

2007

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2007**

REVISED EXPLANATORY STATEMENT

Circulated with the authority of
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2007

Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2007 (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include the:

- *Agents Act 2003*;
- *Civil Law (Wrongs) Act 2002*;
- Classification (Publications, Films and Computer Games) (Enforcement) Regulation 1995;
- *Community Title Act 2001*;
- *Crimes Act 1900*;
- *Criminal Code 2002*;
- Criminal Code Regulation 2005;
- *Discrimination Act 1991*;
- *Domestic Violence Agencies Act 1986*;
- *Human Rights Commission Act 2005*;
- *Judicial Commissions Act 1994*;
- *Powers of Attorney Act 2006*;
- *Utilities Act 2000*;
- *Victims of Crime Act 1994*; and the
- *Victims of Crime (Financial Assistance) Act 1983*.

In addition, the Bill repeals the Powers of Attorney Regulation 2007 which is no longer necessary due to the amendments made by this Bill to the *Powers of Attorney Act 2006*.

The proposed amendments are detailed below.

Agents Act 2003

An amendment has been made to section 22 (1) (b) (ii) of the Act. The amendment has removed the words “person is” from the subparagraph that were unnecessary and made the section difficult to read. The removal has not changed the meaning of the section.

An amendment has been made to section 70 (2) of the Act. The amendment has confirmed an editorial amendment that was made to the subsection by the use of powers under the part 11.3 of the *Legislation Act 2001*.

Civil Law (Wrongs) Act 2002

An amendment has been made by inserting a new provision into the Act. The new provision provides that damages for pain or suffering, for any bodily or mental harm or for curtailment of expectation of life can be awarded to the

estate of a person who has died as a result of an asbestos-related disease. Damages can only be awarded in these circumstances if the person had initiated a claim for damages for personal injury resulting from the asbestos-related disease, but died before an award was made. A consequential amendment has been made by inserting a new definition of **asbestos-related disease** to mean asbestosis, asbestos induced carcinoma, asbestos-related pleural diseases, mesothelioma, and a disease prescribed by regulation. Consultation was conducted on this amendment with the legal profession. This amendment follows changes in other Australian jurisdictions following the Queensland *Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005*.

An amendment has been made to section 84 of the Act. The amendment provides an exception to the limitation currently existing for expert medical evidence. At present only an agreed or appointed expert may give evidence. The exception will allow an expert who has provided a health service for a claimant in relation to the claim to also give expert medical evidence in the proceeding.

An amendment has been made to section 97 (3) of the Act. The amendment provides that the presumption of contributory negligence where the injured person was not wearing a seatbelt at the time of the accident can be rebutted if it can be established that:

- a) the injury suffered by the injured person was less serious than it would have been if the injured person had been wearing a seatbelt at the time of the accident; or
- b) the injured person was not capable of fastening the seatbelt without assistance from someone else.

An amendment has been made to Schedule 4 of the Act to provide for the setting up of schemes that limit the liability of members of associations of practitioners of particular trades or professions. These schemes will only apply if the practitioner has the benefit of an occupational liability insurance policy that provides at least a minimum level of cover set by the scheme. This amendment is part of the national initiative to further develop professional standards legislation in all Australian jurisdictions.

Classification (Publications, Films and Computer Games) (Enforcement) Regulation 1995

An amendment has been made to section 2 of the regulation. The amendment has updated the regulation following amendments to the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (the Act). The amendment has corrected references to particular sections of the Act and references to the classification of films.

Community Title Act 2001

An amendment has been made to section 52 (4) of the Act. The amendment has corrected a reference to a section of the *Residential Tenancies Act 1995*, which was incorrect as a result of the renumbering of that Act.

Crimes Act 1900

An amendment has been made to section 441 (10) of the Act. The amendment has corrected the definition of **prescribed penalty** from “1 penalty unit” to “\$100”. The expression of penalty units as a number should only be used for penalties that are fines. The definition relates to a penalty payable under an infringement notice, which is not a fine.

Criminal Code 2002

An amendment has been made to section 10 (1) of the Code. The amendment has changed the default application date from 1 July 2007 to 1 July 2009. The amendment was necessary to allow work to continue on harmonising the pre-January 2003 offences to conform to the general principles of criminal responsibility in Chapter 2. This work had been delayed pending the outcome of the Standing Committee on Legal Affairs’ inquiry into strict and absolute liability offences.

An amendment has been made to the definition of **territory public official** in section 300 of the Act. The amendment has expanded the definition of a **territory public official** to an authorised person, or a territory service authorised person, under the *Utilities Act 2000*. This amendment has clarified the position of contractors and employees of ACTEW/AGL for the purposes of the obstructing, hindering, and intimidating offences under the *Criminal Code 2002*.

Criminal Code Regulation 2005

An amendment has been made to omit section 4A of the Regulation. The amendment has removed a temporary regulation that was made to extend the default application date of the *Criminal Code 2002* consequent on the amendments made to the *Criminal Code 2002* by this Bill.

Discrimination Act 1991

An amendment has been made by inserting a new provision into the Act. The new provision permits the Discrimination Tribunal to refuse to hear, or further hear a complaint where the applicant has failed to meet reasonable Tribunal directions.

An amendment has been made to the Dictionary of the Act. The definition of **compulsory conference** has been omitted, as the term is no longer used in the Act.

Domestic Violence Agencies Act 1986

Amendments have been made to sections 6, 7, and 8 of the Act. An amendment has been made to clarify that the Domestic Violence Project Coordinator is an automatic member of the Domestic Violence Prevention Council and does not need to be formally appointed.

An amendment has been made to extend the list of appointed members consisting of community members to include at least 1 representative of the Domestic Violence Crisis Service Incorporated (DVCS). The Council benefits from having a representative of the DVCS as a member of the Council due to the role they play in providing crisis intervention, information, support and assistance for people subjected to, or using, violence and abuse in relationships.

An amendment has been made to clarify that the Attorney General can appoint a police officer to the Council. The Council benefits from having a member of the Australian Federal Police (AFP) on the Council due to the important role the Police play in responding to situations of domestic violence. This amendment solves the problems that have arisen in regards to the validity of the appointment of members of the AFP to the Council, as they are not ACT public servants.

An amendment has been made to extend the term of appointment for a member of the Council from two years to three years. The amendment allows members a greater amount of time to become engaged in the work of the Council.

An amendment has also been made to clarify the position that if a member is appointed because the person is a statutory office holder, or public servant or police officer they cease being a member when they cease to hold that position

In 2004, the Commonwealth made a series of amendments to the *Bankruptcy Act 1966*. In particular, it repealed three types of administrations (deeds of assignment, deeds of arrangement, and compositions), replacing them with a single “personal insolvency agreement”. An amendment has been made to replace references to the repealed administrations with references to “personal insolvency agreement”.

An amendment has been made to add the words “if the member” to particular paragraphs of section 8 to make the section easier to read.

Human Rights Commission Act 2005

Amendments have been made to section 6 of the Act. The amendments reinstate the main objects of the Act that had been erroneously removed and remove duplications that have arisen as a result of amendments made by the *Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005*.

Judicial Commissions Act 1994

An amendment has been made to section 61 of the Act. Section 61 prevented action being taken against a person in respect of the publication of a fair and accurate report of the proceedings of a hearing before a commission. The amendment has updated the provision to provide that a proceeding before a commission is taken to be a proceeding of public concern for the *Civil Law (Wrongs) Act 2002* which enables the defence of fair report of proceedings.

Powers of Attorney Act 2006

An amendment has been made to section 12 of the Act. The amendment has removed example 2 from the examples of health care matters that a power of attorney may deal with. The example incorrectly referred to the donation of a principal's tissue, which is one of the matters section 37 (1) of the Act expressly provides that a power of attorney cannot be authorised to do.

A number of amendments have been made through the Act that clarifies references to several terms that are used interchangeably throughout the Act. The terms include authorise and appoint, authorisation and appointment, and authorised and appointed.

An amendment has been made to section 13 (3) of the Act. The amendment changes "the adult" to "an adult". The amendment has made the section easier to read.

An amendment has been made to section 22 (2) (d) of the Act. Section 22 (2) provides for a power of attorney to be signed by a person for the principal, but section paragraph (d) incorrectly refers to the time the principal signed the power of attorney. The amendment has corrected the reference to the time the principal gave the direction to sign the power of attorney.

An amendment has been made to section 31 (2) of the Act. The amendment inserted "in relation to property matters" at the end of the section. The amendment has clarified that an enduring power of attorney would operate as a general power of attorney only in relation to property matters, not in relation to personal care or health care matters, while the principal has decision-making capacity.

An amendment has been made to section 36 (b) of the Act. The amendment removes the words "or enduring power of attorney" as they are redundant.

An amendment has been made to section 83 (3) of the Act. The amendment substitutes "may" for "must". This amendment ensures that the public trustee holds the discretion and is not under an obligation to assist the public advocate if requested.

Utilities Act 2000

An amendment has been made to section 20 (2) (b) of the Act. The amendment has replaced a reference to the *Emergency Management Act 1999* with a reference to the *Emergencies Act 2004*. The *Emergency Management Act 1999* was repealed when the *Emergencies Act 2004* commenced.

An amendment has been made to section 171 (2) (b) (ii) of the Act. The amendment has replaced a reference to the *Magistrates Court (Civil Jurisdiction) Act 1982* with a reference to the *Magistrates Court Act 1930*. The *Magistrates Court (Civil Jurisdiction) Act 1982* was repealed when the *Magistrates Court Act 1930* commenced.

An amendment has been made by inserting a new provision into the Act. The new provision provides that the Essential Services Consumer Council can issue a direction to reduce a charge where there is a complaint that a capital contribution charge imposed by a utility is excessive.

Victims of Crime Act 1994

An amendment has been made by inserting a new provision into the Act. The amendment permits the Victims of Crime Coordinator to delegate its functions under the Act to a public servant. This amendment ensures that the functions of the Coordinator can be performed, at times when the Coordinator is on leave or otherwise unavailable, and avoids the inconvenience of formally appointing an acting Coordinator for these occasions.

Victims of Crime (Financial Assistance) Act 1983

An amendment has been made by inserting a new provision into the Act. The new provision provides for the creation of a judgment debt, which previously did not exist, and is necessary, as provisional orders made under the Act can become a judgment debt payable by the person.

Clause Notes

Clause 1 Name of Act – states the title of the Act as the *Justice and Community Safety Legislation Amendment Act 2007*.

Clause 2 Commencement – sets out the commencement for the Act. The clause states that the Act commences on the day after its notification day.

Clause 3 Notes – explains that a note included in the Act is explanatory and not part of the Act.

Clause 4 Legislation amended – sch 1 - notes that the legislation is listed in schedule 1.

Clause 5 Repeal of Powers of Attorney Regulation 2007 – repeals the Regulation.

Schedule 1 – Legislation amended – sets out the legislation amended by this Act.

PART 1.1 – Agents Act 2003

Amendment 1.1 – Section 22 (1) (b) (ii) – amends subparagraph (ii) by removing the words “the licensed agent” that are unnecessary and make the section difficult to read.

Amendment 1.2 – Section 70 (2) – amends subsection (2) to confirm an editorial amendment that was made by the use of powers under the *Legislation Act 2001*, part 11.3.

PART 1.2 – Civil Law (Wrongs) Act 2002

Amendment 1.3 – New section 16 (3A) – inserts a new section 16 (3A) into the Act. The new section allows damages mentioned in section (3) (b) (i) to be recovered if a person dies as a result of an asbestos-related disease, but had began proceedings in relation to a cause of action resulting from the asbestos-related disease before they died.

Amendment 1.4 – Section 16 (7), new definition of *asbestos-related disease* - inserts a definition of *asbestos-related disease* into the Act. The term refers to asbestosis, asbestos induced carcinoma, asbestos-related pleural diseases, mesothelioma, and a disease prescribed by regulation.

Amendment 1.5 – New section 84 (2) and (3) – inserts two new subsections into section 84 of the Act. Subsection (2) provides an exception to the limitation created in section 84 by allowing an expert who has provided a health service for a claimant in relation to a claim to give expert medical evidence in the proceeding in addition to expert medical evidence given by an agreed or appointed expert. Subsection (3) provides a definition of *health*

service for the section by making a cross-reference to section 15 of the *Health Professionals Act 2004*.

Amendment 1.6 – Section 97 (3) – amends subsection (3) by providing that the presumption for contributory negligence can be rebutted if the injured person establishes, on the balance of probabilities, that the injury suffered was less serious than it would have been if the injured person had been wearing a seatbelt at the time of the accident, or that the injured person was not capable of fastening the seatbelt without assistance from someone else.

Amendment 1.7 – Schedule 4, section 4.2, new definitions of *amount payable* and *costs* – inserts a definition of *amount payable* and *costs* into the Act. The definition of *amount payable* makes a cross-reference to section 4.2A of the Act. The definition of *costs* includes fees, charges, disbursements and expenses.

Amendment 1.8 – Schedule 4, section 4.2, definition of *damages* – amends the definition of *damages* in the Act. The definition is amended to include in that meaning any interest payable on the amount of the damages or costs.

Amendment 1.9 – Schedule 4, new section 4.2A – inserts a new section 4.2A into the Act. The new section provides for the definition of *amount payable* under an insurance policy for Schedule 4, which ensures that references in the Act to an occupational liability insurance policy extend to a policy that provides cover that is inclusive of defence costs.

Amendment 1.10 – Schedule 4, section 4.17 – amends section 4.17 as a consequence of new section 4.2A and to omit certain words that are redundant as a consequence of amendments to section 4.24 (2).

Amendment 1.11 – Schedule 4, section 4.18 (a) – amends subsection (a) as a consequence of new section 4.2A and to omit certain words that are redundant as a consequence of amendments to section 4.24 (2).

Amendment 1.12 – Schedule 4, section 4.18 (b) (ii) – amends paragraph (ii) as a consequence of new section 4.2A and to omit certain words that are redundant as a consequence of amendments to section 4.24 (2).

Amendment 1.13 – Schedule 4, section 4.19 (1) (a) (ii) – amends subparagraph (ii) as a consequence of new section 4.2A and to omit certain words that are redundant as a consequence of amendments to section 4.24 (2).

Amendment 1.14 – Schedule 4, section 4.19 (1) (c) (ii) – amends subparagraph (ii) as a consequence of new section 4.2A and to omit certain words that are redundant as a consequence of amendments to section 4.24 (2).

Amendment 1.15 – Schedule 4, new section 4.22A – inserts new section 4.22A into the Act. This section makes it clear that although a defence costs inclusive insurance policy may (as compared with one that is not defence costs inclusive) reduce the amount available to be paid under the policy to a scheme participant's client in respect of a claim, this does not lower the cap in the scheme participant's liability to the client. The scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap.

Amendment 1.16 – Schedule 4, section 4.24 (2) – amends subsection (2) to ensure that it has the same effect as words that are omitted from sections 4.17, 4.18 (a) and (b) (ii), and 4.19 (1) (a) (ii) and (c) (ii) as a consequence of the amendment of those sections by this Bill.

Amendment 1.17 – Schedule 4, new section 4.59A – inserts new section 4.59A into the Act. The new section inserts provisions into the Act that, in certain circumstances, validate schemes approved before the commencement of the proposed amendments and related matters.

Amendment 1.18 – Dictionary, new definition of *amount payable* - inserts a definition of *amount payable* into the Dictionary. The definition of *amount payable* makes a cross-reference to section 4.2A of the Act.

Amendment 1.19 – Dictionary, definition of costs – amends the definition of *costs* by inserting a cross-reference to section 4.2 of the Act.

PART 1.3 – Classification (Publications, Films and Computer Games) (Enforcement) Regulation 1995

Amendment 1.20 – Section 2 – amends the section to provide that for the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (the Act) particular areas are prescribed areas for X 18+ films. An amendment to the section also omits the incorrect references to particular sections of the Act and substitutes the correct references. This amendment is consequential to the renumbering of the Act.

PART 1.4 – Community Title Act 2001

Amendment 1.21 – Section 52 (4) – amends subsection (4) by omitting the reference to section 7 of the *Residential Tenancies Act 1995* and substituting the reference to section 8 of the *Residential Tenancies Act 1995*. This amendment is consequential to the renumbering of the *Residential Tenancies Act 1995*.

PART 1.5 – Crimes Act 1900

Amendment 1.22 – Section 441 (10), definition of *prescribed penalty* – omits the definition of *prescribed penalty* to be 1 penalty unit and substitutes the definition of *prescribed penalty* to be \$100.

PART 1.6 – Criminal Code 2002

Amendment 1.23 – Section 10 (1), definition of *default application date* – omits the definition of *default application date* to be 1 July 2007 and substitutes the definition of *default application date* to be 1 July 2009.

Amendment 1.24 – Section 300, definition of *territory public official*, new paragraph (k) – inserts a new paragraph (k) into the Act which expands the definition of *territory public official* to include an authorised person, or a territory service authorised person, under the *Utilities Act 2000*.

PART 1.7 – Criminal Code Regulation 2005

Amendment 1.25 – Section 4A – omits section 4A from the Regulation. This omission is consequential on the amendment to Section 10 (1), definition of *default application date* in the *Criminal Code 2002* made by this Bill.

PART 1.8 – Discrimination Act 1991

Amendment 1.26 – New section 77A – inserts a new section 77A into the Act that permits the Discrimination Tribunal to refuse to hear, or further hear, a complaint where the applicant has failed to meet reasonable Tribunal directions.

Amendment 1.27 – Dictionary, definition of *compulsory conference* – omits the definition of *compulsory conference*. The term is no longer used in the Act.

PART 1.9 – Domestic Violence Agencies Act 1986

Amendment 1.28 – Sections 6, 7 and 8 – amends sections 6, 7 and 8 of the Act. The amendments clarify and update the sections regarding the membership of the Domestic Violence Prevention Council.

Amendment 1.29 – Dictionary, definition of *appointed member* – amends the cross-reference to the definition of *appointed member* from section 6 (6) to section 6 (1).

Amendment 1.30 – Dictionary, definition of *member* – amends the definition of *member* to mean a member of the Domestic Violence Prevention Council.

PART 1.10 – Human Rights Commission Act 2005

Amendment 1.31 – New section 6 (aa) – inserts new section 6 (aa) into the Act. This new section reinserts a main object into the Act that had been erroneously removed.

Amendment 1.32 – New section 6 (d) - inserts new section 6 (d) into the Act. This new section reinserts a main object into the Act that had been erroneously removed.

Amendment 1.33 – Section 6 (f) – omits section 6 (f) from the Act. The amendment removes a duplication that arose as a result of amendments made by the *Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005*.

PART 1.11 – Judicial Commissions Act 1994

Amendment 1.34 – Section 61 – amends section 61 of the Act. The amendment provides that a proceeding before a commission is taken to be a proceeding of public concern for the *Civil Law (Wrongs) Act 2002* which enables the defence of fair report of proceedings.

PART 1.12 – Powers of Attorney Act 2006

Amendment 1.35 – Section 12, example 2 – omits example 2 from section 12. The example was incorrect.

Amendment 1.36 – Section 13 heading – amends the heading of section 13 of the Act to provide for the appointment of attorneys instead of the authorisation of attorneys.

Amendment 1.37 – Section 13 (1) and (2) – amends subsections (1) and (2) by omitting the term authorise wherever occurring and substituting the term appoint.

Amendment 1.38 – Section 13 (3) – amends subsection (3) by correcting the phrase “the adult” to “an adult”. This amendment makes the subsection easier to read.

Amendment 1.39 – Section 15 – amends section 15 to provide for the appointment of attorneys by name or position instead of the authorisation of attorneys by name or position.

Amendment 1.40 – Section 21 (1) (b) and (2) (b) - amends subsections (1) (b) and (2) (b) by omitting the term authorised wherever occurring and substituting the term appointed.

Amendment 1.41 – Section 22 (2) (d) – amends paragraph (d) by correcting the reference to the time the principal signed the power of attorney to the time the principal have the direction to sign the power of attorney.

Amendment 1.42 – Part 3.3 heading – amends the heading to provide for the authorisation of 2 or more attorneys instead of the appointment of 2 or more attorneys.

Amendment 1.43 – Section 25 heading – amends the heading to provide for the authorisation of 2 or more attorneys under power of attorney instead of the appointment of 2 or more attorneys under power of attorney.

Amendment 1.44 – Section 31 (2) – amends subsection (2) by inserting “in relation to property matters” at the end of the subsection. This amendment clarifies that an enduring power of attorney would operate as a general power of attorney only in relation to property matters, while the principal has decision-making capacity.

Amendment 1.45 – Section 36 (b) – omits the words “or enduring power of attorney” from subsection (b). These words are redundant.

Amendment 1.46 – Sections 43 (1) and 53 - amends section 43 (1) and 53 of the Act by omitting the term authorisation wherever occurring and substituting the term appointment.

Amendment 1.47 – Section 83 heading – amends the heading as a consequence of the amendment to section 83 (3) of the Act made by this Bill.

Amendment 1.48 – Section 83 (3) – amends subsection (3) by omitting the term must wherever occurring and substituting the term may.

PART 1.13 – Utilities Act 2000

Amendment 1.49 – Section 20 (2) (b) – omits the reference to the *Emergency Management Act 1999* in paragraph (b) and substitutes the reference to the *Emergencies Act 2004*. The *Emergency Management Act 1999* was repealed when the *Emergencies Act 2004* commenced.

Amendment 1.50 – Section 171 (2) (b) (ii) – omits the reference to the *Magistrates Court (Civil Jurisdiction) Act 1982* in subparagraph (ii) and substitutes the reference to the *Emergencies Act 2004*. The *Emergency Management Act 1999* was repealed when the *Emergencies Act 2004* commenced.

Amendment 1.51 – New section 206 (1) (d) – inserts new paragraph (d) into the Act, which provides that the division applies to a complaint that a capital contribution charge imposed by a utility, is excessive.

Amendment 1.52 – Section 206 (2) – amends subsection (2) by providing that the Essential Services Consumer Council may give a direction under section 209A of the Act for a complaint that a capital contribution charge is excessive.

Amendment 1.53 – New section 209A – inserts a new section 209A into the Act. The new section provides that the Essential Services Consumer Council can issue a direction to reduce the charge where there is a complaint that a capital contribution charge is excessive.

Part 1.14 – Victims of Crime Act 1994

Amendment 1.54 – New section 18A – inserts a new section 18A into the Act. The new section permits the Victims of Crime Coordinator to delegate its functions under the Act to a public servant.

Part 1.15 – Victims of Crime (Financial Assistance) Act 1983

Amendment 1.55 – New section 61AA – inserts a new section 61AA into the Act. The new section provides for the creation of a judgment debt under the Act.

Amendment 1.56 – Sections 61AA and 61A – renumbers the sections.