

2009

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2009 (NO 4)**

EXPLANATORY STATEMENT

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Justice and Community Safety Legislation Amendment Bill 2009 (No 4)

Overview of Bill

The Justice and Community Safety Legislation Amendment Bill 2009 (No 4) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

The detail of these amendments is listed below.

ACT Civil and Administrative Tribunal – transitional provisions

The ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009 (ACAT (TP) Regulation) contains a number of modifications to legislation affected by the introduction of the *ACT Civil and Administrative Tribunal Act 2008*.

The transitional provisions and modifications expire on 2 February 2010. The Bill seeks to re-enact the modifications as permanent, substantive legislative amendments.

In order to permanently enact the temporary modifications contained in the transitional regulation, the Bill amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Legal Profession Act 2006*
- *Magistrates Court Act 1930*
- *Utilities Act 2000*

The detail of these amendments is listed in the clause notes below.

Transfer of trustee company regulation to the Commonwealth

Following a decision by the Council of Australian Governments (COAG), the Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 (Cth) will transfer the regulation of trustee companies from the States and Territories to the Commonwealth. It will insert a new chapter (5D) into the *Corporations Act 2001* (Cth) to effect this transfer.

The Commonwealth changes will harmonise the regulation of trustee companies. This will reduce the regulatory burden on these companies while creating a national market for trustee services. The new chapter will also protect consumers by establishing a national consumer protection and disclosure regime under the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth).

While the Commonwealth changes will effectively displace existing ACT laws on trustee companies, consequential amendments to the ACT laws to complement the changes are desirable.

Security Industry Act 2003 – employee licences

Amendments to the Act and Security Industry Regulation 2003 will expand the current suitability criteria and pre-requisites for applicants for an employee licence to work in the security industry.

Clause Notes

Clause 1 Name of Act

Provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2009 (No 4)*.

Clause 2 Commencement

Provides that parts 1.1-1.5 and part 1.8 commence after the commencement of part 1.2 of the *Justice and Community Safety Legislation Amendment Act 2009 (No 3)*. These parts deal with amendments to ACT Civil and Administrative Tribunal authorising legislation, and are linked to provisions in part 1.2 of JACS 2009 (No 3).

Parts 1.5 and 1.6, dealing with amendments to the *Security Industry Act 2003* and Security Industry Regulation 2003, will commence on a day fixed by the Minister. Part 1.7, dealing with amendments to the *Trustee Company Act 1947*, will also commence on a day fixed by the Minister. If a provision of the Act does not commence within 2 years after notification, it will automatically commence on the day after the period. The automatic 6-month commencement provision does not apply.

Clause 3 Legislation amended

Provides that the Act amends legislation mentioned in schedule 1.

Schedule 1 Legislation amended

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

Clause 1.1 Section 115D

This amendment provides clarity surrounding the procedure for Territory entities which do not pay a filing fee up-front for the commencement of proceedings, and to reduce the transaction costs associated with recurrent payments.

Agencies are required to pay a filing fee when commencing proceedings in the ACAT, for example, proceedings for occupational discipline and other regulatory purposes. The amendment mandates the payment, but permits an agency to remit the fee to the ACAT trust account on a quarterly basis, to reduce the transaction costs involved in more frequent payments.

Clause 1.2 Divisions 30.2 to 30.7

This clause repeals divisions 30.2 – 30.7 of the *ACT Civil and Administrative Tribunal Act 2008*. Divisions 30.2 – 30.7 deal with transitional matters and are no longer required.

**Part 1.2 ACT Civil and Administrative Tribunal (Transitional Provisions)
Regulation 2008**

Clause 1.3 Section 67

Section 67 of the regulation contains a number of temporary modifications to ACT law. Given that these modifications are now being re-enacted as substantive law, section 67 is no longer need, and thus it is to be omitted.

Clause 1.4 Schedule 3

Schedule 3 of the regulation contains a modification to the *Legal Profession Act 2006* which is to be re-enacted as substantive law (see Part 1.3 below for details).

Clause 1.5 Schedule 4

Schedule 4 of the regulation contains a modification to the *Magistrates Court Act 1930* which is to be re-enacted as substantive law (see Part 1.4 below for details).

Clause 1.6 Schedule 5

Schedule 5 of the regulation contains a modification to the *Utilities Act 2000* which is to be re-enacted as substantive law (see Part 1.6 below for details).

Part 1.3 Legal Profession Act 2006

Clause 1.7 New section 423A

This amendment inserts a new section 432A dealing with the naming of legal professionals prior to the expiry of the appeal process for an occupational discipline matter. A similar provision (former section 426A) was included in an earlier republication of the *Legal Profession Act 2006*, but was omitted by the *ACT Civil and Administrative Tribunal Amendment Act 2008*, which replaced Part 4.7 of the *Legal Profession Act 2006*.

Part 1.4 Magistrates Court Act 1930

Clause 1.8 New section 266B

This amendment inserts a new section 266B dealing with representation for enforcement proceedings.

In many civil dispute proceedings in the ACAT, enforcement action is required after an order is made. In law and practice, enforcement action is simply another step in the same application, although for reasons of convenience, ACAT orders are enforced in the Magistrates Court. New section 266B provides that where a person represented another person in proceedings before the ACAT, that person may continue to represent the other person in any enforcement proceedings before the Magistrates

Court. This new section is consistent with the former practice in small claims and residential tenancy matters prior to commencement of the ACAT.

Part 1.5 Security Industry Act 2003

Clause 1.9 New section 21(1)(a)(ia)

This clause adds a new paragraph 21(1)(a)(ia) to expand the current suitability criteria and pre-requisites for applicants for an employee licence to work in the security industry. Applicants for an employee licence will be required to obtain information about their workplace rights and responsibilities from representatives of a registered organisation under the Commonwealth *Fair Work Act 2009*, before they can be issued with a licence. It is essential that workers in this industry are informed about matters which directly affect their workplace performance.

Armed with this information, employees will be in a better position to know their legal rights as they relate to their entitlements under the *Fair Work Act 2009* and their rights and responsibilities under the *ACT Work Safety Act 2008*, thereby promoting greater productivity and economic growth in the ACT security industry.

Clause 1.10 Dictionary, new definition of employee organisation

This clause amends the dictionary to include a definition of ‘employee organisation’ for the purposes of the new requirements to obtain information about workplace rights and responsibilities.

Part 1.6 Security Industry Regulation 2003

Clause 1.11 New section 7B

This clause amends the Security Industry Regulation 2003 to require applicants for an employee licence to provide documentary evidence of compliance with new section 21(1)(a)(ia) of the *Security Industry Act 2003*.

Part 1.7 Trustee Companies Act 1947

Clause 1.12 – Clause 1.40

These provisions will repeal sections of the *Trustee Companies Act 1947* that are to be superseded by the Commonwealth law. The sections to be repealed deal with regulatory matters such as management of accounts, reporting requirements and fees. Provision has been made for the differential repeal of these provisions, over a twenty-four month period, to allow the ACT to accommodate the staggered commencement of some of the Commonwealth arrangements (refer clause 2 - commencement).

Clause 1.41 New section 37

A new section 37 is introduced to provide transitional arrangements for the definition of ‘trustee company’ during the move to the new Commonwealth regime. The amendment will extend the dictionary definition of ‘trustee company’ to include all

trustee companies currently authorised to operate in all States and Territories. This extended definition will be in place for up to 12 months, until the Commonwealth has enacted regulations required under the new definitional section in the *Corporations Act 2001* (Cth).

Clause 1.42 Schedule 1

Provides that schedule 1 is to be repealed. Schedule 1 contains a list of all companies authorised to operate as a trustee company for the purposes of the *Trustee Companies Act 1947*. Under the new Commonwealth regime, these companies will be authorised by way of Commonwealth regulation.

Clause 1.43 Dictionary

Provides that the definition of ‘trustee company’ is amended to refer to the new Commonwealth definition section contained in section 601RAB of the *Corporations Act 2001* (Cth).

Part 1.8 Utilities Act 2000

Clause 1.44 New section 45(2)

This amendment replaces previous section 45(2) with a new section to permit the Independent Competition and Regulatory Commission to continue to determine an annual licence fee payable by a utility for the costs incurred by the ACAT in dealing with utility matters not otherwise met from appropriation (in particular, the costs incurred in relation to water and sewerage).

Pursuant to the establishment of ACAT, the *ACT Civil and Administrative Tribunal Amendment Act 2008 (No 2)* amended the *Utilities Act 2000* to remove a reference to the Energy and Water Consumer Council in section 45(2). New section 45(2) will apply to the ACAT funding arrangements that previously applied to the Energy and Water Consumer Council.