

2010

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2010 (NO 4)**

EXPLANATORY STATEMENT

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JUSTICE & COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2010 (No 4)

Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2010 (No 4) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

The details of these amendments are listed below.

Crimes Act 1900

Restrictions on anabolic steroids were introduced into the *Crimes Act 1900*, with criminal offences, through transitional provisions in the *Medicines, Poisons and Therapeutic Goods Regulation 2008*. The amendments make the restrictions permanent.

Guardianship and Management of Property Act 1991

These amendments change the way directors can be liable for certain offences under the Act. This part of a national reform project aimed at creating uniform principles of directors' liability.

Human Rights Commission Act 2005

The Bill makes a number of changes to the handling of complaints and conciliation under the *Human Rights Commission Act 2005* (the Human Rights Commission Act).

Under the current section 44 of the Human Rights Commission Act, the Commission may only consider a complaint if that complaint is in writing. The amendment creates an exception to this requirement, to allow a complaint to be made orally if the Commission is satisfied on reasonable grounds that waiting for a written complaint would make action in response to the complaint impossible or impractical, and where exceptional circumstances justify action without a written complaint.

Amendments are also made to broaden the Commission's power to deal with complaints that are unlikely to be resolved by conciliation. Conciliation is just one of the steps that may be taken by the Commission in relation to a complaint. The Commission may also allocate, consider, report, close or refer a complaint to another entity. Under the current section 64 of the Act, if, at any time during the conciliation of a discrimination matter, the Commission decides that conciliation is unlikely to be successful, the Commission must tell the parties in writing about the decision and include a discrimination referral statement with the notice. Once a discrimination referral statement is issued, the complaint is closed and no other action may be taken. The amendments omit section 64 of the Act and allow the Commission to take action other than closure of a complaint. References to section 64 are omitted from sections 53A(1)(a)(i) and 53(B)(1)(a).

Land Titles Act 1925

The Registrar-General has identified a problem with renewing leases for unit plans in the ACT. The law currently requires every owner in a unit plan complex to endorse a new lease, or to execute a memorandum of surrender of the old lease, unanimously. If an owner is missing, unavailable, or uncooperative, the ability of unit title owners to obtain a new lease may be hampered.

On a practical level, this situation means that unit title owners will experience difficulties when trying to secure mortgages for a full term, where their leases are set to expire within twenty to thirty years.

The amendments to the Act will allow the ACT Planning and Land Authority (ACTPLA) and the Registrar-General to renew leases for unit title owners in a timely and efficient manner.

Legal Profession Act 2006

The bar council may recommend conditions to attach to a barrister's practising certificate. The ACT Law Society currently acts as the licensing body for imposing conditions on an ACT practising certificate under section 47 of the Act.

Under the current section 47(3), the licensing body cannot impose conditions on a barrister's practising certificate without the recommendation or agreement of the bar council. The amendments will require the ACT Law Society, as the licensing body, to impose any conditions agreed to or recommended by the bar council.

Medicines, Poisons and Therapeutic Goods Regulation 2008

Transitional provisions under this regulation introduced a change to the *Crimes Act 1900* to regulate anabolic steroids in the Territory. Now that the transitional provisions are being made permanent in the *Crimes Act 1900*, the transitional provisions are repealed.

Personal Property Securities Act 2010

Schedule 3 of the Act repeals legislation that will be made redundant by the commencement of the Commonwealth Personal Property Securities Register. This Bill adds provisions relating to co-operative charges under the *Cooperatives Act 2002*.

Public Trustee Act 1985

Section 22 of the Act currently allows the Public Trustee to accept a will for deposit. The insertion of the new provision, section 23A, will allow the Public Trustee to keep a register of wills held under section 22, in whatever form the Public Trustee considers appropriate.

The effect of section 23A is that, where the Public Trustee is the executor, the Public Trustee will be able to keep copies of wills electronically, and will therefore be able to provide certified copies of those wills when appropriate. This will increase efficiency in the administration of the Public Trustee's depository of wills.

Security Industry Act 2003

At the July 2008 meeting of the Council of Australian Governments (COAG), it was agreed that a reform of the private security industry would be conducted. It was agreed that Stage 1 of these reforms would be implemented in all jurisdictions by 1 January 2010. Stage 1 reforms include standards covering licensable activities, probity and background checking, training competencies and mobility of licences.

Section 13 of the Act governs employee licences and the activities authorised under those licences. The amendments in this Act will insert new provisions to include the following licensable activities:

- guarding with a dog;
- guarding with a firearm – this activity will be subject to a licence applicant providing proof that they hold a current ACT firearms licence, before a licence under section 13 can be granted;
- a monitoring centre operator.

The amendments in this Act will also provide for a temporary visitor licence scheme to facilitate inter-state mobility of the security industry, by recognising that industry members sometimes cross jurisdictional lines to engage in security work in relation to specific events.

Security Industry Regulation 2003

The Regulation is amended in accordance with the amendments to the Act. Section 8 of the Regulation governs training courses for employee licences. These amendments prescribe the types of training courses that security employees will be required to undertake in order to perform the licensable activities under section 13 of the Act.

Unclaimed Money Act 1950

Part 4 of the *Unclaimed Money Act 1950* has become redundant, due to recent amendments to the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The collection and distribution of unclaimed superannuation will now become a function performed by the Commonwealth. In light of the amendments to the Commonwealth Act, Part 4 of the ACT legislation will be repealed.

Unit Titles Act 2001

These amendments complement the *Land Titles Act 1925* amendments in this Bill. Owners corporations will be empowered to step into the shoes of owners who cannot be located in order to complete a lease renewal.

Human rights impact

The amendments in this Bill do not substantively alter any rights or responsibilities of individuals. These amendments streamline and improve procedures for administering existing regulatory schemes.

Clause Notes

Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2010 (No 4)*.

Clause 2 Commencement

This clause provides for the Act to commence 7 days after notification. Schedule 1, part 1.9 and part 1.10 of the Act are to commence on a day fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause provides that the legislation in Schedule 1 is amended by the Act.

Schedule 1 Legislation amended

Part 1.1 Crimes Act 1900

Clause 1.1 Section 170

An amended section 170 of the *Crimes Act 1900* is substituted to provide a more detailed description of the substances included within the meaning of “anabolic steroid”. This definition had previously been in place through a transitional regulation under the *Medicines, Poisons and Therapeutic Goods Regulation 2008*.

Clause 1.2 New schedule 1

The new schedule 1 is substituted to provide a detailed list of the substances which fall within the category of “anabolic steroid”. This change makes permanent a transitional regulation under the *Medicines, Poisons and Therapeutic Goods Regulation 2008*.

Part 1.2 Guardianship and Management of Property Act 1991

Clause 1.3 Section 74(1)

Section 74 governs the criminal liability of officers of corporations, and is currently the only provision within the Act which deals with offences. Reference to “the Act” in this section will now be omitted, and will be substituted by a reference to “section 72”, the only offence to which section 74 will apply after this amendment.

Part 1.3 Human Rights Commission Act 2005

Clause 1.4 New section 44(3)

Under section 44(1), a complaint made to the ACT Human Rights Commission must be made in writing. The new section 44(3) is inserted to allow for complaints to be made orally, if the Commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint.

Clause 1.5 Section 53A(1)(a)(i)

Section 53A(1)(a)(i) of the Act deals with referral of discrimination complaints and applies if a complainant is given a discrimination referral statement under section 45(2)(d) or section 64.

However, section 64, which governs unsuccessful conciliation of discrimination matters, will now be omitted from the Act, so reference to it in section 53A(1)(a)(i) must be omitted.

Clause 1.6 Section 53B(1)(a)

Section 53B(1)(a) also refers to section 64, in relation to a complainant submitting a late application due to exceptional circumstances, so the reference must be omitted.

Clause 1.7 Section 64

Section 64 deals with unsuccessful conciliation of discrimination matters and prescribes that where the Commission decides that conciliation is likely to be unsuccessful, the complainant must be informed by a written notice and a discrimination referral statement. The complaint is then closed, and no further action can be taken.

The omission of section 64 will allow the Commission to take action other than closure of a complaint when conciliation fails. This is consistent with the intention of the Act to give the Commission flexibility in dealing with complaints.

Clause 1.8 New section 78(1)(ea)

Section 78(1) prescribes the circumstances under which the Commission may close a complaint. The new section 78(1)(ea) gives the Commission discretion to close a complaint where it considers that conciliation is unlikely to succeed.

Clause 1.9 New section 79(3)

Section 79 of the Act prescribes the circumstances under which the Commission may reopen complaints. The new section 79(3) allows the Commission to reopen a complaint due either to the receiving of new information, or to exceptional circumstances, such as where an investigation appears to have been defective.

Part 1.4 Land Titles Act 1925

Clause 1.10 New section 50(3A)

New section 50(3A) adds a new ground for dispensing with production of a certificate in order to register a memorial under section 50. The Registrar will now be able to dispense with production where the requirements for renewing a unit titles lease have been followed under new section 49A of the *Unit Titles Act 2001*, and section 86 of the *Land Titles Act 1925*.

The new provisions address the issue of unit title owners who fail to respond to an owners corporation that seeks to renew unit title leases. Current law requires all individual unit title owners to surrender their leases for a new lease over a unit plan to be commence. If one or more owners cannot be contacted, it is impossible to renew a lease for a unit plan. This amendment is part of a series that will allow for owners corporations and ACTPLA to renew unit title leases in these circumstances.

Clause 1.11 New section 86(3A)

New section 49A of the *Unit Titles Act 2001*, introduced by this Amendment Act, will allow owners corporations to undertake a surrender of lease on behalf of unresponsive owners in very limited circumstances.

New section 86(3A) authorises the Registrar to accept surrenders executed by an owners corporation on behalf of an unresponsive unit title owner. In order to do this, the owners corporation must show proof of a resolution under section 109 of the *Unit Titles Act 2001* that complies with new section 49A. This process will require owners corporations to notify all owners in a unit plan of the intention to renew a lease and the corresponding requirement to surrender old leases. Owners will be able to object, but if they do not respond, the owners corporation will be empowered to take all necessary steps to renew the unit plan lease.

Part 1.5 Legal Profession Act 2006

Clause 1.12 Section 47(3)

Section 43 of the Act prescribes the conditions imposed on practising certificates by the relevant licensing body or council. The licensing body for the ACT is the ACT Law Society.

The amended section 47(3) builds on the current provision, which prescribes that the licensing body must not impose a condition on a barrister's practising certificate unless the bar council has agreed to or recommended the condition. The amendment prescribes that a condition must be imposed on a barrister's practising certificate if the bar council has agreed to or recommended that condition.

Part 1.6 Medicines, Poisons and Therapeutic Goods Regulation 2008

Clause 1.13 Chapter 31

The transitional regulation in Chapter 31 modified the *Crimes Act 1900*, to provide a workable scheme for regulating anabolic steroids. This Act makes the transitional provisions permanent through amendments to the *Crimes Act 1900*.

No substantive change has been made to the legislation.

Clause 1.14 Schedule 10

This schedule is omitted because it is now included directly in the *Crimes Act 1900*. No change to the schedule has been made.

Part 1.7 Personal Property Securities Act 2010

Clause 1.15 Schedule 3, new part 3.1A

This part adds a repeal of the provisions that govern cooperative charges in the *Cooperatives Act 2002*.

Part 1.8 Public Trustee Act 1985

Clause 1.16 New section 23A

The new section 23A prescribes that the public trustee may keep a register of legal records deposited with them, including wills and enduring powers of attorney. The register may be kept in any form, including electronically. The register is designed to create more efficiency, particularly in circumstances where legal documents are needed for a proceeding in a court or tribunal.

Part 1.9 Security Industry Act 2003

Clause 1.17 Section 7(1)(a) to (d)

These amendments introduce the new, nationally agreed set of activities that will be covered by the *Security Industry Act 2003*. Several new grounds have been added. The result is a consistent approach with other jurisdictions to the scope of security industry regulation.

Clause 1.18 Section 11(1) and (2)

This clause introduces a new licence class, the temporary visitor licence. This licence class is intended to facilitate inter-State/Territory regulation of the security industry.

Clause 1.19 Section 12(2)

This clause allows master licence holders to employ people with temporary visitor licences, as well as the existing categories of licences.

Clause 1.20 New section 13(1)(aa) to (ad)

This clause adds to the list of activities that may be undertaken by people with an employee licence. The additions reflect the new activities introduced in section 7 by this Act.

Clause 1.21 Section 13(1), new notes

This note explains the relationship between guarding with a firearm and firearms licensing requirements under the Act.

Clause 1.22 New section 15A

This clause explains the authorisation granted by a temporary visitor licence, the new licence class introduced by this Act. The terms of the temporary licence generally follow those of employee and master licences, but with different application requirements, for a shorter duration, and only in relation to specified events. Applicants for these licences will be required to hold full licences in another State or Territory. The purpose of this change is to facilitate inter-state mobility of the security industry, by recognising that industry members sometimes cross jurisdictional lines to engage in security work in relation to specific events.

Clause 1.23 Section 17(3)

This clause excludes temporary visitor licences from the operation of section 17(3). Temporary visitor licences are filed by people who already hold full licences in other States, so the application requirements are different. Police certificates and other information required for a licence applicant have been varied.

Clause 1.24 Section 17(4)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.25 Section 17(4)(b)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.26 Section 17(5)

This clause sets a time limit for temporary visitor licence applications. They must be filed no later than five days before the event to which the application relates.

Clause 1.27 Section 21(1)(a)(i), note

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.28 Section 21(1)(a)(ii)

This clause excludes the new temporary visitor licence class from certain training requirements. Training requirements for visiting security licensees will have been regulated in other State and Territory legislation.

Clause 1.29 Section 21(1)(a)(ia)

This clause applies existing requirements to the new set of regulated activities under section 7.

Clause 1.30 Section 21(1)(a)(v) and (vi)

This clause introduces the requirement that temporary visitor licence holders have full licences under the State from which they come, which authorise the activity they intend to undertake.

Clause 1.31 Section 21(3), definition of *applicant*, paragraph (a)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.32 Section 24

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.33 Section 25(3)(b)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.34 New section 29(2)

This clause specifies that temporary visitor licences are issued only for limited periods, in relation to special events.

Clause 1.35 Section 42(1)(a)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.36 New sections 42(1)(b)(ia) to (ic)

This clause adds some of the new regulated activities to the list of activities during which a licence number must be clearly displayed.

Clause 1.37 Section 42(2)(a)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.38 Section 42(2)(b)(ia)

This clause adds a new regulated activity to the list of activities during which a licence must be carried and displayed on demand.

Clause 1.39 Section 45(1)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.40 Section 46(1)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.41 Section 52(2)(g)

This clause applies existing requirements to the new temporary visitor licence class.

Clause 1.42 New part 7

This part creates a transitional provision to recognise existing licensees in classes amended by this Act. The purpose is to allow people who engage in activities that were previously not listed under section 7, to apply within 2 years to have their experience recognised and substituted for the completion of a training course that would otherwise be required under the Act.

Clause 1.43 Dictionary, note 2

Inserts “working day” as term defined in the *Legislation Act 2001*.

Clause 1.44 Dictionary, new definitions

Adds new definitions for temporary visitor licences, in accordance with the creation of these new licence categories by this Act.

Part 1.10 Security Industry Regulation 2003

Clause 1.45 Table 8, new items 1A to 1D

This amendment to the Regulation specifies the training that must be undertaken to obtain a licence for certain security activities. These training requirements are part of a uniform, national approach to training requirements for security work.

Part 1.11 Unclaimed Money Act 1950

Clause 1.46 Section 2, note 1

Due to recent amendments to the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the collection and distribution of unclaimed

superannuation will now become a function performed by the Commonwealth, thereby making Part 4 of the Act redundant.

Clause 1.47 Part 4

Part 4 prescribes the circumstances under which unclaimed superannuation benefits are distributed in the ACT. Because this function is now undertaken at the Commonwealth level, this part is repealed.

Clause 1.48 Part 6

This part inserts transitional provisions, authorising the Minister to pay money to the Commonwealth under the new scheme for unclaimed superannuation.

Clause 1.49 Dictionary, definition of *approved deposit fund*

This definition makes reference to part 4 of the Act and is no longer necessary. It will therefore be omitted.

Clause 1.50 Dictionary, definition of *Commonwealth Act*

The current definition of *Commonwealth Act* makes reference to part 4 and part 5 of the Act. Due to the amendments to the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*, reference to part 4 will be omitted.

Clause 1.51 Dictionary, definitions of *eligibility age, fund and regulated superannuation fund*

All of these definitions were used in part 4 of the Act and therefore need to be omitted.

Clause 1.52 Dictionary, definition of *unclaimed money*

The current definition of *unclaimed money* makes reference to part 3 and part 4 of the Act. Due to the amendments to the Commonwealth *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the reference to part 4 will be omitted.

Part 1.12 Unit Titles Act 2001

Clause 1.53 New section 49A

This clause inserts a new section that would allow owners corporations to act on behalf of owners, in limited circumstances, to complete a lease renewal under section 254 of the *Planning and Development Act 2007*.

These amendments preserve owners rights to object to a lease renewal by opposing the resolution necessary to complete the process, and by objecting to written notices of the owners corporation's intention to renew. If an owner is unresponsive or cannot be reached, however, and an unopposed resolution authorises renewal of a lease, the owners corporation will then be empowered to execute a surrender of existing leases.

This new section operates in conjunction with amendments to sections 50 and 86 of the *Land Titles Act 1925*. The result is that, where some owners in a unit plan cannot be reached to sign documents in support of a lease renewal, the owners corporation can take steps on those owners' behalf to ensure that the renewal is completed.