

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Justice and Community Safety Legislation
Amendment Bill 1999**

A BILL

FOR

**An Act to amend the law relating to justice and
community safety, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

5 This Act is the *Justice and Community Safety Legislation
Amendment Act 1999*.

2 Commencement

(1) Except as provided in subsections (2) and (3), this Act commences on the day it is notified in the *Gazette*.

10 (2) The following amendments in the Schedule commence on a day or days fixed by the Minister by notice in the *Gazette*:

(a) the amendments of the Administrative Appeals Tribunal Act 1989, Consumer Credit (Administration Act) 1996, Magistrates Court

99047 (1999/196) (T47/1999)

Justice and Community Safety Legislation Amendment No , 1999

Act 1930, Residential Tenancies Tribunal Act 1997 and Tenancy Tribunal Act 1994;

- (b) the repeal of sections 94 to 97 (inclusive) of the *Coroners Act 1997*.
- 5 (3) However, if an amendment mentioned in subsection (2) has not commenced within 6 months after the day mentioned in subsection (1), it commences on the next day.

3 Acts amended—Schedule

This Act amends the Acts mentioned in the Schedule.

SCHEDULE

(See s 3)

AMENDMENTS OF ACTS

Administrative Appeals Tribunal Act 1989

Sections 59A to 59E (inclusive)—

5 Repeal the sections.

Consumer Credit (Administration) Act 1996

Section 99—

Repeal the section.

Subsection 140 (1)—

10 Omit the subsection, substitute the following subsection:

“(1) The Minister may, in writing, determine fees for the purposes of this Act (except Part 4).”.

Section 140—

Add at the end the following subsection:

15 “(3) A determination under this section is a disallowable instrument for section 10 of the *Subordinate Laws Act 1989*.”.

Coroners Act 1997

Section 92—

20 (a) After “Attorney-General”, insert “or by anyone else”.

(b) Add at the end the following subsections:

“(2) If an application is made under subsection (1) by a person (other than the Attorney-General or someone acting under the Attorney-General’s authority), the application must be served on the Attorney-General.

25 “(3) The Attorney-General may appear on the hearing of any application under subsection (1).”.

Paragraph 93 (b)—

(a) Omit “, or under”, substitute “or under”.

(b) After “Attorney-General”, insert “or by anyone else”.

30 **Section 93—**

Add at the end the following subsections:

SCHEDULE—continued

“(2) If an application is made under subsection (1) by a person (other than the Attorney-General or someone acting under the Attorney-General’s authority), the application must be served on the Attorney-General.

5 “(3) The Attorney-General may appear on the hearing of any application under subsection (1).”.

Heading to Part 9—

Omit the heading, substitute the following heading:

“PART 9—WITNESSES EXPENSES AND OTHER AMOUNTS”.

10 **Sections 94 to 97 (inclusive)—**

Repeal the sections.

Section 106—

Add at the end the following subsection:

15 “(2) However, sections 92 and 93 of this Act apply to an inquest or inquiry mentioned in subsection (1) instead of sections 45 and 46 of the former Act.”.

Subsection 107 (1)—

Omit the subsection.

Government Solicitor Act 1989

20 **Subsection 5 (3)—**

After paragraph (e) insert the following paragraph:

“(ea) a company, joint venture or trust in which the Territory or a Territory entity has a controlling interest; or”.

Paragraph 5 (3) (f)—

25 Omit the paragraph, substitute the following paragraph:

“(f) a person who—

(i) is a public employee; or

(ii) was a public employee; or

30 (iii) is or was an officer or employee of a company, joint venture or trust in which the Territory or a Territory entity has a controlling interest; or”.

SCHEDULE—continued

Paragraph 5 (3) (h)—

Omit the paragraph, substitute the following paragraphs:

- 5 “(ga) a person who is or was a trustee, director or board member of a company, joint venture or trust in which the Territory or a Territory entity has a controlling interest; or
- (h) the government solicitor (however described) of the Commonwealth, a State, another Territory or a foreign country, by arrangement, as agent on behalf of clients of that solicitor; or”.

Section 5—

10 After subsection (3) insert the following subsection:

“(3A) Paragraph (3) (ea), subparagraphs (3) (f) (ii) and (iii) and paragraph (3) (ga) apply to a matter only if the chief solicitor decides that the Territory has an interest in the outcome of the matter.”.

Subsection 5 (11)—

15 Insert the following definitions:

“controlling interest—see Auditor-General Act 1996, section 5.

Territory entity—see Auditor-General Act 1996, subsection 3 (1).”.

Juries Act 1967

Subsection 42C (5)—

20 After paragraph (c) insert the following paragraph:

“(ca) to a legal practitioner to obtain legal advice in relation to an investigation or alleged offence mentioned in paragraph (c); or”.

Subsection 42C (6)—

After paragraph (c) insert the following paragraph:

25 “(ca) to a legal practitioner to obtain legal advice in relation to an investigation or alleged offence mentioned in paragraph (c); or”.

Magistrates Court Act 1930

Part 13A—

Omit the Part, substitute the following Part:

SCHEDULE—continued

“PART 13A—COURT AND TRIBUNAL FEES

“248 Definitions for Pt 13A

In this Part—

court means—

- 5 (a) the Coroner’s Court; or
 (b) the Magistrates Court.

determined fee means a fee determined under this Part.

fee includes a charge and a tax.

relevant legislation means any of the following:

- 10 (a) the *Administrative Appeals Tribunal Act 1989*;
 (b) the *Consumer Credit (Administration) Act 1996*;
 (c) the *Coroners Act 1997*;
 (d) the *Discrimination Act 1991*;
 (e) this Act;
15 (f) the *Magistrates Court (Civil Jurisdiction) Act 1982*;
 (g) the *Residential Tenancies Act 1997*;
 (h) the *Tenancy Tribunal Act 1994*;
 (i) regulations or other subordinate legislation made or in force
 under an Act mentioned in paragraphs (a) to (h);
20 (j) the code within the meaning of the *Tenancy Tribunal Act*
 1994.

tribunal means any of the following:

- (a) the administrative appeals tribunal;
 (b) the credit tribunal;
25 (c) the discrimination tribunal;
 (d) the residential tribunal;
 (e) the tenancy tribunal.

SCHEDULE—continued

“248A Determination of fees

“(1) The Minister may, in writing, determine fees for any of the following purposes:

- 5 (a) proceedings in a court or tribunal, and matters incidental to such proceedings, including—
- (i) the service and execution of the process of a court or tribunal; and
 - (ii) the taxation of costs by the registrar or other officers of a court or tribunal;
- 10 (b) facilities and services provided by a court or tribunal, including the service and execution of the process of a court of the Commonwealth, a State, another Territory or a foreign country;
- (c) the general purposes of relevant legislation.

“(2) A determination under subsection (1) may make provision for or with respect to—

- 15 (a) exempting persons, in whole or part, from liability to pay determined fees in all or particular circumstances; or
- (b) remitting, refunding or waiving determined fees, in whole or part, by the registrar of a court or tribunal in particular circumstances; or
- 20 (c) deferring by the registrar of a court or tribunal of liability, in whole or part, to pay determined fees in particular circumstances.

“(3) A determination under subsection (1) is a disallowable instrument for section 10 of the *Subordinate Laws Act 1989*.

“248B Payment of fees

25 “(1) A determined fee is payable, in advance, in accordance with the determination that determined the fee, but subject to this section.

“(2) A determined fee is payable on notice from the registrar of the court or tribunal if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee is payable.

30

“(3) If a determined fee that is payable in advance has not been paid, the registrar of the court or tribunal (and the court or tribunal) is not obliged to perform the function, or provide the facility or service, for which the fee is payable.

SCHEDULE—continued

“248C Remission, refund, deferral, waiver and exemption of fees

5 “(1) A determined fee may be remitted or refunded, or liability for its payment deferred, in accordance with the determination that determined the fee.

“(2) A determined fee is not payable—

(a) if the person otherwise liable to pay the fee is—

(i) exempt from liability to pay the fee under the determination that determined the fee; or

10 (ii) exempt from paying the fee under subsection 93 (1) of the *Legal Aid Act 1977*; or

(iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or

15 (b) if the registrar of the court or tribunal waives payment by a person of the fee in whole or part because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or

(c) for the laying of an information—

20 (i) by the director of public prosecutions acting in the performance of an official function under a Territory law; or

(ii) by a police officer acting in the performance of an official function under a Territory law; or

(iii) for an offence against subsection 255 (1) (which is about contempt in the face of the court).

25 **“248D Recovery of fees in non-criminal proceedings if fees otherwise not payable**

“(1) This section applies in relation to a civil proceeding in the Magistrates Court, or a proceeding in a tribunal, between at least 2 parties (the *first party* and the *second party*) if—

30 (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—

(i) not payable in whole or part because of the exemption of the first party under this Part; or

35 (ii) remitted, refunded or waived in whole or part under this Part; and

(b) judgment is given or entered, or an order is made, in favour of the first party; and

(c) the first party’s costs are payable by the second party.

SCHEDULE—continued

“(2) If this section applies, the second party must pay to the registrar of the court or tribunal the amount of the exemption, remission, refund or waiver.

5 **“248E Recovery of fees in criminal proceedings if fees not otherwise payable**

“(1) This section applies in relation to a criminal proceeding in the Magistrates Court if—

- 10 (a) the fee (the *information fee*) that would otherwise be payable by the informant for the laying of the information in the proceeding is not payable in whole or part under this Part; and
- (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.

“(2) If this section applies, the defendant must pay to the registrar of the Magistrates Court, in addition to the fine—

- 15 (a) if payment of the fee is waived in part under this Part—the amount of the waiver; or
- (b) in any other case—the information fee.

“248F Review of decisions

20 “(1) This section applies to any of the following decisions made under this Part by the registrar of a court or tribunal in relation to a person (the *eligible person*):

- (a) a decision refusing to remit, in whole or part, a determined fee payable by the person;
- 25 (b) a decision refusing to refund, in whole or part, a determined fee paid by the person;
- (c) a decision refusing to defer, in whole or part, the person’s liability to pay a determined fee;
- (d) a decision refusing to waive, in whole or part, payment of a determined fee by the person;
- 30 (e) a decision refusing to allow the person the benefit of an exemption to pay a determined fee.

“(2) If the registrar makes a decision to which this section applies, the registrar must give written notice of the decision to the eligible person.

“(3) The notice must tell the eligible person that the person may—

- 35 (a) apply to the registrar for a statement of reasons for the decision; and
- (b) apply for review of the decision under this section.

SCHEDULE—continued

“(4) The eligible person may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given notice of the decision by the registrar.

5 “(5) The eligible person may apply to the court or tribunal for review of the decision within—

(a) 28 days after the day when the person is given notice of the decision by the registrar; or

10 (b) if the person applies within that 28 days for a statement of reasons for the decision—28 days after the day when the person is given the statement of reasons.

“(6) On the review, the court or tribunal—

(a) must be constituted by—

(i) for a court—a magistrate; or

(ii) for a tribunal—a member of the tribunal; and

15 (b) may make the orders the court or tribunal considers appropriate.

“(7) A fee is not payable for an application under this section.”.

Residential Tenancies Tribunal Act 1997

Paragraph 73 (2) (c)—

Add at the end “and”.

20 **Paragraphs 73 (2) (d) and (e)—**

Omit the paragraphs, substitute the following paragraph:

“(d) be lodged with the registrar.”.

Section 135—

Repeal the section.

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Supreme Court Act 1933

Section 12—

Repeal the section.

Tenancy Tribunal Act 1994

Part XI—

30

Repeal the Part.

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