

**2008**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT  
BILL 2007 (No 2)**

**REVISED EXPLANATORY STATEMENT**

Circulated with the authority of  
Mr Simon Corbell MLA  
Attorney General

## JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2007 (No 2)

### Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2007 (No 2) (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include the:

- *Administration and Probate Act 1929*;
- *Administrative Appeals Tribunal Act 1989*;
- *Bail Act 1992*;
- *Civil Law (Sale of Residential Property) Act 2003*;
- *Civil Law (Wrongs) Act 2002*;
- *Civil Law (Wrongs) Regulation 2003*;
- *Crimes (Sentence Administration) Act 2005*;
- *Fair Trading Act 1992*;
- *Fair Trading (Consumer Affairs) Act 1973*;
- *Juries Act 1967*;
- *Leases (Commercial and Retail) Act 2001*;
- *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*;
- *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005*;
- *Magistrates Court (Food Infringement Notices) Regulation 2005*;
- *Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005*;
- *Magistrates Court (Sale of Motor Vehicles Infringement Notices) Regulation 2005*;
- *Powers of Attorney Act 2006*;
- *Public Trustee Act 1985*;
- *Residential Tenancies Act 1997*;
- *Trustee Act 1925*;
- *Victims of Crime Regulation 2000*; and the
- *Wills Act 1968*.

In addition, the Bill repeals the *Powers of Attorney Regulation 2007 (No 2)* 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.

#### *Administration and Probate Act 1929*

Amendments have been made to sections 32, 87B, and 98 of the Act. The amendments have updated the structure of, and the language used in, the sections for clarity.

An amendment has been made to subsection 43A(c) of the Act. The amendment has removed words, which mistakenly imply that the term 'succeeding executor' is used elsewhere in division 3.4. The term is only found in subsection 43A(c).

An amendment has been made which repeals current subsection 44(2). Paragraph 44(2)(a) is now redundant. Paragraph 44(2)(b) is reinserted as new section 44A. Currently, paragraph 44(2)(b) provides certain things for division 3A.2, but is located in division 3A.1. Therefore the amendment ensures that the content of current paragraph 44(2)(b) is correctly located at the beginning of division 3A.2.

An amendment has been made to subsection 64(3) of the Act. The amendment removes the word 'shall' to accord with the current ACT drafting practice.

An amendment has been made to remove section 71 from the Act, which is now redundant, as a consequence of amendments made to the *Legal Profession Act 2006*. Section 71 provides limits on the amount that can be allowed out of a small estate for payment to a solicitor for professional services rendered in relation to the obtaining of a grant of probate or administration. Part 3.2 of the *Legal Profession Act 2006*, which commenced on 1 October 2007, deals with costs' disclosure and costs' assessment. Part 3.2 provides adequate protection in relation to costs' assessment.

An amendment has been made to remove part 4 from the Act. Part 4 ensures that assistance is provided to an applicant applying for registration of probate or administration for property of a deceased's estate, not exceeding \$100,000. Part 4 is now redundant because of an earlier amendment to the *Court Procedures Rules 2006* that ensures that assistance is given in all applications, regardless of the value of an estate.

Amendments have been made to sections 87B and 87C, and schedule 6, part 6.1, item 2 of the Act. The amendments have increased the monetary limits and amounts, found in these provisions, in accordance with consumer price index (CPI) increases to ensure that they accord with inflation. A consequential amendment has been made to the heading of section 87C.

In addition, amendments have been made to subsections 49AA(3) and 49D(3) of the Act. The amendments are consequential on amendments made to schedule 6, part 6.1, item 2 by this Bill.

Amendments have been made to the dictionary of the Act. The amendments have inserted signpost definitions for various terms, which are currently defined in sections 43A, 44 and 49F into the dictionary. The signpost definitions will make it easier for people to locate the meaning of the various terms.

Amendments have also been made to subsections 41C(2), 49C(2) and 50(3) to remove the word 'shall' and replace it with the word 'must' to accord with the current ACT drafting practice.

#### Administrative Appeals Tribunal Act 1989

An amendment has been made to remove subsection 26(8) from the Act. Subsection 26(8) provides that the Commonwealth Attorney General may prevent the disclosure of any matter, which is contained in a statement of reasons for a decision, on public interest grounds. The subsection is now redundant because subsection 26(7) provides the ACT Attorney General with a similar power.

In addition, consequential amendments have been made to paragraphs 26(9)(a) and 49(3)(a) and subsections 26(10) and 49(2) to remove references to subsection 26(8).

An amendment has also been made to remove section 62 from the Act. Section 62 provides that a person who has made, or proposes to make an application to the ACT Administrative Appeals Tribunal for a review of a decision may apply to the Attorney General for the provision of financial or legal assistance in relation to the proceeding. Section 62 is now redundant, as the ACT Legal Aid Office is the principal body responsible for the provision of legal assistance, and is provided with a grant of government funds annually for this purpose.

#### Bail Act 1992

An amendment has been made to subsection 31(2) of the Act. Subsection 31(2), as originally enacted, included a person in charge of an ACT or NSW correctional centre as eligible to receive payment of an amount or security in accordance with a bail condition. This reference was erroneously omitted in 2004 by the *Bail Amendment Act 2004* when the subsection was remade. Accordingly, the amendment inserts a person in charge of an ACT correctional centre back into subsection 31(2). The reference to a person in charge of a NSW correctional centre has not been reinserted as this would no longer be appropriate.

#### Civil Law (Sale of Residential Property) Act 2003

An amendment has been made to section 10 of the Act. Subsection (1) currently provides that a seller of residential property in the ACT commits an offence if the seller fails to ensure that all the required documents are available for inspection by a prospective buyer, at all reasonable times, when an offer to buy the property may be made to the seller. The amendment includes a defence, to the strict liability offence in subsection (1), which provides that the offence will not apply where a seller has engaged the services of a lawyer to prepare the contract for sale and it is the lawyer who fails to give the seller all the required documents. The seller is still obligated to make available to the buyer the required documents which are given to

them by the lawyer and must believe on reasonable grounds that they had received all the required documents.

An amendment has also been made to subsection 18(2) of the Act. Subsection 18(1) of the Act provides that on completion of a contract for the sale of residential property, the seller is entitled to reimbursement from the buyer for the costs of obtaining a building and compliance inspection report and a pest inspection report. The amendment clarifies that sellers are only able to pass on to buyers the ordinary costs of obtaining the reports, not the costs of any additional services associated with the provision of these reports by the seller.

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

Amendments have been made to schedule 4 of the Act. Schedule 4 of the Act provides for the establishment of professional standards in the ACT. The amendments implement a decision of the Standing Committee of Attorneys General that States and Territories amend their professional standards legislation to enable mutual recognition, between jurisdictions, of schemes approved in other jurisdictions. Mutual recognition will allow professionals, whose work transcends state boundaries, to have capped liability when providing services. The amendments are based on model New South Wales legislation, and are consistent with amendments to be made in all other jurisdictions.

#### *Civil Law (Wrongs) Regulation 2003*

An amendment has been made to subsection 13(1) of the regulation, which prescribes a particular form of statement which must be included by professionals in their promotional documentation to clients. Currently, the statement makes a specific reference to ACT professional standards legislation (*Civil Law (Wrongs) Act 2002*). As a consequence of the mutual recognition amendments made to the *Civil Law (Wrongs) Act 2002* by this Bill, the statement has been amended to refer to all national professional standards legislation.

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

Amendments have been made to subsections 69(2) and 70(2) of the Act. Subsections 69(1) and 70(1) empower the Sentence Administration Board to cancel an offender's periodic detention in particular circumstances. Paragraph 68(2)(f) provides the Board with a broad power to cancel an offender's periodic detention. The amendments will ensure that the powers provided to the Sentence Administration Board in subsections 69(1) and 70(1) do not limit the circumstances in which the Board can exercise its broad power in paragraph 68(2)(f). A consequential amendment has been made to the note in paragraph 68(2)(f) for consistency.

### Fair Trading Act 1992

An amendment has been made to the definition of **directory** in subsection 29(9) of the Act. The amendment updates a reference to the Australian Telecommunications Commission, which has been renamed Telstra Corporation Limited.

An amendment has been made to subsection 44(2) of the Act. Subsection 44(2) refers to applications for injunctions that have been made before or after commencement (1 January 1993). The amendment removes this redundant reference from the subsection.

Amendments have been made to section 48 of the Act. The amendments remove the corporate criminal responsibility components contained in the section, which are redundant. These principles are now espoused in Part 2.5 of the *Criminal Code 2002*.

### Fair Trading (Consumer Affairs) Act 1973

Amendments have been made to section 27 of the Act. Subsection 27(1) provides the Attorney General with the power to make a consumer product safety order in relation to goods where it is reasonable and necessary due to the risk of injury to, or impairment of health of, any person possessing, handling or using the goods. The amendments ensure that the power given to the Attorney General to make a consumer product safety order is more closely aligned with the powers which are provided in similar New South Wales and Victorian Fair Trading legislation. The amendments ensure that the ACT Attorney General can make a consumer product safety order in relation to goods which are not only dangerous because of a manufacturing defect, but goods which have the potential to be dangerous, if they are misused.

Consequential amendments have been made to paragraphs 26(5)(b) and 26(8)(b) to remove words which are redundant as a consequence of the amendments made to section 27 by this Bill.

A consequential amendment has also been made to subsection 29(2) for consistency as a consequence of the amendments made to section 27 by this Bill.

### Juries Act 1967

An amendment has been made to remove subsection 10(d) from the Act. Section 10 identifies persons who are not qualified to serve as jurors in the ACT. Subsection 10(d) provides that a person who is 'blind, deaf or dumb' is not qualified. It is no longer appropriate to exclude people who are blind or deaf from participating in one of the rights and responsibilities of citizenship purely on the basis of a disability and without any enquiry as to the actual capability of a member of that class to effectively perform as a juror.

Removing the exclusion ensures promotion of the right to equal treatment under the law, and will not compromise a person's right to a fair trial. The Act already provides sufficient protection in sections 8 and 16 to ensure that the court can, before a trial begins or during a trial, dismiss a person who is not capable of performing the duties of a juror. If an individual juror is dismissed the trial will continue, provided the remaining number of jurors on the jury does not fall below ten. Removing the subsection has also removed the classification of a person as 'dumb', which is archaic language.

An amendment has been made to schedule 2, part 2.2, item 3 of the Act. The amendment updates the language used in the item.

An amendment has also been made to schedule 2, part 2.2 of the Act. The amendment ensures that people who are totally or partially blind or deaf have the right to claim exemption from jury service.

An amendment has been made to the definition of **sheriff** in the dictionary of the Act by inserting a signpost definition of the term, which is defined in section 21 for the purposes of part 5. The signpost definition will make it easier for people to locate the definitions of the term.

#### *Leases (Commercial and Retail) Act 2001*

An amendment has inserted a new note into paragraph 123(1)(c) of the Act. The note will refer users to the *Civil Law (Property) Act 2006* in order to obtain further information about the requirement of a lessor to give a tenant notice of a breach.

In addition, amendments have been made to the dictionary of the Act. The amendments have inserted signpost definitions of two terms, currently defined in section 143 for part 14 in the dictionary to accord with the current drafting practice of the ACT. The signpost definitions will make it easier for people to locate the definitions of the terms.

#### *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*

An amendment has been made to remove section 15 from the regulation. Section 15 provides that the regulation expires on the default commencement date (1 July 2009) for the application of the *Criminal Code 2002*. The expiry date provision was included to ensure that the infringement notices scheme under the *Domestic Animals Act 2000* was reviewed to ensure harmonisation with the Criminal Code. The approach to including an expiry provision was later considered problematic and consequently some infringement notice regulations for offences that have yet to be harmonised do not include an expiry provision. Therefore, to ensure consistency, the amendment will remove the expiry date provision from the regulation.

Magistrates Court (Environment Protection Infringement Notices)  
Regulation 2005

An amendment has been made to remove section 13 from the regulation. Section 13 provides that Schedule 1, part 1.1 of the Act expires on the default commencement date (1 July 2009) for the application of the *Criminal Code 2002*. The expiry date was included to ensure that the infringement notices scheme under the *Environment Protection Act 1997* was reviewed to ensure harmonisation with the Criminal Code. The approach to including an expiry provision was later considered problematic and consequently some infringement notice regulations for offences that have yet to be harmonised do not include an expiry provision. Therefore, to ensure consistency, the amendment will remove the expiry date provision from the regulation.

Magistrates Court (Food Infringement Notices) Regulation 2005

An amendment has been made to remove section 15 from the regulation. Section 15 provides that the regulation expires on the default commencement date (1 July 2009) for the application of the *Criminal Code 2002*. The expiry date was included to ensure that the infringement notices scheme under the *Food Act 2001* was reviewed to ensure harmonisation with the Criminal Code. The approach to including an expiry provision was later considered problematic and consequently some infringement notice regulations for offences that have yet to be harmonised do not include an expiry provision. Therefore, to ensure consistency, the amendment will remove the expiry date provision from the regulation.

Magistrates Court (Nature Conservation Infringement Notices)  
Regulation 2005

An amendment has been made to remove section 13 from the regulation. Section 13 provides that the regulation expires on the default commencement date (1 July 2009) for the application of the *Criminal Code 2002*. The expiry date was included to ensure that the infringement notices scheme under the *Nature Conservation Act 1980* was reviewed to ensure harmonisation with the Criminal Code. The approach to including an expiry provision was later considered problematic and consequently some infringement notice regulations for offences that have yet to be harmonised do not include an expiry provision. Therefore, to ensure consistency, the amendment will remove the expiry date provision from the regulation.

Magistrates Court (Sale of Motor Vehicles Infringement Notices)  
Regulation 2005

An amendment has been made to remove section 14 from the regulation. Section 14 provides that the regulation expires on the default commencement date (1 July 2009) for the application of the *Criminal Code 2002*. The expiry date was included to ensure that the infringement notices scheme under the *Sale of Motor Vehicles Act 1977* was reviewed to ensure harmonisation with the Criminal Code. The approach to including an expiry provision was later



considered problematic and consequently some infringement notice regulations for offences that have yet to be harmonised do not include an expiry provision. Therefore, to ensure consistency, the amendment will remove the expiry date provision from the regulation.

### *Powers of Attorney Act 2006*

Amendments have been made to sections 92 and 93 of the Act. The amendments insert new sections 92, 93, 94 and 95 into the Act and reinsert current sections 92 and 93 into new sections 96 and 97.

New section 92 remakes current transitional section 152 as a substantive provision of the Act. New section 92 enables powers of attorney which have been made under the repealed *Powers of Attorney Act 1956* to continue to be valid even though they do not comply with the current requirements under the *Powers of Attorney Act 2006*.

New section 93 remakes current transitional section 152A inserted into the Act by the *Powers of Attorney Regulation 2007 (No 2)* as a substantive provision of the Act. New section 93 permits the use of power of attorney forms under the repealed *Powers of Attorney Act 1956* for a temporary period of up to six months after the commencement of the *Powers of Attorneys Act 2006*.

New section 94 remakes current transitional section 152B, inserted into the Act by the *Powers of Attorney Regulation 2007 (No 2)*, as a substantive provision of the Act. New section 94 provides for the continuing validity of the power given to an attorney under an enduring power of attorney, made under the repealed *Powers of Attorney Act 1956*, to consent to a donation of a body part, blood or tissue of the principal to another person, in accordance with the *Transplantation and Anatomy Act 1978*, which includes both regenerative tissue and non-regenerative tissue. Under the *Powers of Attorney Act 2006*, the principal cannot authorise an attorney to exercise power in relation to the removal of non-regenerative tissue from the principal while alive for donation to someone else.

New section 95 remakes current transitional section 154 as a substantive provision of the Act. New section 95 enables powers of attorney which have been made under the repealed *Medical Treatment Act 1994* to continue to be valid even though they do not comply with the current requirements under the *Powers of Attorney Act 2006*.

The amendments ensure that these transitional provisions are retained in the *Powers of Attorney Act 2006* beyond 30 May 2009 (date of expiry). This is necessary to ensure the continuing validity of any powers of attorney that have been made in accordance with the repealed *Powers of Attorney Act 1956*, but are subject to the transitional provisions.

Consequential amendments have also been made to remove sections 152 and 154 from the Act as a consequence of the amendments made to sections 92 and 93 by this Bill.

### Public Trustee Act 1985

An amendment has been made to section 5 of the Act. The amendment removes particular words from section 5 and replaces them with words that are more consistent with other provisions in the Act.

An amendment has also been made to section 6 of the Act. The amendment enables the ACT Public Trustee to appoint more than one Deputy Public Trustee.

An amendment has been made to section 29A of the Act. The amendment repeals section 29A, which is a duplicate of section 87B of the *Administration and Probate Act 1929*, and is therefore redundant. The amendment also inserts a new section 29A into the Act. New section 29A enables the Public Trustee to make a payment to a person or hand over small personal items, limited to \$20,000, without requiring administration to be taken out in the estate of that person. Currently, upon the death of a person, the Public Trustee for the ACT is not able to make a payment to a person without a grant of probate or letters of administration. A grant of probate or letters of administration is costly and can significantly deplete the amount of money held in a small estate.

An amendment has been made to remove section 66 from the Act, which is now redundant. Section 66 enables the Public Trustee of the ACT to realise the personal property of an estate by auction. However, paragraph 21(1)(a) already enables the Public Trustee to sell property by auction.

A consequential amendment has been made to the definition of **deputy public trustee** in the dictionary of the Act as a consequence of the amendment to section 6 made by this Bill.

### Residential Tenancies Act 1997

An amendment has been made to the Act to insert a new section 115D into the Act. New section 115D enables the president of the ACT Residential Tenancies Tribunal to delegate the endorsement of consent decisions to another member of the Tribunal, where both parties to a residential tenancy agreement agree with the decision. Currently, the Act is unclear in this respect.

### Trustee Act 1925

Amendments have been made to paragraphs 47(3)(a) and (b) and subsection 83(1) of the Act. The amendments have increased the monetary limits and amounts found in these provisions in accordance with CPI increases to ensure that they accord with inflation.

*Victims of Crime Regulation 2000*

Amendments have been made to paragraphs 23(2)(d) and 41(f)(viii) of the Act. The amendments replace incorrect references to the *Community and Health Services Complaints Act 1993* with references to the *Human Rights Commission Act 2005*. The *Community and Health Services Complaints Act 1993* was repealed by the *Human Rights Commission Legislation Amendment Act 2005* as the Act was largely replaced by the *Human Rights Commission Act 2005*.

*Wills Act 1968*

An amendment has been made to paragraph 12A(3)(a) of the Act as a consequence of an amendment to section 87B of the *Administration and Probate Act 1929* made by this Bill.

## Clause Notes

**Clause 1 Name of Act** – states the title of the Act as the *Justice and Community Safety Legislation Amendment Act 2007 (No 2)*.

**Clause 2 Commencement** – sets out the commencement date for the Act which is 21 days after its notification day.

**Clause 3 Legislation amended – sch 1** – notes that the legislation amended by this Act is listed in schedule 1.

**Clause 4 Repeal of Powers of Attorney Regulation 2007 (No 2)** – repeals the Regulation.

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

## PART 1.1 – Administration and Probate Act 1929

**Amendment 1.1 – Section 32** – amends section 32 by updating the structure and language of the section to improve clarity. No changes are made to the substantive content of the section.

**Amendment 1.2 – Section 43A(c)** – amends subsection (c) by removing the words ‘in this division called’ to remove the incorrect inference that the term ‘succeeding executor’ is used elsewhere in division 3.4.

**Amendment 1.3 – Section 44(2)** – removes subsection (2). Paragraph (a) is now redundant. The contents of paragraph (b) will be relocated in the Act as a consequence of amendment 1.4.

**Amendment 1.4 – New section 44A** – inserts a new section 44A into the Act. The new section provides that for division 3A.2 a relationship may be of the whole blood or the half-blood.

**Amendment 1.5 – Section 49AA(3)** – amends subsection (3) by replacing references to \$150,000 with references to \$200,000 as a consequence of amendment 1.14.

**Amendment 1.6 – Section 49D(3)** - amends subsection (3) by replacing references to \$150,000 with references to \$200,000 as a consequence of amendment 1.14.

**Amendment 1.7 – Section 64(3)** – amends subsection (3) by removing the words ‘he or she shall not be liable’ and replacing them with the words ‘the executor or administrator is not liable’.

**Amendment 1.8 – Section 71** – repeals section 71 which is now redundant.

**Amendment 1.9 – Part 4** – repeals part 4 which is now redundant.

**Amendment 1.10 – Section 87B** – amends section 87B to increase the monetary limit in the section from \$20,000 to \$30,000 in accordance with consumer price index (CPI) increases and additionally updates the structure and language to improve clarity. No changes are made to the substantive content of the section.

**Amendment 1.11 – Section 87C heading** – amends the heading to section 87C as a consequence of amendment 1.12.

**Amendment 1.12 – Section 87C(1)(b) and (8)** – amends paragraph (1)(b) and subsection (8) to increase the monetary limits from \$100,000 to \$150,000 in accordance with CPI increases.

**Amendment 1.13 – Section 98** – amends section 98 by updating the structure and language of the section to improve clarity. No changes are made to the substantive content of the section.

**Amendment 1.14 – Schedule 6, part 6.1, item 2** – amends item 2 to increase the monetary amounts in the item from \$150,000 to \$200,000 in accordance with CPI increases.

**Amendment 1.15 – Dictionary, new definitions** – amends the dictionary by inserting new signpost definitions for the following terms: ***dwelling house***, ***eligible partner***, ***intestate***, ***intestate estate***, ***original executor***, ***partner***, ***personal chattels***, and ***personal representative*** into the dictionary. The definitions refer to the relevant provisions in the Act where these terms are defined.

**Amendment 1.16 – Dictionary, definition of *representation*** – amends the definition of ***representation*** in the dictionary by inserting a signpost definition for the term which has a different meaning for the purposes of division 3A.3.

**Amendment 1.17 – Further amendments, references to *shall*** – amends subsections 41C(2), 49C(2) and 50(3) by replacing references to ‘shall’ with references to ‘must’.

## **PART 1.2 – Administrative Appeals Tribunal Act 1989**

**Amendment 1.18 – Section 26(8)** – removes subsection (8) which is now redundant.

**Amendment 1.19 – Sections 26(9)(a) and (10) and 49(2)** – amends paragraph 26(9)(a) and subsections 26(10) and 49(2) by removing the references to ‘or (8)’ as a consequence of amendment 1.18.

**Amendment 1.20 – Section 49(3)(a)** – amends paragraph (a) by removing the reference to ‘or (8)(a) or (b)’ as a consequence of amendment 1.18.

**Amendment 1.21 – Section 62** – removes section 62 which is now redundant.

### **PART 1.3 – Bail Act 1992**

**Amendment 1.22 – New section 31(2)(d)** – inserts a new paragraph (d) into the Act which ensures that a person in charge of an ACT correctional centre is eligible to receive an amount or security, from an accused person, in accordance with a bail condition.

### **PART 1.4 – Civil Law (Sale of Residential Property) Act 2003**

**Amendment 1.23 – Section 10** – amends section 10 of the Act. A minor amendment to the wording of subsection (1) has been made as a consequence of the amendment made to subsection (2). Subsection (1) now provides that a seller of residential property commits an offence if all the required documents are not available for inspection. Subsection (2) has been amended to provide that the strict liability offence in subsection (1) does not apply in relation to a failure to make available all the required documents for inspection where a seller has engaged a lawyer to prepare the contract for sale, and it is the lawyer who fails to give the seller all of the required documents. The seller is still obligated to make available, to the buyer, all the required documents which are given to them by the lawyer and must believe on reasonable grounds that they had received all the required documents. Subsection (3) has been inserted to replicate the contents of the old subsection (2).

**Amendment 1.24 – New section 18(2)** – inserts a new subsection (2) into section 18 of the Act. The new subsection inserts a definition of **cost** for the purposes of section 18. The definition of **cost** qualifies the entitlement belonging to the seller to be reimbursed for the cost of providing a building and compliance inspection report and a pest inspection report. The qualification is that the seller can only obtain the ordinary cost of obtaining such reports and not the costs of any amounts paid for additional services in relation to the reports. An example has also been inserted to provide assistance.

### **PART 1.5 – Civil Law (Wrongs) Act 2002**

**Amendment 1.25 – Schedule 4, section 4.2, new definitions** – amends section 4.2 by inserting new definitions of the following terms: **another jurisdiction**, **appropriate council**, **corresponding law**, and **interstate scheme**. The new definitions are necessary as a consequence of the following amendments to the *Civil Law (Wrongs) Act 2002*.

**Amendment 1.26 – Schedule 4, section 4.2, definition of scheme** – amends the definition of **scheme** in section 4.2 to ensure that references to a scheme in schedule 4 include references to an interstate scheme.

**Amendment 1.27 – Schedule 4, section 4.2, new definition of *this jurisdiction*** – inserts a new definition of *this jurisdiction* into section 4.2. The new definition is necessary as a consequence of the amendments made to the *Civil Law (Wrongs) Act 2002* by this Bill.

**Amendment 1.28 – Schedule 4, new section 4.4(4)** – inserts a new subsection (4) into section 4.4. The new subsection provides that a scheme may indicate an intention to operate as a scheme of the ACT only, or as a scheme of the ACT and another jurisdiction.

**Amendment 1.29 – Schedule 4, new section 4.5(2)** – inserts a new subsection (2) into section 4.5. The new subsection imposes a requirement to publicise a scheme in accordance with the requirements of the corresponding law of another jurisdiction, where a scheme indicates an intention to operate as a scheme of that jurisdiction, in addition to the ACT.

**Amendment 1.30 – Schedule 4, new section 4.7(3)** – inserts a new subsection (3) into section 4.7. The new subsection provides that where a scheme indicates an intention to operate as a scheme of the ACT and another jurisdiction, the ACT Professional Standards Council must consider those matters which the appropriate council for the other jurisdiction would have to consider. The new subsection also provides that all matters which must be considered by the ACT Professional Standards Council must be considered in the context of each of the jurisdictions concerned.

**Amendment 1.31 – Schedule 4, new section 4.9(2)** – inserts a new subsection (2) into section 4.9. The new subsection provides that where a scheme indicates an intention to operate as a scheme of another jurisdiction, the ACT Professional Standards Council may submit the scheme to the relevant Minister administering the corresponding law of the other jurisdiction.

**Amendment 1.32 – Schedule 4, section 4.10(1)** – amends subsection (1) to ensure that the Minister may approve the following schemes:

- an ACT scheme submitted by the ACT Professional Standards Council, or
- an interstate scheme submitted by the appropriate council for the jurisdiction in which the scheme was prepared.

**Amendment 1.33 – Schedule 4, new section 4.10(3)** – inserts a new subsection (3) into section 4.10. The new subsection extends the application of section 4.10 to amendments to interstate schemes.

**Amendment 1.34 – Schedule 4, section 4.11(2)** – amends subsection (2) to provide that a scheme's commencement can be postponed by the ACT Supreme Court under section 4.12 and by the Supreme Court of another jurisdiction through an order made under that jurisdiction's version of section 4.12. The amendment also extends the application of section 4.11 to amendments to interstate schemes.

**Amendment 1.35 – Schedule 4, section 4.12** – amends section 4.12 to provide that a person affected by a scheme approved by the Minister may challenge the scheme by applying to the ACT Supreme Court. Section 4.12 is amended to provide the types of orders that may be made by the ACT Supreme Court on application. Additionally, section 4.12 is amended to ensure that an interstate scheme may not be declared void solely because it fails to comply with the requirements of division 2.2.2 (Content of schemes), but may be declared void if it fails to comply with the equivalent provisions of the corresponding law of the jurisdiction in which it was prepared. Section 4.12 is also amended to ensure the preservation of other rights of challenge and to extend its application to amendments to interstate schemes.

**Amendment 1.36 – Schedule 4, section 4.13(3)** – amends subsection (3) to allow a review to be conducted to determine whether an ACT scheme should be amended or revoked or whether a new scheme should be made, or whether an interstate scheme should be ended in relation to the ACT.

**Amendment 1.37 – Schedule 4, section 4.14(1) to (4)** – amends subsections (1) to (4) to remove the words ‘an amendment or revocation of’ and replaces them with the words ‘an instrument amending or revoking’.

**Amendment 1.38 – Schedule 4, section 4.14(5)** – amends subsection (5) and inserts new subsections (6) and (7) into section 4.14. The amendment excludes sections 4.9 and 4.12 from the list of sections that section 4.14 extends to the amendment or revocation of schemes, and excludes interstate schemes from the application of section 4.14.

**Amendment 1.39 – Schedule 4, new sections 4.14A and 4.14B** – inserts new sections 4.14A and 4.14B into the Act. New section 4.14A requires the Minister to notify his or her interstate counterparts if he or she revokes a scheme. New section 4.14B provides for the termination of interstate schemes in relation to the ACT.

**Amendment 1.40 – Schedule 4, section 4.28(1)** – amends subsection (1) and inserts a new subsection (1A) to clarify the period for which a scheme prepared in the ACT remains in force and the period for which an interstate scheme remains in force.

**Amendment 1.41 – Schedule 4, section 4.37(1)(j)** – amends paragraph (j) to ensure that the ACT Professional Standards Council can exercise functions conferred or imposed on it by laws of other jurisdictions.

**Amendment 1.42 – Schedule 4, new section 4.37A** – inserts a new section into division 4.6.1 of the Act to ensure that the ACT Professional Standards Council can act in conjunction with its interstate counterparts.

**Amendment 1.43 – Dictionary, new definitions** – amends the dictionary by inserting new signpost definitions for the following terms: ***another jurisdiction***, ***appropriate council***, ***corresponding law***, and ***interstate***



**scheme** into the dictionary. The definitions refer to the relevant provisions in the Act where these terms are defined.

**Amendment 1.44 – Dictionary, definition of *this jurisdiction*** – amends the definition of ***this jurisdiction*** to insert a new signpost definition for the term. The new definition refers to the relevant provisions in the Act which define the term for the different purposes of chapter 9 and schedule 4.

### **PART 1.6 – Civil Law (Wrongs) Regulation 2003**

**Amendment 1.45 – Section 13(1)** – amends subsection (1) to prescribe the statement ‘Liability limited by a scheme approved under Professional Standards Legislation’ as a consequence of amendments made in Part 1.5.

### **PART 1.7 – Crimes (Sentence Administration) Act 2005**

**Amendment 1.46 – Section 68(2)(f), note** – removes the words ‘Section 70 requires’ and replaces them with the words ‘Sections 69 and s 70 require’ to ensure consistency.

**Amendment 1.47 – Section 69(2)** – amends subsection (2) to ensure that the power provided to the Sentence Administration Board in section 69 does not limit the circumstances in which the Board can exercise the broad power provided to it in paragraph 68(2)(f).

**Amendment 1.48 – Section 70(2)** - amends subsection (2) to ensure that the power provided to the Sentence Administration Board in section 70 does not limit the circumstances in which the Board can exercise its broad power provided in paragraph 68(2)(f).

### **PART 1.8 – Fair Trading Act 1992**

**Amendment 1.49 – Section 29(9), definition of *directory*** – removes the words ‘Australian Telecommunications Commission’ from the definition of ***directory*** contained in subsection (9) and replaces them with the words ‘Telstra Corporation Limited’.

**Amendment 1.50 – Section 44(2)** – removes the words ‘, whether before or after the commencement of this subsection’ from subsection (2) which are now redundant.

**Amendment 1.51 – Section 48** – amends section 48 by removing the corporate criminal responsibility components from the section, as these principles are now espoused in part 2.5 of the *Criminal Code 2002*.

### **PART 1.9 – Fair Trading (Consumer Affairs) Act 1973**

**Amendment 1.52 – Section 26(5)(b)** – removes the words ‘or class of goods’ as a consequence of amendment 1.54.

**Amendment 1.53 – Section 26(8)(b)** – removes the words ‘or the class of goods’ as a consequence of amendment 1.54.

**Amendment 1.54 – Section 27** – amends section 27 to ensure that the Minister may make a consumer product safety order which prohibits or restricts the supply of dangerous goods. Dangerous goods are defined in the section to mean goods which directly or indirectly, through their possession, handling or use, are likely to cause death or injury to a person or affect a person’s health.

**Amendment 1.55 – Section 29(2)** – amends subsection (2) for consistency as a consequence of amendment 1.54.

#### **PART 1.10 – Juries Act 1967**

**Amendment 1.56 – Section 10(d)** – removes subsection (d) from the Act.

**Amendment 1.57 – Schedule 2, part 2.2, item 3** – removes the words ‘schoolmaster or schoolteacher’ and replaces them with the words ‘or school principal or teacher’ to update the references.

**Amendment 1.58 – Schedule 2, part 2.2, new items 8 and 9** – inserts new items 8 and 9 into part 2.2. The new items enable people who are totally or partially blind, or totally or partially deaf, to claim an exemption from serving on an ACT jury.

**Amendment 1.59 – Dictionary, definition of *sheriff*** – amends the definition of *sheriff* to update the definition to accord with the current drafting practice of the ACT.

#### **PART 1.11 – Leases (Commercial and Retail) Act 2001**

**Amendment 1.60 – Section 123(1)(c), new note** – inserts a new note into paragraph (c).

**Amendment 1.61 – Dictionary, definition of *dispute*** – amends the definition of *dispute* in the dictionary by inserting a signpost definition for the term which has a different meaning for the purposes of part 14.

**Amendment 1.62 – Dictionary, new definition of *party*** – inserts a new signpost definition of *party* into the Act. The definition refers to section 143 where *party* is defined for the purposes of part 14.

#### **PART 1.12 – Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005**

**Amendment 1.63 – Section 15** – removes section 15 from the Act to ensure consistency.

**PART 1.13 – Magistrates Court (Environment Protection Infringement Notices) Regulation 2005**

**Amendment 1.64 – Section 13** – removes section 13 from the Act to ensure consistency.

**PART 1.14 – Magistrates Court (Food Infringement Notices) Regulation 2005**

**Amendment 1.65 – Section 15** – removes section 15 from the Act to ensure consistency.

**PART 1.15 – Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005**

**Amendment 1.66 – Section 13** – removes section 13 from the Act to ensure consistency.

**PART 1.16 – Magistrates Court (Sale of Motor Vehicles Infringement Notices) Regulation 2005**

**Amendment 1.67 – Section 14** – removes section 14 from the Act to ensure consistency.

**PART 1.17 – Powers of Attorney Act 2006**

**Amendment 1.68 – Sections 92 and 93** – amends sections 92 and 93 by replicating the contents of these sections into new sections 96 and 97, and by also inserting new sections 92, 93, 94 and 95 into the Act. The new sections ensure that current transitional sections 152, 152A, 152B and 154 are remade as substantive provisions in the Act to ensure the continuing validity of any powers of attorney which have been made in accordance with the repealed *Powers of Attorney Act 1956* and the repealed *Medical Treatment Act 1994*.

**Amendment 1.69 – Section 152** – removes section 152 from the Act as a consequence of amendment 1.68.

**Amendment 1.70 – Section 154** – removes section 154 from the Act as a consequence of amendment 1.68.

**PART 1.18 – Public Trustee Act 1985**

**Amendment 1.71 – Section 5** – amends section 5 to remove the words 'performing the duties' and replaces them with the words 'exercising the functions' for consistency.

**Amendment 1.72 – Section 6** – amends section 6 to clarify that the Public Trustee for the ACT can appoint more than one Deputy Public Trustee.

**Amendment 1.73 – Section 29A** – amends section 29A by removing the contents of the old section 29A which are now redundant. The contents of the new section 29A will enable the Public Trustee for the ACT to make a payment to a person or hand over small personal items, limited to \$20,000, without requiring administration to be taken out in the estate of that person which can be costly and deplete the assets of the estate.

**Amendment 1.74 – Section 66** – removes section 66 from the Act which is redundant.

**Amendment 1.75 – Dictionary, definition of *deputy public trustee*** – amends the definition of *deputy public trustee* in the dictionary of the Act as a consequence of amendment 1.72.

### **PART 1.19 – Residential Tenancies Act 1997**

**Amendment 1.76 – New section 115D** – inserts a new section 115D into division 7.1 of the Act to enable the president of the ACT Residential Tenancies Tribunal to delegate the endorsement consent decisions to another member of the Tribunal. A definition of *consent decision* is included in the new section.

### **PART 1.20 – Trustee Act 1925**

**Amendment 1.77 – Sections 47(3)(a) and (b)** – amends paragraphs (a) and (b) to increase the monetary limits in the paragraphs from \$500 to \$6,000 in accordance with CPI increases.

**Amendment 1.78 – Section 47(3)(b)** - amends paragraph (b) to increase the monetary limit in the paragraph from \$2,000 to \$25,000 in accordance with CPI increases.

**Amendment 1.79 – Section 83(1)** - amends subsection (1) to increase the monetary limit in the subsection from \$2,000 to \$25,000 in accordance with CPI increases.

### **PART 1.21 – Victims of Crime Regulation 2000**

**Amendment 1.80 – Sections 23(2)(d) and 41(f)(viii)** – amends the paragraphs by removing the references to the repealed '*Community and Health Services Complaints Act 1993*', and replacing them with references to the '*Human Rights Commission Act 2005*'.

### **PART 1.22 – Wills Act 1968**

**Amendment 1.81 – Section 12A(3)(a)** – amends paragraph (a) by removing the reference to 'section 87B(3)' and replacing it with a reference to 'section 87B(4)' as a consequence of amendment 1.10.