

2005

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2005 (NO 2)**

EXPLANATORY STATEMENT

Circulated with the authority of
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2005 (NO 2)

Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2005 (No 2) (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include the:

- *Administrative Appeals Tribunal Act 1989*;
- *Civil Law (Wrongs) Act 2002*;
- Civil Law (Wrongs) Regulation 2003;
- *Conveyancing Act 1919*;
- *Corrections Reform Amendment Act 2004*;
- *Domestic Relationships Act 1994*;
- *Legal Practitioners Act 1970*;
- *Partnership Act 1963*;
- *Powers of Attorney Act 1956*;
- *Remuneration Tribunal Act 1995*;
- *Residential Tenancies Act 1997*;
- *Standard Time and Summer Time Act 1972*;
- *Supreme Court Act 1933*;
- *Trustee Act 1925*; and the
- *Trustee Companies Act 1947*.

In addition, the Bill repeals the *Trading Stamps Act 1972* which is now redundant.

The proposed amendments are detailed below.

Administrative Appeals Tribunal Act 1989

Amendments to the *Land (Planning and Environment) Act 1991* and the commencement of the *Heritage Act 2004* have had the effect of removing provisions relating to appeals to the Administrative Appeals Tribunal in heritage cases from the *Land (Planning and Environment) Act 1991* to the *Heritage Act 2004*. A consequence of these amendments is that the *Administrative Appeals Tribunal Act 1989* appears on its face to require heritage cases to be dealt with in the General Division of the Tribunal, instead of the Land and Planning Division. To clarify that heritage cases should not be heard in the General Division, the Bill amends section 19(1) of the *Administrative Appeals Tribunal Act 1989* to explicitly include proceedings arising from the *Heritage Act 2004* as those which shall be dealt with by the Land and Planning Division.

Civil Law (Wrongs) Act 2002 and Civil Law (Wrongs) Regulation 2003

The provisions in section 51 of the Act currently provide time limits for a claimant to undertake pre-court procedures for personal injury claims. The penalties for not meeting the time limits do not arise if the claimant has a reasonable excuse for non-compliance. For example, if the claimant is delayed due to undertaking conciliation of the relevant health complaint (i.e., the same health complaint associated with the possible personal injury claim) the courts would not seek to penalise the claimant for engaging in an alternative dispute resolution process. However, the specific circumstances that would be considered ‘reasonable’ are not articulated in the Act.

To ensure that claimants are not deterred from undertaking conciliation processes before initiating proceedings for personal injury claims, the Act is amended to prescribe a list of specific ‘reasonable excuses’ for not meeting the section 51 timeframe, and the amendment to the Regulation clarifies that the undertaking of conciliation for a health complaint is a reasonable excuse.

In addition, the ‘one month after the date the claimant instructs a lawyer’ timeframe contained in section 51, provides insufficient time to complete the first step of the pre-court procedures. The Bill extends this timeframe to ‘4 months after the date the claimant instructs a lawyer’.

Section 50 of the *Civil Law (Wrongs) Act 2002* deals with the application of pre-court procedure provisions in Chapter 5 of the Act. The procedures do not apply to matters under the *Workers Compensation Act 1951*. Concern has been raised that the procedures may still apply to common law workers’ compensation matters where a claim for compensation was originally made under the *Workers Compensation Act 1951*. To ensure that claimants do not re-lodge notice or duplicate notice procedures, an amendment to section 50 of the *Civil Law (Wrongs) Act 2002* states that the pre-court procedures need not be complied with if a claim for compensation has been made under section 116 of the *Workers Compensation Act 1951*.

Corrections Reform Amendment Act 2004

The *Corrections Reform Amendment Act 2004* contains a rudimentary form of combination sentences and sets some criteria for sentencing courts to apply. Due to an automatic commencement provision in section 2(2), the Act is due to commence on 6 September 2005.

Since the passing of the Act, the Government has formulated a more comprehensive sentencing policy which will consolidate all sentencing legislation into three Bills. Part of the sentencing policy is to repeal the *Corrections Reform Amendment Act 2004* as part of a consequential amendments bill. However, the consequential amendments bill will not commence before the *Corrections Reform Amendment Act* is due to automatically commence.

To avoid unnecessary complication of ACT sentencing laws, the amendment to section 2(2) of the *Corrections Reform Amendment Act 2004* extends the commencement date of that Act to 6 September 2006.

Domestic Relationships Act 1994

Section 33 of the *Domestic Relationships Act 1994* deals with domestic relationship agreements. In particular, under section 33(1)(d) the court must be satisfied that the parties sought independent advice from a solicitor before signing such agreements dealing with factors such as the effect of the agreement, the financial advantages, whether it was prudent to enter the agreement, and whether the agreement was fair and reasonable in light of reasonably foreseeable circumstances.

As a matter of principle, solicitors should only provide advice on matters about which they have expertise. Solicitors are not generally equipped to provide financial advice. The onus on solicitors to provide advice on whether a matter is prudent or fair and reasonable is also inappropriate, as it requires a solicitor to provide subjective advice that looks to the future. The amendment to section 33 removes these factors from the independent advice given in respect of domestic relationship agreements or termination agreements.

Partnership Act 1963

In 2004, the Commonwealth made a series of amendments to the *Bankruptcy Act 1966* (Cwlth). In particular, it repealed three types of administrations (deeds of assignment, deeds of arrangement, and compositions), replacing them with a single ‘personal insolvency agreement’. Consequently, the amendment to the *Partnership Act 1963* replaces references to the repealed administrations with references to ‘personal insolvency agreement’.

Powers of Attorney Act 1956

The lack of recognition of interstate enduring powers of attorney in the ACT is causing difficulties for some people from interstate ending up in ACT hospitals, who have made valid arrangements for substitute decision-making, yet cannot use these arrangements in the ACT. In such cases, the Community Advocate is forced to seek guardianship orders so that they can make necessary decisions, causing unnecessary strain on resources. Many jurisdictions in Australia have passed laws to recognise interstate enduring powers of attorney to avoid the occurrence of this problem. The amendment to the *Powers of Attorney Act 1956* recognises interstate enduring powers of attorney in the ACT.

Remuneration Tribunal Act 1995

The amendments to the *Remuneration Tribunal Act 1995* are consequential amendments to the amendments to the *Supreme Court Act 1933* which deal with judicial pensions and the remuneration of acting judges.

Residential Tenancies Act 1997

Changes in 2004 to the *Residential Tenancies Act 1997* led to the short-term occupancy market formalising occupancy agreements. This presented the opportunity whereby bond collected under such occupancy agreements could be managed in the

same way as similar rental agreements, by the Office of Rental Bonds, on a fully funded basis (interest derivatives from such bonds are available for the funding of the Office of Rental Bonds and other support agencies). The amendment to the Act permits (but does not compel) the Office of Rental Bonds to accept bonds from occupiers.

An amendment has also been made to section 51 of the Act, which deals with applications to a tribunal. The amendment clarifies that only the lessor can apply under this section, by including the words “On application by a lessor” in the section.

Standard Time and Summer Time Act 1972

In 2004, the National Time Commission recommended that all Australian States and Territories replace references to Greenwich Mean Time (GMT) in legislation with Coordinated Universal Time (UTC). GMT and UTC are approximately equivalent. The difference between the two time scales is minute, but is important for computer programs that use high speed data transfers and in universal synchronization applications. UTC is also the recognised legal standard for time under the *National Measurement Act 1960* (Cwlth) and is the only time scale supported by a technical infrastructure. The National Time Commission predicts that UTC will replace GMT as the international time standard. The amendments to the *Standard Time and Summer Time Act 1972* give recognition to UTC as the standard time in the ACT, to commence on 1 September 2005.

Supreme Court Act 1933

Under section 37J of the *Supreme Court Act 1933*, the Appeals Court can be constituted by a single judge when dealing with certain matters, such as applications for leave to appeal, extensions of time to appeal and leave to amend the grounds relied upon. To improve efficiency, the amendment to the *Supreme Court Act 1933* permits the Court of Appeal to be constituted by a single judge (rather than three) with authority to strike out an appeal for want of prosecution or failure to comply with procedure requirements or for appeals that are scandalous, vexatious or unintelligible. The amendment to section 37J broadens the range of matters that can be heard by a single judge in the Court of Appeal.

Section 37U of the *Supreme Court Act 1933* does not make provision for pension entitlements (or long service leave entitlements) for any incoming judge following the current Chief Justice’s retirement; noting that the Chief Justice’s departure would not remove or diminish the entitlements of serving resident judges. The amendment to section 37U permits any new judges following the departure of the Chief Justice to receive the same entitlements as the remainder of the ACT judges.

A technical reading of section 37U of the *Supreme Court Act 1933* suggests that neither the Chief Justice nor the President of the Court of Appeal are entitled to pension entitlements based on their higher level of remuneration. The amendment to section 37U makes it clear that the entitlements are based on total remuneration, as is the case with other superannuation beneficiaries.

The Bill also makes amendments to the *Supreme Court Act 1933* and the *Remuneration Tribunal Act 1995* and repeals the *Supreme Court (Remuneration) Regulation 1995* to allow for the Remuneration Tribunal to determine the remuneration and allowances for acting judges.

Trustee Companies Act 1947

The references in section 10 of the *Trustee Companies Act 1947* regarding administration bonds have become redundant. Administration bonds are no longer required for trustee companies under the Supreme Court Rules 1937, o 72 r 30 (2) (c). The Bill therefore amends section 10 to remove references to administration bonds. In addition, the Bill makes a number of technical amendments to the Act to remove unnecessary references to Supreme Court procedures.

The Bill also amends the *Conveyancing Act 1919*, the *Legal Practitioners Act 1970*, and the *Trustee Act 1925* to update references to ‘trustee company’.

Clause Notes

Clause 1 Name of Act – states the title of the Act, which is the Justice and Community Safety Legislation Amendment Act 2005 (No 2).

Clause 2 Commencement – states that Schedule 1, part 1.10 of the Act commences when the *Human Rights Commission Legislation Amendment Act 2005*, schedule 1, part 1.12 commences. It also states that Schedule 1, part 1.12 of the Act commences on 1 September 2005 and the remainder of the Act commences on a day fixed by the Minister by written notice.

Clause 3 Legislation amended – sch 1 – states that the legislation listed in schedule 1 is amended.

Clause 4 Legislation repealed – provides that the *Trading Stamps Act 1972* is repealed. The *Trading Stamps Act 1972* prohibited the distribution of trading stamps in retail trade as a form of loyalty scheme. The market conditions that existed at the time the *Trading Stamps Act 1972* was introduced, and the prohibited schemes that the legislation was designed to counteract, no longer prevail in the ACT. This is because the retail trade in the ACT has evolved and is now characterised by strong competition and an informed marketplace. In more recent years, many other loyalty schemes have existed in the ACT, and it is inconsistent for legislation to continue to ban one type of loyalty scheme while allowing other loyalty schemes to continue.

Also provides that the *Supreme Court (Remuneration) Regulation 1995* SL1995-14 is repealed as the remuneration of acting judges will now be determined by the Remuneration Tribunal, rendering this Act redundant.

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

PART 1.1 – Administrative Appeals Tribunal Act 1989

Amendment 1.1 – Section 19 – amends section 19 of the *Administrative Appeals Tribunal Act 1989* to provide that proceedings to which division 4.5 (Land, planning and environment applications) of the Act apply must be conducted in the Land and Planning Division of the Administrative Appeals Tribunal. Currently division 4.5 applies to proceedings under the *Heritage Act 2004*, the *Land (Planning and Environment) Act 1991*, and the *Tree Protection (Interim Scheme) Act 2001*.

PART 1.2 – Civil Law (Wrongs) Act 2002

Amendment 1.2 – Section 50 (2) (a) – amends subsection 50(2)(a) of the *Civil Law (Wrongs) Act 2002* to clarify that chapter 5 does not apply to a claim for compensation under the *Workers Compensation Act 1951* by adding the words ‘for compensation’ into the paragraph.

Amendment 1.3 - New section 50 (3) and (4)– amends the *Civil Law (Wrongs) Act 2002* to clarify that part 5.2 (Claims procedures) does not apply to a civil claim for

damages for personal injury if a claim has been made under the *Workers Compensation Act 1951*. This ensures that claimants do not re-lodge notice or duplicate notice procedures that have already been completed as part of a workers compensation claim. Subsection (4) clarifies that the exclusion from part 5.2 does not apply to those claims for which the *Road Transport (General) Act 1999*, part 10 applies.

Amendment 1.4 – Section 51(3)(b) – amends section 51(3)(b) of the *Civil Law (Wrongs) Act 2002* to replace the reference to *1 month* with *4 months*. This amendment changes one of two timelines relating to pre-court procedures for a personal injury claim.

Amendment 1.5 – Section 51(6) – amends section 51(6) of the *Civil Law (Wrongs) Act 2002* to insert a new section which states that a ‘reasonable excuse’ for delay in giving a respondent a notice of claim can be prescribed by regulation for this section.

Amendment 1.6 – Section 51(6) – renumbers section 51(6) of the *Civil Law (Wrongs) Act 2002* as section 51(7).

Amendment 1.7 – Section 51(7) – omits section 51(7) of the *Civil Law (Wrongs) Act 2002* to replace the reference to *subsection (6)* with *subsection (7)*.

Amendment 1.8 – Section 51 (7) (as amended) – renumbers section 51(7) as section 51(8).

Amendment 1.9 – New section 226 – inserts a transitional provision into the *Civil Law (Wrongs) Act 2002*. The provision ensures that the amendment to the timeline under section 51(3)(b) applies to any notice of claim given after the commencement of the *Justice and Community Safety Legislation Amendment Act 2005* and before the commencement of this section.

PART 1.3 – Civil Law (Wrongs) Regulation 2003

Amendment 1.10 – New section 6A – amends the Civil Law (Wrongs) Regulation 2003 to insert a new section 6A (Reasonable excuse for delay in giving notice – Act, s 51(6)) into the Regulation. The section states that if a claimant does not give notice under section 51 of the Act within the required timeframe because the claim is being conciliated under the *Human Rights Commission Act 2005*, then the claimant has a reasonable excuse for the delay. The section also provides a transitional provision to recognise that provisions relating to conciliations under the *Community and Health Services Complaints Act 1993* are anticipated to be moved into the *Human Rights Commission Act 2005*.

Part 1.4 – Conveyancing Act 1919

Amendment 1.11 – Dictionary, definition of *trustee company* – amends the dictionary in the *Conveyancing Act 1919* to cross-reference the definition of *trustee company* to the definition in the *Trustee Companies Act 1947*.

Part 1.5 - Corrections Reform Amendment Act 2004

Amendment 1.12 – Section 2 – amends section 2 of the *Corrections Reform Amendment Act 2004* to change the commencement date of the Act to 6 September 2006. Previously the section provided for automatic commencement of the Act the day after 12 months after notification, which would have commenced on 6 September 2005. The extension of the commencement date of the *Corrections Reform Amendment Act 2004* foreshadows the repeal of the Act as a consequence of the introduction, and foreshadowed enactment, of the Crimes (Sentencing) Bill 2005 and the Crimes (Sentence Administration) Bill 2005.

PART 1.6 – Domestic Relationships Act 1994

Amendment 1.13 – Section 33(1)(d) - amends section 33(1)(d) of the *Domestic Relationships Act 1994* to remove the requirements for a solicitor to give financial advice, advice about if an agreement is prudent, and advice about if an agreement is fair and reasonable in light of reasonably foreseeable circumstances, in relation to a domestic relationship or termination agreement. The section now requires the solicitor to advise only on the effect of the agreement on the rights of the parties, and the advantages and disadvantages for the party in making the agreement.

PART 1.7 – Legal Practitioners Act 1970

Amendment 1.14 – Section 193(2)(a)(iv) – amends the *Legal Practitioners Act 1970* to update the reference to *trustee company*.

Amendment 1.15 – Section 194(2)(c) – amends the *Legal Practitioners Act 1970* to update the reference to *trustee company*.

Part 1.8 - Partnership Act 1963

Amendment 1.16 – Section 7(4)(b) and (c) – amends paragraphs 7(4)(b) and (c) of the *Partnership Act 1963* to update the language in the section. The amendment replaces references to *servant* with *employee*, and replaces the references to *widow* with *domestic partner*.

Amendment 1.17 – Section 38 – amends section 38 of the *Partnership Act 1963* to replace a reference to *deed of assignment* with *personal insolvency agreement*. The term ‘deed of assignment’ was repealed recently by the *Bankruptcy Legislation Amendment Act 2004 (Cwlth)*.

Amendment 1.18 – Section 41(3) – amends section 41(3) of the *Partnership Act 1963* to replace references to *deed of assignment* with *personal insolvency agreement*. The term ‘deed of assignment’ was repealed recently by the *Bankruptcy Legislation Amendment Act 2004 (Cwlth)*.

Amendment 1.19 – New section 44 – amends section 44 of the *Partnership Act 1963* to replace references to *deed of assignment* with *personal insolvency agreement*. The term ‘deed of assignment’ was repealed recently by the *Bankruptcy Legislation*

Amendment Act 2004 (Cwlth). The amendment also updates the language of the section.

PART 1.9 – Powers of Attorney Act 1956

Amendment 1.20 – Section 1 – amends section 1 of the *Powers of Attorney Act 1956* to state the name of the Act. This amendment modernises language by providing that the name of the Act is the *Powers of Attorney Act 1956*, rather than using the words “the Act may be cited as the *Powers of Attorney Act 1956*.”

Amendment 1.21 – Section 2 (1), definitions of *donee, donor, enduring power of attorney and trustee company* – amends section 2(1) of the *Powers of Attorney Act 1956* to omit the definitions of *donee, donor, enduring power of attorney and trustee company* from the Act. These definitions have been modernised and are included in the dictionary at the end of the Act.

Amendment 1.22 – Section 2 (1), definitions (as amended) – amends section 2(1) of the *Powers of Attorney Act 1956* to relocate the definitions under section 2 to the dictionary at the end of the Act.

Amendment 1.23 – Section 2, remainder – inserts new sections 2, 2A and 2C into the *Powers of Attorney Act 1956*. New section 2 provides that the dictionary at the end of the Act is part of the Act. New section 2A provides that a note included in the Act is explanatory and does not form part of the Act. New section 2C modernises the content of sections 2(2) and (3). The section provides that a reference to *property* in a power of attorney is a reference to real and personal property, unless a contrary intention appears in the instrument. New section 2C applies to a power of attorney created before the commencement of this section.

The amendment does not include a section 2B. This gap has been left to allow for the insertion of the standard 'application of the Criminal Code' provision when the Act is eventually harmonised with the Criminal Code.

Amendment 1.24 – Section 3 – amends section 3 of the *Powers of Attorney Act 1956* to omit the reference to the *Real Property Act 1900*. This Act has been repealed and land under this Act is now governed by the *Land Titles Act 1925*, which is already referred to in section 3.

Amendment 1.25 – Section 11 – amends section 11 of the *Powers of Attorney Act 1956* to update the wording of the section.

Amendment 1.26 – New section 18A – inserts a new section 18A into the *Powers of Attorney Act 1956*. New section 18A recognises an enduring power of attorney made in another State or Territory. An enduring power of attorney will only be recognised if the power of attorney complies with the requirements of the law of the jurisdiction where it was made. In addition, this new section makes it clear that an enduring power of attorney made in another jurisdiction has effect in the ACT, only to the extent that the powers could validly have been given by a power of attorney under the *Powers of Attorney Act 1956*.

Amendment 1.27 – New dictionary – inserts a new heading, notes in the dictionary at the end of the *Powers of Attorney Act 1956* and modernises the definitions of *donee*, *donor*, *enduring power of attorney* and *trustee*. The notes refer to the *Legislation Act 2001* defining terms that are relevant for this Act, and cross-references the definition of *enduring power of attorney* with section 18A.

PART 1.10 – Remuneration Tribunal Act 1995

Amendment 1.28 – Section 10(3) – omits section 10(3) from the *Remuneration Tribunal Act 1995*. This amendment is consequential to amendments made to the *Supreme Court Act 1933*.

Amendment 1.29 – Section 10(4) and (5) – renumbers as sections 10(3) and (4) of the *Remuneration Tribunal Act 1995*. This amendment is consequential to the removal of section 10(3) in Amendment 1.28.

Amendment 1.30 – Schedule 1, part 1.1 – omits *judge* and substitutes with *acting judge* in the list of positions to which the *Remuneration Tribunal Act 1995* applies under Schedule 1, part 1.1.

PART 1.9 – Residential Tenancies Act 1997

Amendment 1.31 – Section 51 – amends section 51 of the *Residential Tenancies Act 1997* to clarify that an application for termination of a residential tenancy agreement must be made by the lessor. This makes section 51 consistent with the remainder of division 4.4 of the *Residential Tenancies Act 1997* dealing with termination initiated by the lessor.

Amendment 1.32 – New section 71GA – inserts a new section 71GA into Part 5A of the *Residential Tenancies Act 1997*. New section 71GA provides that an occupant may deposit a bond with the Territory. Currently the Act only permits a bond to be deposited with the Territory if it is from a residential tenancy agreement. New section 71GA also sets out how the provisions of the Act apply to a bond accepted under this section.

PART 1.12 – Standard Time and Summer Time Act 1972

Amendment 1.33 – Section 3 to 6 – replaces sections 3 to 6 in the *Standard Time and Summer Time Act 1972* with new sections 2 to 7. These sections have been amended to replace Greenwich Mean Time with coordinated universal time as the standard against which the time in the ACT is determined.

Amendment 1.34 – New dictionary – inserts a new heading and notes in the dictionary at the end of *Standard Time and Summer Time Act 1972*. The notes refer to the *Legislation Act 2001* defining terms that are relevant for this Act. This amendment also includes definitions of *ACT standard time*, *ACT summer time*, *coordinated universal time*, *legal instrument* and *summer time period* in the dictionary at the back of the Act.

PART 1.13 – Supreme Court Act 1933

Amendment 1.35 – Section 37J(1)(h) – substitutes section 37J(1)(h) of the *Supreme Court Act 1933* to include additional matters where the Court of Appeal may be constituted by a single judge. The Court of Appeal may be constituted by a single judge for dismissal of an appeal or other proceeding for want of prosecution, for any reason prescribed in the rules or on application of the appellant or other applicant. In addition, the Court of Appeal may be constituted by a single judge for any question of practice and procedure or costs or other matter incidental to a matter that can be heard by a single judge.

Amendment 1.36 – New section 37J(3) – inserts a new section 37J(3) into the *Supreme Court Act 1933*. New section 37J(3) provides that the rules may provide that the jurisdiction and powers of the Court of Appeal may be exercised by a single judge in particular kinds of proceedings. This section is based on section 30 of the *Supreme Court of Queensland Act 1991*.

Amendment 1.37 – Section 37U(1) – amends section 37U(1) of the *Supreme Court Act 1933* by omitting the reference to the requirement of another resident judge holding office as a judge of the Federal Court. This section now applies to any person appointed as a resident judge, whether or not there was another resident judge holding office as a judge of the Federal Court at the time (provided they are not a person to whom the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 29A(2) applies).

Amendment 1.38 – Section 37U(3)(i) – amends section 37U(3)(i) of the *Supreme Court Act 1933* by omitting the word *died* and replacing it with the words *died; and*. This is a technical amendment necessary for the inclusion of a new subsection.

Amendment 1.39 – New section 37U(3)(j) – inserts a new section 37U(3)(j) into the *Supreme Court Act 1933*. The effect of this amendment is that section 37 accounts for all other necessary changes, as well as changes prescribed by regulation.

Amendment 1.40 – New section 37U(4) – inserts a new section 37U(4) into the *Supreme Court Act 1933*. This section clarifies the meaning of *appropriate current judicial salary* in the context of the application of the *Judges' Pensions Act 1968 (Cth)* to the people to whom section 37U applies.

Amendment 1.41 – Section 37V – amends section 37V of the *Supreme Court Act 1933* by removing a provision that allows for the remuneration and allowances of an acting judge to be prescribed under regulations. The removal of this provision transfers the power to determine the remuneration and allowances for acting judges to the Remuneration Tribunal.

PART 1.14 – Trustee Act 1925

Amendment 1.42 – Dictionary, definition of *trustee company* – updates the definition of 'trustee company' in the *Trustee Act 1925*.

Part 1.15 – Trustee Companies Act 1947

Amendment 1.43 – Section 2 and 3 – amends sections 2 and 3 of the *Trustee Companies Act 1947* to update the Act. The amendment to section 2 moves the definitions for the Act to a Dictionary at the back of the Act. The amendment to section 3 removes the section dealing with *declaration of financial institution* which is now redundant (the concept of financial institution is no longer used in the Act). New section 3 provides that a note included in the Act is explanatory and does not form part of the Act.

Amendment 1.44 - Section 5 (2) – replaces the phrase *the court* in section 5(2) of the *Trustee Companies Act 1947* with the phrase *the Supreme Court*. This amendment is technical and clarifies the specific court that has jurisdiction under the section.

Amendment 1.45 – Section 10 – amends section 10 of the *Trustee Companies Act 1947* to remove reference to the Treasurer of the Commonwealth being responsible for the administration of bond money from ACT trustee companies. The ACT no longer requires administration bonds from trustee companies.

Amendment 1.46 – Section 11(1) – amends section 11(1) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.47 - Section 15, heading – amends the heading for section 15 of the *Trustee Companies Act 1947* to remove reference to an application for consent being by motion. This is a technical amendment which removes unnecessary references to Supreme Court procedures.

Amendment 1.48 – Section 15(1) – amends section 15(1) of the *Trustee Companies Act 1947* to remove reference to an application for consent being by motion. This is a technical amendment which removes unnecessary references to Supreme Court procedures.

Amendment 1.49 – Section 18A (1) and (2) – amends section 18A(1) and (2) of the *Trustee Companies Act 1947* to remove reference to probate, death, succession or estate duties. This is a technical amendment, which removes unnecessary references to Supreme Court procedures.

Amendment 1.50 – Section 20(2) – amends section 20(2) of the *Trustee Companies Act 1947* to remove reference to an action occurring by ordinary procedure of the court or by motion. This is a technical amendment, which removes unnecessary references to Supreme Court procedures.

Amendment 1.51 – Section 21(1) – amends section 21(1) of the *Trustee Companies Act 1947* to remove unnecessary reference to *a judge, on motion or summons, after notice to the company, but without action or permit*. This is a technical amendment which removes unnecessary references to Supreme Court procedures.

Amendment 1.52 – Section 21(2) to (4) – amends section 21(2) to (4) of the *Trustee Companies Act 1947* to removes unnecessary references to a judge and to update the language of the section.

Amendment 1.53 – Section 22(1) – amends section 22(1) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.54 – Section 22(3) – amends section 22(3) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.55 – Section 23(1) – amends section 23(1) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.56 – Section 23(2) – amends section 23(2) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge acting in a summary way.

Amendment 1.57 – Section 23(2) – amends section 23(2) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.58 – Section 24(1)(c) – amends section 24(1)(c) of the *Trustee Companies Act 1947* to update the language of the section relating to banks.

Amendment 1.59 – Section 27 – amends section 27 of the *Trustee Companies Act 1947* to update the language of the section relating to banks.

Amendment 1.60 – Section 28(5) – amends section 28(5) of the *Trustee Companies Act 1947* to replace reference to the *Audit Act 1901 (Cwlth)* with a reference to the *Financial Management Act 1996*. This is a technical amendment that recognises the *Financial Management Act 1996* as the more appropriate reference for this section.

Amendment 1.61 – Section 29(1) – amends section 29(1) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge.

Amendment 1.62 – Section 30(1) – amends section 30(1) of the *Trustee Companies Act 1947* to remove an unnecessary reference to a judge, on motion or summons after notice to the trustee company, but without action or petition for an account.

Amendment 1.63 – Section 30(1) – amends section 30(1) of the *Trustee Companies Act 1947* to replace the word *rendered* with the modern term *given*.

Amendment 1.64 – Section 30(2) to (4) – amends section 30(2) to (4) of the *Trustee Companies Act 1947* to remove unnecessary references to a judge and to update the language of the section.

Amendment 1.65 – Section 31B(6) – amends section 31B(6) of the *Trustee Companies Act 1947* to recognise the Australian Capital Territory as the relevant jurisdiction, rather than the Commonwealth.

Amendment 1.66 – Section 33 – amends section 33 of the *Trustee Companies Act 1947* to update the language of the section and replace references to *solicitor* with *lawyer*. It also defines the terms *will* and *misconduct* in relation to the section.

Amendment 1.67 – New dictionary –inserts a new heading and notes in the dictionary at the end of the *Trustee Companies Act 1947*. The notes refer to the *Legislation Act 2001* defining terms that are relevant for this Act. This amendment also includes definitions of *books*, *first valuation day*, *officer*, *trustee company*, and *valuation day* in the dictionary at the back of the Act.