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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2018**

**EXPLANATORY STATEMENT**

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# JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2018

## **Introduction**

This Explanatory Statement is for the Justice and Community Safety Legislation Amendment Bill 2018 (the Bill) as presented in the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **Overview of the Bill**

The Bill makes amendments to a number of laws in the Justice and Community Safety portfolio. The amendments are intended to improve the operation of each amended law without amounting to a major change in policy.

## **Summary of amendments**

### ***Civil Law (Wrongs) Act 2002***

The Bill amends the *Civil Law (Wrongs) Act 2002* to allow the Minister to extend the period for which the Professional Standards Scheme is in force by making a notifiable instrument regardless of whether the instrument is made before or after the period for the scheme ends.

This amendment will minimise any gap in the application of a professional standards scheme in the ACT, which will provide greater certainty to members of professional standards schemes about the cap on their professional indemnity.

This means that even where an administrative error has led to the lapse of a professional standards scheme applying in the ACT, the scheme will still be deemed in force and the cap on damages for professional indemnity will still apply. The retrospectivity of a notifiable instrument extending the scheme will ensure that a claimant with a claim that arises during the time a scheme has lapsed will not be entitled to more damages than claimants whose claims arise at other times.

### ***Crimes Act 1900***

The Bill amends the *Crimes Act 1900* to correct an inconsistency in provisions relating to the powers of a guardian for an accused who is unfit to plead. The amendment will clarify that the guardian's power is to notify the Supreme Court that a special hearing is in the accused's best interests, rather than to make an election on behalf of an accused.

### ***Crimes (Restorative Justice) Act 2004***

The Bill amends the *Crimes (Restorative Justice) Act 2004* to extend the timeframe for the Restorative Justice Unit (RJU), on behalf of the Director-General, to report to entities that refer offences for restorative justice to the RJU on the progress of those referred matters.

This amendment will allow the RJU to meet its reporting obligations as well as manage its increased workload as a result of its expanded jurisdiction.

### ***Family Violence Act 2016***

The Bill amends the *Family Violence Act* to allow victims of family violence to apply to register Family Violence Orders made under the repealed *Domestic Violence and Protection Orders Act 2008* for interstate recognition in the ACT.

This amendment will allow victims to register orders to be recognised interstate without having to travel interstate and bring the provision in line with the intent of the national model.

### ***Heavy Vehicle National Law (ACT) Act 2013***

The Bill amends the *Heavy Vehicle National Law (ACT) Act 2013* to:

- apply the *Heavy Vehicle National Amendment Regulation 2017* in the ACT with a retrospective effect so that the Heavy Vehicle National Law (ACT) Act will remain consistent with the national scheme;
- extend the timeframe for presentation in the Legislative Assembly of Heavy Vehicle Regulations, from within six sitting days of notification by NSW to 20 sitting days from notification, to allow sufficient time for identification of regulations and arrangements for presentation to the Legislative Assembly to occur; and
- to make a consequential amendment to authorise the payment of the regulatory component of heavy vehicle registration charges to the national regulator.

## **Human Rights Implications**

### ***Family Violence Act 2016***

The amendment to the Family Violence Act allows victims of family violence to register in the ACT for orders made under the repealed Act, which are still in effect, to apply interstate. This amendment may engage the following rights under the *Human Rights Act 2004* (HRA):

- the right to protection from torture and cruel, inhuman or degrading treatment (section 10),
- the right to protection of the family and children (section 11), and
- the right to liberty and security of person (section 18).

The primary purpose of this amendment is to protect the lives and safety of women and children where there is a risk posed to them because of domestic, family and sexual violence when they are interstate. This purpose supports the right to protection from torture and cruel, inhuman or degrading treatment, protection of family and children, and the right to liberty and security of person (ss 10, 11 and 18 of the HR Act) by putting in place measures to minimise the risk of physical and psychological harm to victims of abuse.

This purpose supports the above-mentioned rights under the HRA by facilitating the safety of families and allowing orders to be registered in the ACT for interstate recognition without requiring victims to travel.

### **Climate Change Impacts**

This Bill has no identified climate change impacts.

## **CLAUSE NOTES**

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause names this Act the *Justice and Community Safety Legislation Amendment Act 2018*.

#### **Clause 2 Commencement**

This clause provides that the Act will commence the 7<sup>th</sup> day after its notification day.

#### **Clause 3 Legislation amended**

This clause provides the list of legislation that this Act amends.

### **Part 2 Civil Law (Wrongs) Act 2002**

#### **Clause 4 Duration of scheme Schedule 4, section 4.28(6)**

Clause 4 amends the *Civil Law (Wrongs) Act 2002* to allow an instrument to be made to extend the period for which a professional standards scheme is in force, even if that period has already ended before the instrument commences. This will ensure that there are no gaps in the application of interstate professional standard schemes in the ACT.

### **Part 3 Crimes Act 1900**

#### **Clause 5 Special hearing Section 316(3)**

Clause 5 corrects an inconsistency within section 316 by amending section 316(3) to provide that the power of an appointed guardian is the power to make a notification to the Supreme Court that it is in the best interests of the accused for the special hearing to be a trial by a single judge without a jury, rather than the power to make an election on behalf of the accused to have a special hearing by a judge alone trial. This amendment rectifies an inconsistency within section 316 and between this section and provisions of the *Guardianship*

*and Management of Property Act 1991*, to give effect to the purpose of section 316 where an accused person is incapable of making an election as to the form of a special hearing.

**Part 4**      ***Crimes (Restorative Justice) Act 2004***

**Clause 6**      **Quarterly reporting by director-general**  
**Section 68(2)**

Clause 6 extends the timeframe for the provision of quarterly reports to entities that refer offences for restorative justice from within 7 days to 14 days after the last day of the quarter.

**Part 5**      ***Family Violence Act 2016***

**Clause 7**      **Applications and orders under repealed Act**  
**Section 199(3)**

Clause 6 specifies that division 9.6 (Application of pt 9 – existing protection orders) applies to domestic violence orders made under the repealed Act. This will allow people who have existing orders under the repealed Act to apply in the ACT for interstate recognition of those orders.

**Part 6**      ***Heavy Vehicle National Law (ACT) Act 2013***

Part 6 makes amendments to the *Heavy Vehicle National Law (ACT) Act 2013* to better facilitate the implementation of amendments made to the *Heavy Vehicle National Law* and its subordinate legislation to the ACT.

**Clause 8**      **Exclusion of Legislation Act**  
**Section 8(2)(b)**

Clause 8 excludes the reference to ‘6 sitting days’ in the *Legislation Act 2001* as the timeframe required to table national regulations under the *Heavy Vehicle National Law* in the Legislative Assembly, and instead applies a timeframe of 20 sitting days to ensure that there is sufficient time to identify and present national amendment regulations to the Legislative Assembly. Clause 8 also clarifies that a reference to ‘notification day’ should be considered a reference to ‘published’ as mentioned in the *Heavy Vehicle National Law (ACT)*.

**Clause 9**      **New part 10**

Clause 9 inserts a new Part 10 (Validation) which provides that the national regulations made for the *Heavy Vehicle National Law (ACT)* are taken to be amended by the *Heavy Vehicle (General) National Amendment Regulation (NSW)* and the *Heavy Vehicle National Amendment Regulation 2017 (NSW)* as if they had been presented to the Legislative Assembly in accordance with the *Legislation Act 2001* within the required timeframe and had not been disappplied by the *Legislation Act 2001*.

National regulations under the Heavy Vehicle National Law apply automatically in the ACT through the ACT's application law (the *Heavy Vehicle National Law (ACT) Act 2013*). The *Heavy Vehicle (General) National Amendment Regulation* (NSW) and the *Heavy Vehicle National Amendment Regulation 2017* (NSW) commenced in the ACT on 1 July 2016 and 30 June 2017 respectively. These regulations give effect to a number of minor and technical amendments that amount to a lessening of regulation. The amendments have no significant impact on heavy vehicle operators and tidy up existing national regulations.