

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2009 (No 2)**

EXPLANATORY STATEMENT

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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2009 (No 2)

Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2009 (No 2) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety. The laws amended include the:

- *Associations Incorporation Act 1991*;
- *Charitable Collections Act 2003*;
- *Charitable Collections Regulation 2003*;
- *Domestic Violence and Protection Orders Regulation 2009*;
- *Door-to-Door Trading Act 1991*;
- *Firearms Act 1996*;
- *Firearms Regulation 2008*;
- *Legal Aid Act 1977*;
- *Machinery Act 1949*;
- *Magistrates Court Act 1930*;
- *Prohibited Weapons Act 1997*;
- *Regulatory Services Legislation Amendment Act 2008*;
- *Remuneration Tribunal Act 1995*;
- *Residential Tenancies Act 1997*; and
- *Supreme Court Act 1933*.

The proposed amendments are detailed below.

Associations Incorporation Act 1991

An amendment has been made to section 93(1) of the Act. The amendments will allow the Registrar-General to begin cancellation of incorporation proceedings where:

- an association has not held an annual general meeting according to the requirements of the Act during the past three years;
- an association has not lodged an annual return with the registrar-general in relation to each of the last two years; or
- an association has lodged an annual return with the registrar-general in relation to each of the last three years and for each of those returns an auditor has been unable to determine if the return complies with the requirements of the Act.

These changes were recommended by the Standing Committee on Public Accounts Report 17 of 2008, on the regulation of charitable collections and incorporated associations. The amendments will improve the general oversight and regulation of incorporated associations by improving the ability of the Registrar to begin cancellation proceedings when an association is not fulfilling its reporting duties.

Charitable Collections Act 2003

An amendment has been made to section 7 of the Act, to clarify the types of activities that are exempt from the licensing and other requirements of the Act. The amendment draws on the existing Charitable Collections Regulation 2003, section 6(1)(d), to avoid any doubt that entities which do not solicit donations, or do not conduct collections, are exempt from regulation under the Charitable Collections Act. This amendment will transfer the existing exemption in the regulation to the text of the Act, thereby ensuring that only entities that actively solicit donations are required to be licensed and to comply with the accounting rules of the Charitable Collections Act.

Charitable Collections Regulation 2003

The amendment to the Regulation is designed to remove provisions dealing with exemptions for entities that do not solicit, or that do not conduct collections, which will become redundant as a consequence of the amendments made to the *Charitable Collections Act 2003* by this Bill.

Domestic Violence and Protection Orders Regulation 2009

Amendments have been made to the regulation to update references in the current text to the Legal Aid Office (ACT), to refer to the new operating name of the Legal Aid Commission as “Legal Aid ACT.”

Door-to-Door Trading Act 1991

Amendments have been made to the Act to clarify its application to marketing practices that occur by telephone, ensuring that the existing consumer protections offered under the Act apply to unsolicited trading, whether conducted in person or by telephone. The amendments update the language of the Act to make clear that, in the context of telephone solicitations, consumers have the same rights and protections as with in-person solicitation. The amendments have been drafted to specifically provide for telephone marketing practices, so that where consumers and industry do interact by telephone, it is feasible and convenient to offer the standard protections of the Door-to-Door Trading Act.

Firearms Act 1996

Amendments have been made to the Act to update its language, to include New Zealand Domestic violence offences for consideration in licensing decisions, and to allow foreign police officers to undertake training with firearms in the ACT.

The amendments to sections 80, 97, and 119 will include in the mandatory suspension provisions offences against New Zealand laws corresponding to domestic violence offences. This amendment is consistent with existing provisions that allow domestic violence orders under New Zealand law to be

considered in deciding whether to suspend firearms licences. The amendment to section 140 merely provides a grammatical correction.

The amendment to schedule 2, part 2.2, of the Act will list foreign police officers as exempt from the provisions of the Act for the purposes of engaging in training provided by the Australian Federal Police, within the jurisdiction of the ACT. This amendment will allow the AFP to conduct joint training operations with foreign police forces that involve the use of firearms.

Firearms Regulation 2008

The amendment to the Regulation is designed to remove provisions dealing with foreign police officers which will become redundant as a consequence of the amendments made to the *Firearms Act 1996* by this Bill.

Legal Aid Act 1977

Amendments have been made to the Act to enable the Legal Aid Commission to implement service improvements as part of its Strategic Plan for 2008-2012, to update its drafting and to improve the clarity of the requirements for the Commission's constitution and powers. The amendments make a number of changes relating to the functions, constitution, and powers of the Commission, including amending the Act to:

- Give legal effect to the structure of the Commission's governing body as a board. The size of the board has been increased from 7 to 8 with the addition of a Commissioner who must have expertise in financial management, to better ensure that the Commission is able to effectively govern its operations;
- Establish new arrangements for legal assistance to be provided by private legal practitioners, with accompanying regulatory powers to ensure the quality of all services provided;
- Facilitate the provision of dispute resolution services by the Commission, in order to allow the Commission to promote the efficient resolution of claims involving recipients of legal assistance;
- Consolidate the authority to delegate the powers and duties of the Commission, to increase the clarity and scope of the Commission's delegation power;
- Allow for the provision of additional superannuation benefits to Commission employees under the Act, subject to the approval of the additional superannuation scheme for that purpose by the Attorney General; and
- Formally change the name under which the Commission operates to "Legal Aid ACT" from "Legal Aid Office (ACT)," to adopt a nationally consistent branding method for legal aid services.

Machinery Act 1949

The Act has been amended to remove the requirement for an appointed inspector to be a public servant. The amendment will allow for the appointment of expert inspectors regardless of their employment status.

Broadening the category of person eligible for appointment as an inspector makes it possible for the continued employment of expert inspectors in this field.

Magistrates Court Act 1930

An amendment has been made to the Act to allow for the Attorney General to determine additional superannuation schemes under which Magistrates may be retired on grounds of invalidity. The amendment will enable the retirement of a Magistrate who is not a member of one of the existing superannuation schemes specified in the legislation, provided the Attorney General determines the scheme in a notifiable instrument. This addition does not in any way limit the existing provisions with respect to the retirement of magistrates on grounds of invalidity.

Amendments have also been made to Division 3.4.2 of the Act to modernise the provisions dealing with warrants for the arrest of witnesses who have not attended Court as required, and witnesses who are unlikely to attend as required. The new Division 3.4.2 requirements are intended to update the former sections 63 and 64 to be compliant with the *Human Rights Act 2004*, whilst providing a clear and orderly process for issuing and executing warrants for witnesses who fail to attend Court.

The modernised provisions align the considerations that must be made in issuing a warrant with those used in the ACT Civil and Administrative Tribunal for witnesses who fail to attend as required. A set of factors must now be considered in deciding whether it is in the interests of justice to issue a warrant. An identical set of factors must be considered in issuing a warrant in the first instance, to secure attendance if the Court determines that it is unlikely for the witness to appear.

These provisions do not displace the common law rules relating to the form and content of warrants.

The new provisions dealing with the execution of warrants for witnesses are modelled on section 220 of the *Crimes Act 1900*. Once a warrant is executed, the witness may be brought before the Magistrates Court either by telephone or in person. The new rules provide that witnesses must be brought before the Court within the prescribed time period of 18 hours, to ensure that witnesses are not detained for longer than necessary to seek a determination from the Court as to whether the witness should be further detained or released.

The Court will have the power to order that the witness be remanded to appear at a later time to give evidence, to be released unconditionally, or to be released on a recognisance requiring that the witness appear at a later time.

Prohibited Weapons Act 1997

An amendment has been made to the Act to provide an exemption to allow foreign police officers to possess, for training purposes, standard police equipment that is prohibited or regulated under the Act.

Regulatory Services Legislation Amendment Act 2008

Amendments have been made to the Act only to those clauses that would amend the *Door-to-Door Trading Act 1991*, to clarify when a telephone call constitutes door-to-door trading. This amendment clarifies that the Door-to-Door Trading Act applies to all telephone calls that are made, or received, in the course of door-to-door trading in the ACT. The purpose is to include all unsolicited marketing attempts aimed at consumers, conducted either in person or by telephone, within the ACT.

Remuneration Tribunal Act 1995

An amendment has been made to the Act to remove “president of the human rights commission” from the schedule of positions to be determined. The position of president of the human rights commission does not exist, and therefore it is unnecessary to determine remuneration for the position. The schedule of positions in the Act has been updated accordingly.

Residential Tenancies Act 1997

An amendment to the Act clarifies the way that the standard terms operate in the context of a fixed-term, as opposed to a periodic, tenancy. The amendment is a clear statement of the law, consistent with a similar provision in New South Wales, that any increases, or the method of determining increases, during the term of a fixed-term tenancy must be specified in the agreement, and that all increases must occur in accordance with the agreement.

Supreme Court Act 1933

An amendment has been made to the Act to allow for the Attorney General to determine additional superannuation schemes under which the Master of the Court may be retired on grounds of invalidity. This amendment will enable the retirement of a Master who is not a member of one of the existing superannuation schemes specified in the legislation, provided the Attorney General determines the scheme in a notifiable instrument. This addition does not in any way limit the existing provisions with respect to the retirement of the Master on grounds of invalidity.

Clause Notes

PART 1 – Preliminary

Clause 1 – Name of Act – states the title of the Act as the *Justice and Community Safety Legislation Amendment Act 2009 (No 2)*.

Clause 2 – Commencement – sets out the commencement date for the Act, which is the 28th day after its notification day.

PART 2 – Associations Incorporation Act 1991

Clause 3 – Legislation amended—pt 2 – this part amends the *Associations Incorporation Act 1991*.

Clause 4 – Cancellation of Incorporation, Section 93(1)(d) and (e) – amends paragraph (e) by replacing the reference to ‘3 years’ with a reference to ‘2 years’, to allow for cancellation proceedings to begin if an association has not lodged an annual return for the past two years. The amendment also adds paragraph (ea), giving the Registrar-General the power to begin cancellation of incorporation proceedings if for each of the past three years an auditor, in the course of the auditor’s duties to examine the association’s accounting and other records, has stated that he or she is unable to determine if the return complies with the Act.

PART 3 – Charitable Collections Act 2003

Clause 5 – Legislation amended—pt 3 – this part amends the *Charitable Collections Act 2003*.

Clause 6 – What is a *collection*, New section 7(3)(fa) – inserts a new paragraph (fa) to clarify that where an entity receives money or benefit that is not solicited by the entity, or not the result of a collection conducted by the entity, the receipt of the money or benefit does not constitute a “collection” for the purposes of the Act. This amendment exempts entities receiving money or benefit under those circumstances from the operation of the Act.

PART 4 – Charitable Collections Regulation 2003

Clause 7 – Legislation amended—pt 4 – this part amends the *Charitable Collections Regulation 2003*.

Clause 8 – What are not collections – Act, s 7(3)(G) Section 6(1)(d) – omits this section from the regulation, consequential upon the enactment of new section 7(3)(fa) of the *Charitable Collections Act 2003*.

PART 5 – Domestic Violence and Protection Orders Regulation 2009

Clause 9 – Legislation amended—pt 5 – this part amends the *Domestic Violence and Protection Orders Regulation 2009*.

Clause 10 – Section 58 heading – amends this section heading to include the new name under which the Legal Aid Commission operates, “Legal Aid ACT.”

Clause 11 – Section 58(2) – amends section 58(2) to refer to the Legal Aid Commission’s operating name as “Legal Aid ACT”.

Clause 12 – Section 58(3) – amends this section to refer to “Legal Aid ACT” under section 94 of the *Legal Aid Act 1977*, in order to reflect the change in the Legal Aid Commission’s operating name to “Legal Aid ACT.”

PART 6 – Door-to-Door Trading Act 1991

Clause 13 – Legislation amended—pt 6 – this part amends the *Door-to-Door Trading Act 1991*.

Clause 14 – Contracts to which Act applies Section 4(4)(b) – amends paragraph (b) to allow for the regulations to exempt contracts, or parts of contracts, with or without conditions. The amendment gives flexibility to determine the scope and nature of the Act’s application to particular kinds of contracts.

Clause 15 – Requirements in relation to prescribed contracts Section 7(1)(c) – amends paragraph (c) to provide that where a contract is made in person, it must be signed by the consumer, and where a contract is made by telephone, that consent is recorded either in writing or, with the consent of the consumer, using a recording device.

Clause 16 – Section 7(1)(f) and (g) – amends section 7 to add sections (fa) and (ga), providing that where contracts are made over the telephone, all of the notices that that would otherwise be provided in person must be provided as soon as possible to the consumer following the telephone call where the contract is made. These notices include notice of the right to cancel, and a notice that may be used by the consumer to rescind the contract by returning that notice to the dealer. Consumers who enter into door-to-door contracts over the telephone will receive these notices from dealers as soon as practicable.

Clause 17 – Section 7(2) – amends 7(2) to specify that, where a contract is not made over the telephone, notice referred to in 7(g)(i) must be read aloud before the dealer gives the consumer the notice. This amendment merely clarifies the application of the Act to in-person door-to-door trading, and does not change the substantive requirement that dealers read the notice under 7(g)(i) aloud before giving it to a consumer.

Clause 18 – New section 7(2A) – inserts into section 7 new subsection 2A, to specify that, where a contract is made over the telephone, a dealer must read the notice referred to in section 7(1)(ga)(i) aloud before the consumer consents to be bound by the contract. This provision allows for an equivalent

to the in-person notice under section 7(2) to operate in the context of a telephone call.

Clause 19 – Cooling-off period—acceptance of consideration, supply of services, Section 8(2) – amends section 8 by omitting the offence, in subsection 2, of providing services to a consumer before the end of the cooling-off period. Dealers will be able to provide services before the end of the 10 day cooling-off period. All other requirements relating to the cooling-off period, including the requirement that dealers not accept any consideration and that consumers not be held liable to pay for services provided during that period if the contract is rescinded, are not changed in any respect by this provision.

Clause 20 – Section 8(3) – amends section 8(3) by removing the reference to “or (2)”, to reflect that subsection two has been omitted from section 8.

Clause 21 – Duties of dealers New section 10(2A) – inserts into section 10 of the Act a new subsection 2A, requiring that dealers who use telephones for the purpose of negotiating a contract must, as soon as practicable during the telephone call, provide consumers with information as to the purpose of the call and the identity of the caller.

Clause 22 – Section 10(3) – amends section 10(3) to provide an offence for contraventions of new section 10(2A), in addition to contraventions of section 10(2). The amendment provides an offence to correspond to the duty to provide identity and purpose information during telephone calls under new section 10(2A).

Clause 23 – Restitution, Section 14(1)(b)(ii) – amends section 14(1)(b)(ii) so that the restitution requirement reflects the change in section 8, regarding cooling-off periods. Now that there is no offence for providing services before the cooling-off period ends, this reference has been updated. Consumers will not be required to pay for services provided during the cooling off period if the contract is rescinded.

PART 7 – Firearms Act 1996

Clause 24 – Legislation amended—pt 7 – this part amends the *Firearms Act 1996*.

Clause 25 – Adult firearms licences—mandatory suspension Section 80(1)(b) – amends subsection 1(b) to include offences against the laws of New Zealand corresponding to a domestic violence offence.

Clause 26 – Minors firearms licences—mandatory suspension Section 97(1)(b) – amends subsection 1(b) to include offences against the laws of New Zealand corresponding to a domestic violence offence.

Clause 27 – Composite entity firearms licences—mandatory suspension Section 119(1)(b) – amends subsection 1(b) to include offences against the laws of New Zealand corresponding to a domestic violence offence.

Clause 28 – Temporary recognition of interstate licences for international visitors—shooting or paintball competitions Section 140(5) – amends this section to substitute “is not taken” in place of “is taken.”

Clause 29 – Schedule 2, pt 2.2, new item 1A – inserts item 1A to schedule 2, pt 2.2, exempting any member of a police service or force of a foreign country while possessing firearms for taking part in a training activity conducted by the Australian Federal Police, within the ACT.

PART 8 – Firearms Regulation 2008

Clause 30 – Legislation amended—pt 8 – this part amends the *Firearms Regulation 2008*.

Clause 31 – People exempt from Act—Act, s 272 (2) (r) Section 73A – omits this section from the regulation, consequential upon the amendments to the Firearms Act 1996.

Clause 32 – Dictionary, note 2, 2nd dot point – omits this section from the regulation, consequential upon the amendments to the *Firearms Act 1996*.

PART 9 – Legal Aid Act 1977

Clause 33 – Legislation amended—pt 9 – this part amends the *Legal Aid Act 1977*.

Clause 34– Constitution of commission Section 7 – omits this section providing for the constitution of the Commission. The constitution of the Commission is now outlined in new Part 3, which provides for a board of the Commission.

Clause 35 – Powers of commission Section 9(2)– substitutes the reference to fees determined under former section 32 (5), (6), and (7) with a reference to new section 31C(1) and (2), which now contains the provisions governing fees paid by the Commission to private legal practitioners. There is no substantive change to the provisions governing fees paid to private legal practitioners.

Clause 36 – New part 3 – inserts a new Part 3, giving legal effect to the structure of the Commission’s governing body as a board and specifying the functions and constitution of the board.

New section 14 establishes commissioners as the board of the Legal Aid Commission. New section 15 identifies the functions of the board as providing the broad policies, priorities, and strategies of the Commission for the provision of legal assistance under the Act.

New section 16 lists the required members of the board, all of whom must be appointed by the Minister except for the Chief Executive Officer. The new section replicates existing provisions for the appointment of commissioners, with two differences. First, new section 16(1)(c)(v) provides for an additional member of the board to have expertise in financial management. Second, new section 16(1)(d) allows the Minister to appoint a member to provide other specialist assistance to the board, but only if the Minister is of the opinion that the board requires that type of specialist assistance from time to time.

Clause 37 – Section 32 – substitutes new sections 31B, 31C, 31D, 31E, 31F, and new section 32 for former section 32, to provide new procedures for arranging for the services of private legal practitioners, and regulating and auditing the services of private legal practitioners.

New section 31B provides that only private legal practitioners who are appointed to a panel under new section 31E may be selected to provide services to a legally assisted person. Consistent with the current provisions of section 32, the Commission will be required to take account of the interests of the legally assisted person, the legally assisted person's preference, and the expertise of the private legal practitioner in selecting a private legal practitioner to assist a person. The considerations are designed to guide the selection process so that the interests of the person requiring assistance are matched to the expertise and practice of the selected practitioner.

Consistent with current provisions of section 32, new section 31C specifies that fees paid to private legal practitioners under the Act should be fixed based on particular services provided, and that the fee should generally be below the ordinary professional cost of those services. The views of the ACT bar association and the ACT law society must be taken into account by the Commission in determining fees under new section 31C.

Consistent with former section 32, section 31D requires the Commission to keep records of services provided by private legal practitioners to people who receive legal assistance, and to make those records available for inspection by the law society or the bar association.

31E will allow the Commission to establish panels of private legal practitioners, to deal with either general matters, particular kinds of matters, or matters before particular courts and tribunals. New section 31E replaces the system of maintaining a list of practitioners under former section 32(1). The new system provides the Commission with the power to establish specialist panels, to determine the criteria of appointment to a panel, the length of appointment, and the grounds for suspension, removal or exclusion from a panel.

31F gives the Commission the power to audit legal assistance case files of a private legal practitioner to ensure compliance with the terms of legal assistance and the criteria for panel membership. The Commission will be

required to give written notice of an audit, and of the scope of the proposed audit, in advance.

New section 32 replicates existing section 32(3) and provides that, where a decision about suspension, removal or exclusion in regards to a panel under 31E is to be made, the Commission must give private legal practitioners written notice setting out the reasons for the proposed decision, and an opportunity to be heard on the proposed decision. This section requires the Commission to observe basic procedural fairness when making decisions about appointment to a panel, or removal, suspension or exclusion of panel members.

Clause 38 – Payments to private legal practitioners Section 32AA (2) – substitutes new requirements for section 32AA(2). In place of the former rule that practitioners give an invoice for services to the Commission within 6 months of a matter being finalised, new paragraph (2) simply requires that practitioners give an invoice, and new paragraph (2A) gives the Commission the power to issue directions about the giving of invoices. The amendments enable the Commission to require invoices to be submitted at intervals during the running of a case and to specify the form and manner in which invoices must be submitted.

Clause 39 – Section 32AA(4) – substitutes “in accordance with subsection (2)” with “in accordance with any directions issued under subsection (2A).” The amendment gives effect to the Commission’s power, under new section 32AA(2A), to issue directions about the giving of invoices.

Clause 40 – New part 5A – inserts a new part, with new sections 35A, 35B, 35C, 35D, 35E, and 35F, to allow the Commission to provide dispute resolution services (‘approved negotiation’) where either all parties are receiving, or at least one party to a matter or proceeding is receiving, legal assistance from the Commission. The Commission may approve dispute resolution programs for the purposes of the new part 5, and select a convenor to facilitate the negotiations. The Commission currently has power under a funding agreement between the Commonwealth and Territory governments (incorporated into the Act by sections 8 and 8A) to provide resolution services in family law disputes. New Part 5A will enable the Commission to expand resolution service to other types of disputes.

Under new section 35C, the Commission may use money available to the Commission to procure negotiation services, or it may require a party in the matter (including a legally assisted person) to partly or fully meet the costs of negotiation. Any costs required from a party in the matter constitute a debt owing to the Commission, and must be paid according to the way and time stated by the Commission.

New section 35D requires that convenors keep information received in the course of a negotiation confidential from nonparticipants in the negotiation, but provides exceptions to allow for convenors to refer the parties for further dispute resolution services, to allow the Commission to obtain information in

order to provide legal assistance, to prevent or minimise damage to a person or property, and where a law of the Commonwealth or Territory compels disclosure. Also, the convenor may disclose information to nonparticipants with the consent of the person who provided the information.

New section 35E provides that anything done or said at a negotiation session under new part 5, including a document prepared for the negotiation session, is inadmissible as evidence in any court or tribunal unless the parties to the negotiation consent to the admission of the evidence. This provision is designed to encourage frank and open discussion between the parties at negotiation sessions, by removing the potential for negotiation to prejudice either party's legal standing.

New section 35F provides immunity from civil liability for convenors of dispute resolution services under new part 5, where the convenor's acts or omissions have been done in the exercise of a function under the part, or in a reasonable belief that the acts or omissions were done in the exercise of a function under new part 5.

Clause 41 – Qualifications for appointment Section 50(2) – omits a reference to former section 7(1)(e), and replaces it with a reference to new section 16(1)(c)(iv). New section 16(1)(c)(iv) contains the same reference to a board member of the Council of Social Service of the ACT that was previously contained in section 7(1)(e). The effect of section 50(2) is preserved without change by this amendment.

Clause 42 - Section 50(3) – omits this section from the Act. This change removes a reference to a provision in former section 7 that no longer exists.

Clause 43 – Section 58 – replaces former section 58(1) through (4) with a consolidated section 58, specifying that the Commission may grant leave of absence to statutory officers of the Commission on terms decided by the Commission. This is intended to grant broad power to determine the terms of a leave of absence to the Commission. Also, this amendment removes the reference to the authority of the Commission to delegate the power to grant leave. All delegation authority now arises from new section 90.

Clause 44 – Delegation of commission's power to appoint Section 62 – omits this section, which formerly provided for the delegation of the Commission's power to appoint a person to act in the office of chief executive officer to the president of the Commission. All delegation power will now come from new section 90, which provides a broad grant of power to the Commission to delegate its functions under the Act.

Clause 45 – Personnel management Section 68A(2)(a) – amends subsection (2)(a) to clarify that the Commission is not obliged, if there are suitable internal candidates, to advertise to the public at large all vacancies for employment for longer than 3 months or for promotions.

Clause 46 – New section 90 – inserts a new section specifying the delegation powers of the Commission. Under this new section, the Commission has broad power to delegate any of its functions, to any of the following groups in any combination: a committee of commissioners or officers, or both, an officer, or any person providing services on behalf of the Commission under this Act.

Clause 47 – Section 94 heading – amends the heading to note the new operating name of the Legal Aid Commission as “Legal Aid ACT”. The name under which the Commission operates has been rebranded to be consistent with the names used in other jurisdictions, such as “Legal Aid NSW”.

Clause 48 - Section 94(1) – amends subsection (1) to provide the new operating name of “Legal Aid ACT.”

Clause 49 - Section 98 – amends former section 98 to add to the list of superannuation schemes available to officers any scheme determined by the Attorney-General. This amendment allows the Attorney General to add to the list of superannuation benefits to available to employees under section 98.

Clause 50 – New part 14 – inserts a new part to provide transitional amendments and regulations. New section 101 provides for the continuation of appointments made under former section 7(3) before the commencement of the amendments, so that appointees continue to hold office as if appointed under new section 16 for the remainder of the appointee’s period of appointment. The period of appointment for commissioners who were appointed under section 7(3), prior to commencement of this bill, will not be changed.

Clause 51 – Dictionary, note 2 – includes the word “document” as an example of a term defined in the *Legislation Act 2001*.

Clause 52 – Dictionary, new definition of *board* – inserts a new definition, for the term “board”, to define the term as used in new section 14.

Clause 53 – Dictionary, definition of *commissioner* – amends the current definition of commissioner to define the term by reference to section 16, so that any person appointed under section 16 is a commissioner for the purposes of the Act.

PART 10 – Machinery Act 1949

Clause 54 – Legislation amended—pt 10 – this part amends the *Machinery Act 1949*.

Clause 55 – Inspectors of machinery Section 4(1), except notes – amends subsection (1) to replace the reference to “public servant” with “a person”. This amendment will allow for a person to be appointed as an inspector under the Act irrespective of whether the person is a public servant.

PART 11 – Magistrates Court Act 1930

Clause 56 – Legislation amended—pt 11 – this part amends the *Magistrates Court Act 1930*.

Clause 57 – Section 7F – inserts a new paragraph (c) into subsection (1), providing that the section applies to a member of any other superannuation scheme determined by the Attorney General. The amendment also adds subsection 3, providing that a determination under new section 7F(1)(c) is a notifiable instrument.

Clause 58 – Division 3.4.2 – inserts a new division 3.4.2 to update the rules relating to the issue of warrants for the arrest of witnesses who fail to attend Court when required to do so by subpoena, order, or undertaking. The updated rules provide, in new sections 63, 64, 65, 67, and 68, the following:

- New section 63(2)(a) requires the party calling the witness to make reasonable attempts to contact the witness before a warrant may be issued, or, alternatively, the Court has the option to attempt to contact the witness before issuing a warrant. This provision places no obligation on the Court to contact witnesses before issuing a warrant. It does, however, provide the option for the Court to issue warrants where the parties have not made reasonable attempts to contact the witness.
- A list of factors that must be considered when deciding to issue a warrant, including the importance of the evidence, other means available to collect the evidence, the nature and urgency of the matter being heard;
- Provisions allowing for a warrant to be issued in the first instance, to ensure that a witness attends when necessary;
- Procedures after arrest, including that a person may be brought before a magistrate by telephone;
- Orders that the Court may issue when a witness is brought before the Court following the execution of a warrant, including that the witness may be remanded to custody or released on a recognisance to appear at a later time.

PART 12 – Prohibited Weapons Act 1997

Clause 59 – Legislation amended—pt 12 – this part amends the *Prohibited Weapons Act 1997*.

Clause 60 – Application of Act New Section 4(1)(aa) – inserts a new section 4(1)(aa), to exempt members of foreign police services from the operation of the Act when those officers are required to possess prohibited weapons for the purpose of training conducted by the Australian Federal Police, within the jurisdiction of the ACT.

PART 13 – Regulatory Services Legislation Amendment Act 2008

Clause 61 – Legislation amended—pt 13 – this part amends the *Regulatory Services Legislation Amendment Act 2008*.

Clause 62 – Section 26 – substitutes a new section 26, with a new paragraph 4(a)(ii), adding the phrase “made or received by a consumer in the ACT;”, to ensure that all unsolicited telephone marketing directed at ACT consumers is regulated by the *Door-to-Door Trading Act 1991*. This amendment to the *Regulatory Services Legislation Amendment Act 2008* only updates a clause that will amend the *Door-to-Door Trading Act 1991*.

PART 14 – Remuneration Tribunal Act 1995

Clause 63 – Legislation amended—pt 14 – this part amends the *Remuneration Tribunal Act 1995*.

Clause 64 – Schedule 1, pt 1.2 – omits the reference to “president of the human rights commission.”

PART 15 – Residential Tenancies Act 1997

Clause 65 – Legislation amended—pt 15 – this part amends the *Residential Tenancies Act 1997*.

Clause 66 – New section 64A – inserts a clarifying provision, to remove any doubt that under a fixed term agreement, the rent may not be increased during the term unless the amount of the increase or a method for calculating that amount is set out in the agreement. The rights of parties to a lease are not substantively altered by this amendment.

PART 16 – Supreme Court Act 1933

Clause 67 – Legislation amended—pt 16 – this part amends the *Supreme Court Act 1933*.

Clause 68 – Section 44 – amends section 44(1) with a new paragraph (c), providing that section 44 applies if the master is a member of any other superannuation scheme determined by the Attorney-General. Also, the amendment inserts a new subsection (3), providing that a determination under new section 44(1)(c) is a notifiable instrument.