

1999

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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Attorney-General**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 1999

This Bill amends the law relating to justice and community safety, and for other purposes.

Notes on Clauses

Clause 1 Short Title

This clause explains that when the Bill becomes an Act, it will be known as the *Justice and Community Safety Legislation Amendment Act 1999*.

Clause 2 Commencement

This clause is formal; it deals with commencement.

Clause 3 Acts amended - Schedule 1

Schedule 1 establishes a coherent, common scheme to clarify and standardise the application of fees in a number of tribunals and the lower courts. The new scheme is based on the existing structure of Part 13A of the *Magistrates Court Act 1930* (which itself is to be amended to simplify the provisions, remove some provisions which are better placed in the determinations themselves and permit the provisions to apply in relation to particular tribunals and the Coroner's Court.

The scheme provides for the Minister to determine fees and charges by way of disallowable instrument. The determination may make provisions for exemptions, remissions and deferrals. The scheme permits a court to allow a person who has paid a fee, to recover it from a person against whom a judgment or order is made. It also provides for internal review of various decisions concerning fees and charges.

The amendments provide that the Part 13A scheme applies in relation to specific tribunals and the Coroner's Court. This will replace similar existing schemes under the *Administrative Appeals Act 1989* and the *Tenancy Tribunal Act 1994*. It will replace the existing provisions in the *Residential Tenancies Act 1997* and the *Consumer Credit (Administration) Act 1996* that made less comprehensive provision for fees and charges (neither provided for recovery nor internal review). It will introduce the scheme into the *Discrimination Act 1991* to permit the setting of appropriate fees and charges in that jurisdiction. As provided at present, no

provision for fees and charges is made in relation to tribunals under *the Mental Health (Treatment and Care) Act 1994* or *the Guardianship and Management of Property Tribunal Act 1997*.

Coroners Act 1997

Schedule 1 amends the *Coroners Act 1997*. These provisions deal with the power of the Supreme Court to order an inquest or inquiry (s.92) and the power of the Supreme Court to quash, or order a fresh inquest or inquiry (s.93). While section 64 of the Act provides the Chief Coroner with the power, on application, to request the original Coroner to reconsider a decision, the Attorney-General acts as a gatekeeper to the Supreme Court's further consideration of the matter under sections 92 and 93.

These amendments bring the Act into conformity with other States by providing that either the Attorney-General or *any other person* may make an application under sections 92 and 93. Accordingly, a person may make an application independently of the Attorney-General under these provisions (although the Attorney-General is to be required to be served with notice of the application). Section 106 is also amended to ensure that the amendment applies to any inquest or inquiry, whether or not it occurred before the commencement of the *Coroners Act 1997*.

Government Solicitor Act 1989

Schedule 1 also amends the *Government Solicitor Act 1989* to allow the Government Solicitor to act for a Territory owned Corporation and for former public employees enabling the Territory to protect its interests where the Territory may be liable for damages.

Juries Act 1967

Schedule 1 also amends section 42C of the *Juries Act 1967* to permit a juror to disclose protected information to a legal practitioner for the purposes of obtaining advice where the jury deliberations are in issue, or where information is sought by a legal practitioner if the juror becomes involved in court proceedings, a criminal investigation or a Royal Commission.

Supreme Court Act 1933

Schedule 1 repeals section 12 of the *Supreme Court Act 1933* which required decisions of the President, whether or not he or she was a Judge, to be reviewed by a full Court only. The requirement mirrored subsection 44(3) of the *Commonwealth Administrative Appeals Tribunal Act 1975*; but that Act requires the President to be a Federal Court Judge. This is an expensive and inappropriate procedure for the ACT where there is no requirement for the President to be a Judge.