

**2010**

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT  
BILL 2010 (NO 2)**

**EXPLANATORY STATEMENT**

**Presented by  
Simon Corbell MLA  
Attorney General**

## **Justice and Community Safety Legislation Amendment Bill 2010 (No 2)**

### **Overview of the Bill**

The Justice and Community Safety Legislation Amendment Bill 2010 (No 2) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

The detail of these amendments is listed below.

### **ACT Civil and Administrative Tribunal Act 2008**

Amendments to the *ACT Civil and Administrative Tribunal Act 2008* will clarify an ambiguity in the Act in relation to the appointment of temporary presidential and non-presidential members to the Tribunal. The amendments will disaggregate the generic reference to temporary appointment of ‘tribunal members’ referred to in existing section 101 of the Act by describing the way temporary appointments apply to each type of member. Temporary appointments will be permissible for a term of not longer than 12 months.

### **Magistrates Court Act 1930**

Section 89 of the *Magistrates Court Act 1930* authorises the court (subject to a number of procedural requirements) to issue a warrant for arrest in the event of a person failing to attend court in response to a summons for an indictable offence. Section 110 of the Act provides similarly in respect of summary offences. However, neither section empowers the court to issue a warrant in the event of a person attending court in answer to the summons, but then failing to attend on any subsequent adjourned date. At present, the court is utilising provisions under Division 3.3.4 of the Act, which permit a warrant to be issued, but are not entirely appropriate where a person has already attended court in answer to a summons.

Accordingly, the Act is amended to allow the court to issue a warrant where a person appears in court, is informed of the adjourned date and time of the adjourned hearing, but fails to appear on the adjourned date. The information must be substantiated by oath of the informant or witness before a warrant may be issued. The amendment is consistent with equivalent legislation other jurisdictions, including the New South Wales *Criminal Procedure Act 1986* (section 181).

In addition, section 110 does not allow the court to issue a warrant in the event of a person having appeared by lawyer in accordance with section 53(2) in the first instance, and then failing to appear at a later date. This issue does not arise in relation to section 89, as section 89A provides for these circumstances. This problem is addressed by amendment to section 110 so that in the event of appearance by lawyer, but the court requiring attendance in person, the court must adjourn the case and inform the defendant of the place, date and time of the adjourned hearing. If the defendant then fails to attend a hearing following service of the adjournment notification, the court may issue an arrest warrant.

## **Prostitution Act 1992**

Amendments have been made to the *Prostitution Act 1992* to update the language used in the Act to reflect the terminology used in Australian national policy. Specifically, the amendments replace references to ‘sexually transmitted disease’ with references to ‘sexually transmissible infection’. The term ***sexually transmissible infection*** reflects the terminology that is used in Australian national policy that addresses this issue - specifically the *National Sexually Transmissible Infections Strategy 2010- 2013*. Local policy also uses this terminology including the ACT document which is entitled *HIV/AIDS, Hepatitis C and Sexually Transmissible Infections: A Strategic Framework for the ACT 2007-2012*. An amendment has also been made to the heading of section 25 to more appropriately reflect the content of the provision.

## **Update of bankruptcy and insolvency terminology**

The *Statute Law Amendment Act 2009 (No. 2)* inserted a definition into the *Legislation Act 2001* of bankrupt or personally insolvent. The definition establishes a single term to cover the range of circumstances by which an individual may be considered bankrupt or insolvent under the *Bankruptcy Act 1966* (Cwlth). The definition includes individuals having a similar bankruptcy or personal insolvency status in a foreign country and people in any other circumstances seeking to benefit from any law for the relief of bankrupt or insolvent debtors. Consequential amendments were made to 19 Acts and regulations to apply the new definition. The Statute Law Amendment Bill 2010 continued this process for non-Justice and Community Safety portfolio legislation.

The amendments in the Bill continue the process with similar amendments being made to:

- *Associations Incorporation Act 1991*;
- *Associations Incorporation Regulation 1991*;
- *Cooperatives Act 2002*;
- *Corrections Management Act 2007*;
- *Crimes (Sentence Administration) Act 2005*;
- *Director of Public Prosecutions Act 1990*;
- *Domestic Violence Agencies Act 1986*;
- *Guardianship and Management of Property Act 1991*;
- *Human Rights Commission Act 2005*;
- *Independent Competition and Regulatory Commission Act 1997*;
- *Justices of the Peace Act 1989*;
- *Legal Aid Act 1977*;
- *Ombudsman Act 1989*;
- *Powers of Attorney Act 2006*;
- *Public Advocate Act 2005*;
- *Public Trustee Act 1985*.

The amendments to the listed Acts and regulations above will ensure that legislation within the Justice and Community Safety portfolio is consistent with the rest of the ACT statute book.

## Clause Notes

### Clause 1 Name of Act

Provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2010 (No 2)*.

### Clause 2 Commencement

Provides that all provisions in the Act will commence on the 28<sup>th</sup> day after notification, except for the amendments to the *ACT Civil and Administrative Tribunal Act 2008* (Part 1.1) which will commence on the day after notification.

### Clause 3 Legislation amended

Provides that the Act amends legislation mentioned in schedule 1.

## Schedule 1 Legislation amended

### Part 1.1 ACT Civil and Administrative Tribunal Act 2008

#### Clause 1.1 Section 94(2)

Section 94 of the Act provides for the appointment of presidential members to the ACT Civil and Administrative Tribunal (ACAT). New subsection 94(1A) will permit the Executive to appoint a temporary presidential member to the ACAT. The substance of existing subsection 94(2) is retained but is revised to include a new reference to subsection (1A).

#### Clause 1.2 Section 96(2)

Section 96 of the Act provides for the appointment of non-presidential members to the ACT Civil and Administrative Tribunal (ACAT). New subsection 96(1A) will permit the Attorney General to appoint a temporary senior member or temporary ordinary member to the ACAT. The substance of existing subsection 96(2) is retained but is revised to include a new reference to subsection (1A).

#### Clause 1.3 Section 96(3)

This amendment replaces the phrase ‘appointment of senior and ordinary members’ with the phrase ‘appointment of non-presidential members’ for consistency with references used throughout section 96.

**Clause 1.4 Section 98(1)**

Subsection 98(1) of the Act provides for the term of appointment for a presidential member. Subsection 98(1) is revised to exclude the operation of the section to temporary presidential members (see clause 1.5 for the term of appointment for a temporary presidential member).

**Clause 1.5 New section 98(1A)**

This amendment inserts a new subsection 98(1A) into the Act to provide for the appointment of a temporary presidential member for up to 12 months.

**Clause 1.6 Section 98(2)**

Subsection 98(2) of the Act provides for the term of appointment for a non-presidential member. Subsection 98(2) is revised to exclude the operation of the section to temporary non-presidential members (see clause 1.7 for the term of appointment for a temporary non-presidential member).

**Clause 1.7 New section 98(2A)**

This amendment inserts a new subsection 98(2A) into the Act to provide for the appointment of a temporary non-presidential member for up to 12 months.

**Clause 1.8 Section 101**

This amendment removes section 101. Section 101 provides for the appointment of temporary tribunal members. This section is now redundant through the inclusion of new subsections 94(1A) and 96(1A) (see clauses 1.1 and 1.2).

**Clause 1.9 Section 103 heading**

This amendment replaces the heading for section 103 to more appropriately reflect the content of the provision.

**Clause 1.10 Section 103**

Section 103 of the Act provides that a presidential member must not do other work (including engaging in remunerative employment, or accepting appointment to another position) without the Attorney General's written consent. The amendment revises section 103 to exclude the operation of the section to temporary presidential members.

**Clause 1.11 Dictionary, definition of *non-presidential member***

This amendment amends the definition of *non-presidential member* in the dictionary to include a new reference to temporary non-presidential members appointed under subsection 96(1A).

**Clause 1.12 Dictionary, definition of *presidential member***

This amendment amends the definition of *presidential member* in the dictionary to include a new reference to temporary presidential members appointed under subsection 94(1A).

## **Part 1.2 Associations Incorporation Act 1991**

### **Clause 1.13 Section 63(2)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.14 Section 64(2)(d)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.15 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in sections 63 and 64 (see clauses 1.13 – 1.14).

## **Part 1.3 Associations Incorporation Regulation 1991**

### **Clause 1.16 Schedule 1, section 16(1)(e)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

## **Part 1.4 Cooperatives Act 2002**

### **Clause 1.17 Section 67(1)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.18 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 67 (see clause 1.17).

## **Part 1.5 Corrections Management Act 2007**

### **Clause 1.19 Section 61(1)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.20 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 61 (see clause 1.19).

## **Part 1.6 Crimes (Sentence Administration) Act 2005**

### **Clause 1.21 Section 178(1)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

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

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 178 (see clause 1.21).

## **Part 1.7 Director of Public Prosecutions Act 1990**

### **Clause 1.23 Section 28(2)(a)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.24 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 28 (see clause 1.23).

## **Part 1.8 Domestic Violence Agencies Act 1986**

### **Clause 1.25 Section 8(3)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.26 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 8 (see clause 1.25).

## **Part 1.9 Guardianship and Management of Property Act 1991**

### **Clause 1.27 Section 10(2)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.28 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 10 (see clause 1.27).

## **Part 1.10 Human Rights Commission Act 2005**

### **Clause 1.29 Section 29(1)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.30 Dictionary, note 2**



This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 29 (see clause 1.29).

## **Part 1.11 Independent Competition and Regulatory Commission Act 1997**

### **Clause 1.31 Schedule 2, section 2.5(6)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.32 Schedule 3, section 3.9(6)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.33 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in schedule 2, section 2.5(6) and schedule 3, section 3.9(6) (see clauses 1.31-1.32).

## **Part 1.12 Justices of the Peace Act 1989**

### **Clause 1.34 Section 3B(1)(a)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

## **Part 1.13 Legal Aid Act 1977**

### **Clause 1.35 Section 52(2)(a)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

### **Clause 1.36 Section 60(2)(a)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.37 Section 78(2)(a)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.38 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in sections 52, 60 and 78 (see clauses 1.35-1.37).

**Part 1.14 Magistrates Court Act 1930**

**Clause 1.39 Section 89 heading**

This amendment creates a new heading for section 89. The new heading indicates that section 89 allows for warrants in cases of disobedience of a summons.

**Clause 1.40 New section 89(1A)**

This amendment extends the court’s power to issue a warrant when a person fails to appear as directed by a summons in relation to an indictable offence. The court will be empowered to issue warrants when a person first appears in response to a summons, but then fails to appear for further hearings as directed by the court. The requirements to issue a warrant following an initial appearance are the same as those applicable to a failure to appear as directed by a summons.

**Clause 1.41 New sections 112 and 112A**

This amendment provides the court with the power to issue warrants for failure to appear for further hearings in relation to summary offences. The warrant will be available in cases where a summons has been issued, and the person subject to the summons has already appeared before the court, either in person or through a lawyer. If the person fails to appear as directed for further hearings related to the same offence, the court may issue a warrant as if the person had failed to appear in response to the initial summons.

**Part 1.15 Ombudsman Act 1989**

**Clause 1.42 Section 28(6)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.43 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in sections 28 (see clause 1.42).

**Part 1.16 Powers of Attorney Act 2006**

**Clause 1.44 Section 14(1)(b) and note**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.45 Section 62(1)(b)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.46 Section 62(2), note**

This amendment removes the note in subsection 62(2) which will become redundant on the amendment made in clause 1.45.

**Clause 1.47 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in sections 14 and 62 (see clauses 1.44-1.45).

**Clause 1.48 Dictionary, definitions of *bankrupt* and *personal insolvency agreement***

This amendment removes the existing definitions of *bankrupt* and *personal insolvency agreement*, consequential on the amendments made in clauses 1.44-1.45.

**Part 1.17 Prostitution Act 1992**

**Clause 1.49 Section 24**

This amendment replaces the term *sexually transmitted disease* with the term *sexually transmissible infection* to update the language to reflect the terminology used in Australian national policy.

The term *sexually transmissible infection* reflects the terminology that is used in Australian national policy that addresses this issue - specifically the *National Sexually Transmissible Infections Strategy 2010- 2013*. Local policy also uses this terminology including the ACT document which is entitled *HIV/AIDS, Hepatitis C and Sexually Transmissible Infections: A Strategic Framework for the ACT 2007-2012*.

**Clause 1.50 Section 25 heading**

This amendment replaces the heading for section 25 to more appropriately reflect the content of the provision.

**Clause 1.51 Sections 25 and 26**

This amendment substitutes the term *sexually transmissible infection* where the legislation currently refers to *sexually transmitted disease*.

**Clause 1.52 Section 32(2)(g)**

This amendment replaces the term *sexually transmitted diseases* with the term *sexually transmissible infections* to update the language to reflect the terminology used in Australian national policy.

**Clause 1.53 Schedule 2, item 7, column 3**

This amendment replaces the term *sexually transmitted disease* with the term *sexually transmissible infection* to update the language to reflect the terminology used in Australian national policy.

**Clause 1.54 Dictionary, definition of *prophylactic***

This amendment replaces the term *sexually transmitted disease* with the term *sexually transmissible infection* to update the language to reflect the terminology used in Australian national policy.

**Clause 1.55 Dictionary, definition of *sexually transmitted disease***

This amendment replaces the existing definition of *sexually transmitted disease* with a definition of *sexually transmissible infection* as a consequence of the replacement of the new term (see clauses 1.49 and 1.51-1.53). The amendment also replaces the term chlamydial disease with chlamydial infection for consistency. The definition is otherwise identical to the previous definition.

**Part 1.18 Public Advocate Act 2005**

**Clause 1.56 Section 7(1)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.57 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 7 (see clause 1.56).

**Part 1.19 Public Trustee Act 1985**

**Clause 1.58 Section 53(2)(c)**

This amendment substitutes language in relation to bankruptcy with the term ‘bankrupt or personally insolvent’, which is defined in the *Legislation Act 2001*, dictionary, part 1. The definition covers the range of circumstances in which an individual may be considered bankrupt or insolvent.

**Clause 1.59 Dictionary, note 2**

This amendment inserts a new defined term in the list of terms defined in the *Legislation Act 2001* as a consequence of the insertion of the new term in section 53 (see clause 1.58).