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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2011
(NO 2)**

EXPLANATORY STATEMENT

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JUSTICE & COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2011 (NO 2)

Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2011 (No 2) (the Bill) amends a number of laws administered by the Justice and Community Safety Directorate.

Associations Incorporation Act 1991

The *Associations Incorporation Act 1991* does not currently include a mechanism to prevent associations that incorporate and continually fail to meet their obligations under the Act from reincorporating. In this regard, the Act is failing to prevent people from taking advantage of their members and, in turn, the community.

After being cancelled, a new application is received for incorporation of a very similar association with the same committee members.

These amendments will allow the Registrar-General to apply to ACAT to order that a person not act in the role of public officer or committee member. The ACAT may make a disqualification order in the event of failure by the person or an association of which the person was the public officer or a committee member, to meet their statutory obligations.

These amendments do not affect human rights.

Associations Incorporation Regulation 1991

A new section 16 (ga) is inserted to compliment the amendment to section 63 of the *Associations Incorporation Act 1991*, detailed under Clause 1.2 of the Bill. It states that a member will be subject to a disqualification order under section 63A.

These amendments do not affect human rights.

Births, Deaths and Marriages Registration Act 1997

Section 19(2) of the *Births, Deaths and Marriages Registration Act 1997* sets out the circumstances in which one parent of a child may apply to the Registrar-General to change a child's name. Section 20(4) sets out circumstances in which the Registrar-General must register a change of name.

Section 19(2) will be amended by this Bill to allow one parent to apply to change a child's name in the same circumstances as set out in section 20(4). That is, if the child's name has been changed under a law of the Commonwealth, a corresponding law, or by order of any court in Australia.

Section 40(2) sets out a power of the Registrar-General to correct the register when satisfied that, in view of the order of a court, an entry in the register is incorrect. Section 40(4) defines "court" to include any court of the Territory, the Commonwealth or a State.

However, section 16(3) vests power in the Supreme Court to make orders to add or omit information about a child's parentage, which is arguably a basis for reading down section 40(2) to not include the power to correct errors relating to the parentage of a child. This effectively requires a person wanting to change parentage information to get a Supreme Court order, even though they may already have the order of another court. It does not change parentage in and of itself, rather, it recognises a decision made by a court in relation to parentage.

It was originally proposed that section 40 of the *Births, Deaths and Marriages Registration Act 1997* be amended, in order to prevent section 16 of the Act from being read down. The reading down of section 40 could arguably lead to a finding that the Registrar-General does not have power to correct the register where errors relating to the parentage of a child occur.

Instead, it has been decided that a new section 16 (3A) will be inserted to correct this issue. Section 20 (4) has also been amended to align with the amendment under the new section 19 (2) (ba). Both amendments outline the fact that the Registrar-General must register a change of name if satisfied that the name of a person has been changed under a Commonwealth law, or should be changed pursuant to an order of any court in Australia.

These are technical amendments that do not affect human rights.

Crimes (Sentence Administration) Act 2005

The new fine enforcement scheme (created by the *Crimes (Sentence Administration Amendment) Act 2010*) allows an entity (other than the Territory) to make an agreement with the Chief Executive for a reparation order to be enforceable under the scheme. This allows a person with a reparation order to enter into an agreement with the Chief Executive to pursue the outstanding reparation order on their behalf.

However, section 116ZP allows for time served in custody (for a separate offence) to count towards reducing the amount of an outstanding fine. This would apply to a reparation order, because it would be pursued by the Chief Executive as a fine. This situation would disadvantage a person with a reparation order in their favour.

To avoid any doubt, section 116ZP will be amended to explicitly exclude reparation orders.

This is a technical amendment that does not affect human rights.

Land Titles (Unit Titles) Act 1970

This Bill will remove the formatting requirements relating to unit plans documents under schedule 1, part 1.1. These strict formatting requirements are replaced by a generic provision to the effect that the document must be in a format approved by the Registrar-General.

The current sizing and dimension requirements for unit plans documents cause unnecessary "red tape". For example, under the current requirements, it is approximately double the cost for obtaining the sheets in the required B4 size and the specified margin dimensions, rather than using an A3 size sheet.

These amendments will also remove the requirement that each units plan diagram be drawn in “waterproof Indian ink”. This is consistent with allowing the Registrar General to determine reasonable, flexible formatting requirements for units plans.

These amendments are matters of form and do not affect human rights.

National Institute of Accountants change of name amendments

The National Institute of Accountants (NIA) is one of the three professional accounting bodies in Australia. In early 2011, the NIA contacted the Attorney General to advise that they had changed the name of their organisation to the Institute of Public Accountants (IPA).

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

- *Associations Incorporation Act 1991*;
- *Gaming Machine Act 2004*;
- *Sale of Motor Vehicles Act 1977*; and
- *Workers Compensation Act 1951*.

All references to the NIA in each of the above Acts will be removed by this Bill, and then replaced with a reference to the IPA.

These are technical changes which do not affect human rights.

Victims of Crime (Financial Assistance) Act 1983

The amendments to this Act will allow for victims of culpable driving (as detailed in section 29 of the *Crimes Act 1900*) to be eligible for financial assistance.

The Act generally excludes motor vehicle injuries, in order to exclude injuries caused by minor traffic offences, from the financial assistance provisions. These cases are more appropriately dealt with in the civil system, as insurance and tort matters.

These amendments would create an exception so that victims of serious crimes involving driving are eligible for financial assistance. This is consistent with the policy intention at the time of the 2008 amendments to include culpable driving offences, which was to make victims and related victims eligible for financial assistance.

The amendments are retrospective to the time of the 2008 amendments. There is no detriment to individuals, as this clarifies eligibility for a benefit. The amendments do not affect human rights.

Clause Notes

Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2011*.

Clause 2 Commencement

This clause provides for the Act (other than part 1.8) to commence on the 14th day after its notification day. Part 1.8 gives effect to a retrospective amendment to make victims and related victims of culpable driving offences eligible for compensation under the *Victims of Crime (Financial Assistance) Act 1983*, and is taken to have commenced on 29 July 2008.

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 Associations Incorporation Act 1991

Clause 1.1 Section 63 heading

The heading ‘Disqualification from office’ is substituted with ‘Disqualification from office – convictions or bankruptcy’ to reflect the offences that will result in an association committee member being disqualified from office.

Clause 1.2 New section 63A

A new section, section 63A, is inserted to rectify the situation where there is currently no mechanism to prevent associations that incorporate, and continually fail to meet their obligations under the Act, from reincorporating. In this regard, the Act is failing to prevent people from taking advantage of their members and, in turn, the community.

After an association is cancelled, a new application is often received for incorporation of a very similar association with the same committee members.

Section 63A is inserted to allow the Registrar-General to apply to ACAT to order that a person not act in the role of public officer or committee member. ACAT may make a disqualification order in the event of failure by the person, or an association of which the person was the public officer or a committee member, to meet their statutory obligations.

Clause 1.3 New section 64 (2) (fa)

A new section, section 64 (2) (fa), is inserted to reflect the fact that the office of a public office holder is taken to be vacant if the office holder is subject to a disqualification order under section 63A.

Clause 1.4 Section 74 (3)

The organisation name, the ‘National Institute of Accountants’, is substituted with the organisation name, the ‘Institute of Public Accountants’.

The National Institute of Accountants (NIA) is one of the three professional accounting bodies in Australia. In early 2011, the NIA contacted the Attorney General to advise that they had changed the name of their organisation to the Institute of Public Accountants (IPA).

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

- a) *Associations Incorporation Act 1991*;
- b) *Gaming Machine Act 2004*;
- c) *Sale of Motor Vehicles Act 1977*; and
- d) *Workers Compensation Act 1951*.

Part 1.2 Associations Incorporation Regulation 1991

Clause 1.5 Schedule 1, new section 16 (ga)

This new section is inserted to compliment the amendment to section 63 of the *Associations Incorporation Act 1991*, detailed under Clause 1.2 of the Bill. It states that a member will be subject to a disqualification order under section 63A.

Part 1.3 Births, Deaths and Marriages Registration Act 1997

Clause 1.6 New section 16 (3A)

Section 40(2) sets out a power of the Registrar-General to correct the register when satisfied that, in view of the order of a court, an entry in the register is incorrect. Section 40(4) defines “court” to include any court of the Territory, the Commonwealth or a State.

However, section 16(3) vests power in the Supreme Court to make orders to add or omit information about a child’s parentage, which is arguably a basis for reading down section 40(2) to not include the power to correct errors relating to the parentage of a child. This effectively requires a person wanting to change parentage information to get a Supreme Court order, even though they may already have the order of another court.

In order to prevent section 40 from being read down in light of section 16, a new section 16 (3A) is inserted stating that section 16 does not limit section 40.

Clause 1.7 New section 19 (2) (ba)

Section 19(2) of the *Births, Deaths and Marriages Registration Act 1997* sets out the circumstances in which one parent of a child may apply to the Registrar-General to change a child’s name. Section 20(4) sets out circumstances in which the Registrar-General must register a change of name.

A new section, section 19(2)(ba), is inserted to allow one parent to apply to the Registrar-General to change a child's name in the same circumstances as set out in section 20(4). That is, if the child's name has been changed under a law of the Commonwealth, a corresponding law, or by order of any court in Australia.

Clause 1.8 Section 20 (4)

Section 20 (4) has been amended to align with the amendment under the new section 19 (2) (ba), detailed under Clause 1.7 of the Bill. Both amendments outline the fact that the Registrar-General must register a change of name if satisfied that the name of a person has been changed under a Commonwealth law, or should be changed pursuant to an order of any court in Australia.

Part 1.4 Crimes (Sentence Administration) Act 2005

Clause 1.9 New section 116ZP (5)

A new section, section 116ZP (5), is inserted to explicitly exclude reparation orders in the context of time served in custody counting toward reducing the amount of outstanding fines.

The new fine enforcement scheme (created by the *Crimes (Sentence Administration Amendment) Act 2010*) allows an entity (other than the Territory) to make an agreement with the Chief Executive for a reparation order to be enforceable under the scheme. This allows a person with a reparation order to enter into an agreement with the Chief Executive to pursue the outstanding reparation order on their behalf.

However, section 116ZP allows for time served in custody (for a separate offence) to count towards reducing the amount of an outstanding fine. This would apply to a reparation order, because it would be pursued by the Chief Executive as a fine. This situation would disadvantage a person with a reparation order in their favour.

To avoid any doubt, section 116ZP (5) has been inserted to explicitly exclude reparation orders.

Part 1.5 Gaming Machine Act 2004

Clause 1.10 Dictionary, definition of *qualified accountant*, paragraph (a)

As with clause 1.4, the organisation name, the 'National Institute of Accountants', is substituted with the organisation name, the 'Institute of Public Accountants'.

Part 1.6 Land Titles (Unit Titles) Act 1970

Clause 1.11 Schedule 1 heading

This amendment corrects a cross reference in the note to this heading, to refer to section 6 of the Act. Section 6, rather than section 8, is the provision that requires units plans to be prepared in accordance with schedule 1.

Clause 1.12 Schedule 1, part 1.1

The amendments to part 1.1 are designed to allow the Registrar greater flexibility in determining the format requirements for filing a units plan. The current statutory requirements are unnecessarily prescriptive, and require people preparing a units plan to comply with expensive size and ink requirements. The new provision gives the Registrar to exercise discretion in setting the format requirements for preparing a units plan.

Clause 1.13 Schedule 1, part 1.2, item 1

This amendment removes the requirement for a plan to be formatted in “waterproof Indianink.” Consistent with the amendments in clause 1.11, this amendment will allow the Registrar greater flexibility in determining the format requirements, including the approved ink, for preparing a units plan.

Part 1.7 Sale of Motor Vehicles Act 1977

Clause 1.14 Dictionary, definition of *qualified accountant*, paragraph (a)

As with clauses 1.4 and 1.8, the organisation name, the ‘National Institute of Accountants’, is substituted with the organisation name, the ‘Institute of Public Accountants’.

Part 1.8 Workers Compensation Act 1951

Clause 1.15 Dictionary, definition of *auditor*, paragraph (d)

As with clauses 1.4, 1.8 and 1.13, the organisation name, the ‘National Institute of Accountants’, is substituted with the organisation name, the ‘Institute of Public Accountants’.

Part 1.9 Victims of Crime (Financial Assistance) Act 1983

Clause 1.16 Section 12 (1) (a)

This amendment ensures that primary victims of the crime of culpable driving, as defined in section 29 of the *Crimes Act 1900*, are eligible to receive financial assistance under the Act. Culpable driving, unlike other motor vehicle related offences, involves a death or grievous bodily harm caused by either unjustifiable failure to observe reasonable standards of care, or as a result of driving while under the influence of alcohol or drugs.

This amendment inserts an exception to the usual rule that injuries caused in motor vehicle accidents do not make a person eligible for compensation. This exception is based on the aggravated and serious nature of injuries caused as a result of crimes that fall under section 29 of the *Crimes Act 1900*. This amendment is retrospective to 29 July 2008.

This amendment gives effect to the intention of amendments to the *Victims of Crime (Financial Assistance) Act 1983* that commenced in July 2008. As it makes people eligible for compensation, it does not adversely impact on an individual.

Clause 1.17 Section 18 (1) (a)

This amendment creates the same exception as clause 1.15, for related victims of crimes against section 19 of the *Crimes Act 1900*. The amendments to section 12 allow for primary victims to be eligible for assistance. These amendments ensure that related victims are covered as well.