Dictionary, note 2

As with clause 1.1, CrimTrac is inserted into the dictionary, note 2, to pick up the definition in the Legislation Act.

Clause 1.9 Dictionary, definition of police certificate

‘CrimTrac’ is inserted into the dictionary definition of a police certificate, in line with the reasons set out in clause 1.1.

Part 1.5 Legislation Act 2001

Clause 1.10 Dictionary, part 1, definition of *road transport authority*

This amendment is consequential to the amendment in Part 1.9, and replaces the notes to the definition of *road transport authority*. Replacement note 1 explains that in relation to the exercise of a function under a provision of the road transport legislation, the director-general of the administrative unit responsible for that provision is the road transport authority.

Replacement note 2 explains that *road transport legislation* is defined in section 6 of the *Road Transport (General) Act 1999*.

Part 1.6 Liquor Act 2010

Clause 1.11 Dictionary, definition of police certificate

As with clauses 1.2 and 1.9, ‘CrimTrac’ is inserted into the dictionary definition of a police certificate in line with the reasons set out in clause 1.1.

Clause 1.12 Dictionary, definition of police certificate, paragraph (a)

As with clauses 1.2, 1.9 and 1.10, ‘CrimTrac’ is inserted into the dictionary definition of police certificate in line with the reasons set out in clause 1.1.

Part 1.7 Pawnbrokers Act 1902

Clause 1.13 Section 28 (2)

‘CrimTrac’ is inserted into section 28 in line with the reasons set out in clause 1.1.

Clause 1.14 Dictionary, note 2

As with clauses 1.1 and 1.8, CrimTrac is inserted into the dictionary, note 2 to pick up the definition in the Legislation Act.

Part 1.8 Prostitution Act 1992

Clause 1.15 Section 5, definition of police report

‘CrimTrac’ is inserted into the definition of police report, in line with the reasons set out in clause 1.1.

Clause 1.16 Dictionary, note 2

As with clauses 1.1, 1.8 and 1.13, CrimTrac is inserted into the dictionary, note 2 to pick up the definition in the Legislation Act.

Part 1.9 Road Transport (General) Act 1999

Clause 1.17 New section 16 (2A)

This amendment inserts a new section 16 (2A). Section 16 (1) formally establishes the road transport authority, while section 16 (2) explains that the director-general is the road transport authority.

The new section 16 (2A) is included to accommodate the situation that has arisen following the Hawke Review of the ACT Public Service, which has resulted in functions under the road transport legislation being allocated between two directorates, the Justice and Community Safety Directorate and the Territory and Municipal Services Directorate.

The new section 16 (2A) explains that, in relation to the exercise of a function under a provision of the road transport legislation, *director-general* means the person who is the director-general of the administrative unit responsible for that provision. It should be noted that the Administrative Arrangement Orders will allocate responsibility for particular provisions of the road transport legislation to the administrative units (directorates).

Clause 1.18 Dictionary, note 2

This amendment is a consequential amendment to insert a reference to ‘administrative unit’ in note 2 in the Dictionary. That note is a list of the terms that are defined in the *Legislation Act 2001*.

Part 1.10 Sale of Motor Vehicles Act 1977

Clause 1.19 Dictionary, note 2

As with clauses 1.1, 1.8, 1.13 and 1.15, CrimTrac is inserted into the dictionary, note 2 to pick up the definition in the Legislation Act.

Clause 1.20 Dictionary, definition of police certificate

As with clauses 1.2, 1.9, 1.10 and 1.11, ‘CrimTrac’ is inserted into the dictionary definition of a police certificate in line with the reasons set out in clause 1.1.

Part 1.11 Second Hand Dealers Act 1906

Clause 1.21 Section 18 (2)

‘CrimTrac’ is inserted into section 18 in line with the reasons set out in clause 1.1.

Clause 1.22 Dictionary, note 2

CrimTrac is inserted into the dictionary, note 2 to pick up the definition in the Legislation Act.