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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2011 (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

Streamlining Governance Arrangements in the Office of Regulatory Services

The primary purpose of the Bill is to streamline governance arrangements in the Office of Regulatory Services (the ORS).

Amendments in the Bill remove the need for multiple, unnecessary appointments of the same person to a number of offices which fall within the ORS' authority. This is achieved by substituting references to the office of Registrar under a number of laws with the Commissioner for Fair Trading.

Similarly, investigators appointed under section 36 of the *Fair Trading (Australian Consumer Law) Act 1992* undertake various investigatory functions under other laws. The Bill amends a number of Acts to allow fair trading investigators to carry out a range of ORS statutory functions, without the need for duplicative appointments of investigators to a number of offices. The Bill also amends these Acts to allow investigators to carry out statutory functions without the need to be issued with duplicative identity cards.

Associations Incorporation Act 1991

The Bill amends section 93(3)(e) (cancellation of incorporation after notice) to be consistent with section 93(1)(e) (notice before cancellation of incorporation).

ACT Civil and Administrative Tribunal Act 2008

The Bill amends the *ACT Civil and Administrative Tribunal Act 2008* to correct a typographical error.

Clause Notes

Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2011*.

Clause 2 Commencement

This clause provides for the Act to commence on a day fixed by the Minister by written notice. Fixing commencement by notice will ensure that consequential amendments to chief executive appointments and delegations are coordinated with commencement of the streamlined ORS governance arrangements.

Clause 3 Legislation Amended

This clause provides that the legislation mentioned in schedule 1 is amended by the Act.

Schedule 1 Legislation amended

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

Clause 1.1 Section 20(1)

The word ‘that’ in section 20(1) is substituted with ‘than’ to correct a typographical error.

Part 1.2 Associations Incorporation Act 1991

Clause 1.2 Section 93(3)(e)

Section 93(1)(e) was amended by the *Justice and Community Safety Legislation Amendment Act 2009 (No 2)* to allow the Registrar-General to serve a notice on an incorporated association where an association has not lodged an annual return with the Registrar-General in relation to each of the last 2 years. 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 requirements in the notice section under section 93(1) should be mirrored by the subsequent cancellation provisions in section 93(3).

Section 93(3)(e) provides that where the Registrar-General has served a section 93(1) notice on an incorporated association and published the notice, the Registrar-General may, on the end of the 2-month notice period, in writing, cancel the incorporation of the association, unless the Registrar-General is satisfied within that period that the association has met certain defined requirements. The period of 3 years is substituted in section 93(3)(e) to 2 years, to make the section consistent with section 93(1)(e) regarding cancellation of an incorporated association for failure to lodge an annual return.

Part 1.3 Charitable Collections Act 2003

Clause 1.3 New section 54(1)(aa)

New section 54(1)(aa) is inserted to allow an investigator appointed under the *Fair Trading (Australian Consumer Law) Act 1992* (the FT (ACL) Act) to be an authorised person under the *Charitable Collections Act 2003*. This will avoid the need for investigators to hold a separate appointment as an ‘authorised person’ under the *Charitable Collections Act 2003*.

Clause 1.4 New section 56(7)

New section 56(7) is inserted to define “identity card” in section 56 to include an identity card issued under section 37 of the FT (ACL) Act. This is to avoid investigators being required to be issued with a separate identity card to carry out functions under the *Charitable Collections Act 2003*.

Part 1.4 Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995

Clause 1.5 Section 54A, definition of registrar

The definition of ‘registrar’ is omitted as the office of the Registrar of X18+ Film Licences is removed. The Commissioner for Fair Trading will carry out the functions previously carried out by the office of the Registrar of X 18+ Film Licences.

Clause 1.6 Sections 54B and 54BA

Sections 54B and 54BA provide for the appointment of the Registrar of X18+ Film Licences and delegation of Registrar functions. These sections are omitted as the office of the Registrar of X18+ Film Licences is removed. The Commissioner for Fair Trading will carry out the functions previously carried out by the office of the Registrar of X 18+ Film Licences. This will allow the Commissioner for Fair Trading to carry out functions under the *Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995* without needing to be appointed to the office of Registrar.

Clause 1.7 Section 54C, note 2

Section 54C provides for applications for licences to sell or copy, or to sell and copy X 18+ films. References to ‘registrar’ in note 2 of section 54C are substituted with ‘commissioner’ in relation to the approval of application forms for applications under section 54C.

Clause 1.8 New section 54U(2)

Section 54U(2) is inserted to include investigators appointed under the FT (ACL) Act as ‘inspectors’. This allows investigators to carry out functions under the *Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995* without being required to hold a separate appointment as inspectors under the Act.

Clause 1.9 New section 54V(1A)

Section 54V provides for identity cards that must be issued for inspectors. Section 54V(1A) is inserted to remove the need for investigators appointed under the FT (ACL) Act to be issued with another identity card.

Clause 1.10 Dictionary, note 2

The term ‘commissioner for fair trading’ is inserted in note 2 of the dictionary under terms used in the Act that are defined in the *Legislation Act 2001*.

Clause 1.11 Dictionary, new definition of *commissioner*

The term ‘commissioner’ is inserted into the dictionary.

Clause 1.12 Dictionary, definition of *registrar*

The term ‘registrar’ is removed from the dictionary as the office of the Registrar of X18+ Film Licences is removed and its functions given to the Commissioner for Fair Trading.

Clause 1.13 Further amendments, mentions of *registrar*

All further mentions of ‘registrar’ in the Act are substituted with ‘commissioner’. The Commissioner for Fair Trading will carry out the functions previously carried out by the office of the Registrar of X 18+ Film Licences.

Part 1.5 Fair Trading (Australian Consumer Law) Act 1992

Clause 1.14 Section 34(2), definition of *consumer and trader legislation*

The definition of ‘consumer and trader legislation’ in section 34(2) is substituted to include the fair trading legislation, *Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995*, *Pawnbrokers Act 1902*, *Prostitution Act 1992*, *Sale of Motor Vehicles Act 1977*, *Second-hand Dealers Act 1906*, and *Tobacco Act 1927*. The *Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995* and *Tobacco Act 1927* are added to the list of legislation defined as ‘consumer and trader legislation’ to reflect the substitution of references to ‘registrar’ in those Acts to ‘commissioner’, and to allow the commissioner to delegate his or her functions under those Acts to a public servant. The *Liquor Act 2010* has been omitted from this list as it is unnecessary – the ‘fair trading legislation’ is already defined to include the *Liquor Act 2010*.

The substitution of ‘commissioner’ in the above laws removes the requirement for multiple, duplicative appointments of the Commissioner to separate offices.

Clause 1.15 Section 36

Section 36 is amended to clarify the role of investigators appointed by the commissioner under the FT (ACL) Act and in particular, to clarify that an investigator may exercise any other function given to the investigator under a territory law. In addition, the amendment re-

casts the role of investigator as a formal appointment, rather than by written authorisation, of the commissioner.

Clause 1.16 Dictionary, definition of *fair trading legislation*, new paragraph (da)

The definition of ‘fair trading legislation’ is amended to include new paragraph (da), the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (the FT (MVRI) Act). The FT (MVRI) Act, which came into operation on 7 October 2010, amended the definition of ‘fair trading legislation’ in the now repealed *Fair Trading (Consumer Affairs) Act 1973* to include reference to the FT (MVRI) Act in order to ensure that the Commissioner for Fair Trading could exercise enforcement powers under this legislation. By way of technical oversight the definition of ‘fair trading legislation’ in the FT (ACL) Act was not amended to include reference to the FT (MVRI) Act. This oversight is ameliorated by the insertion of paragraph (da) in the definition of ‘fair trading legislation’.

The definition has been temporarily modified to include the FT (MVRI) Act by the *Fair Trading (Australian Consumer Law) (Transitional Provisions) Regulation 2011*.

Clause 1.17 Dictionary, definition of *investigator*

The definition of ‘investigator’ in the FT (ACL) Act is amended, consistent with the amendment in section 36 which re-casts the role of investigator as a formal appointment, rather than by written authorisation, of the commissioner.

Part 1.6 Hawkers Act 2003

Clause 1.18 Section 40(1)(b)

Section 40 provides for ‘authorised person’ under the Act. Section 40(1)(b) is substituted with a new section 40(1)(b) and a new section 40(1)(ba). The new section defines an ‘authorised person’ under the *Hawkers Act 2003* to include an investigator under the FT (ACL) Act. This allows investigators to carry out functions under the *Hawkers Act 2003* without being required to hold a separate appointment as an authorised person under the Act.

Clause 1.19 New section 41(1A)

Section 41 provides for identity cards that must be issued under the Act. New section 41(1A) is amended so that only public servants appointed under section 40(2) are required to be issued with an identity card. This removes the need for investigators and other authorised people who hold identity cards under other legislation (such as police officers) to hold separate identity cards.

Clause 1.20 Section 41(1)

Section 41 provides for identity cards that must be issued under the Act. New section 41(1A) is inserted to require that only authorised persons appointed under section 40(2) need to be issued with an identity card. The words ‘(other than a police officer or roads and public places officer)’ in section 41(1) are therefore unnecessary and are omitted.

Clause 1.21 Section 41(2)(a)

Section 41(2) provides that a person commits an offence if the person fails to return an identity card after the person ceases to be an authorised person. Given the other amendments to section 41, section 41(2)(a) is omitted as it is duplicative and unnecessary.

Clause 1.22 New section 42(6)

Section 42 provides for an authorised person's power to require a person's name and address. Section 42(4) provides that a person is not required to comply with a direction under section 42 if the authorised person does not produce his or her identity card. New section 42(6) provides a definition of 'identity card' which includes an identity card issued under section 37 of the FT (ACL) Act. This removes the need for another identity card to be issued to investigators.

Part 1.7 Prostitution Act 1992

Clause 1.23 Division 2.2 heading

The heading of division 2.2 is substituted to exclude the term 'registrar', as the office of Registrar of Brothels and Escort Agencies is removed. The Commissioner for Fair Trading will carry out the functions of the Registrar of Brothels and Escort Agencies.

Clause 1.24 Sections 9 and 10

Sections 9 and 10 are omitted as the office of Registrar of Brothels and Escort Agencies is removed. The Commissioner for Fair Trading will carry out functions of the Registrar of Brothels and Escort Agencies.

Clause 1.25 Dictionary, note 2

A definition of 'commissioner for fair trading' is inserted into note 2 of the dictionary which provides for terms used in the Act that are defined in the *Legislation Act 2001*.

Clause 1.26 Dictionary, new definition of *commissioner*

A definition of 'commissioner' is inserted into the dictionary.

Clause 1.27 Dictionary, definition of *registrar*

The term 'registrar' is omitted from the dictionary, as the office of Registrar of Brothels and Escort Agencies is removed. The Commissioner for Fair Trading will carry out the functions of the Registrar of Brothels and Escort Agencies.

Clause 1.28 Further amendments, mentions of *registrar*

Further mentions of 'registrar' are substituted with 'the commissioner'. This allows the commissioner to carry out functions of the registrar without requiring a separate appointment as Registrar of Brothels and Escort Agencies.

Part 1.8 Roads and Public Places Act 1937

Clause 1.29 Section 2C heading

The heading in section 2C is substituted to correct a typographical error.

Clause 1.30 New section 2C(2)

Section 2C(2) is inserted to include investigators under the FT (ACL) Act as roads and public places officers. This allows investigators to carry out functions under the Act without the need for a separate appointment as a Roads and Public Places Officer.

Clause 1.31 Dictionary, definition of *roads and public places officer*

The definition of ‘roads and public places officer’ is substituted to exclude the word ‘appointed’. This is to include investigators who are also Roads and Public Places Officers under new section 2C(2).

Part 1.9 Sale of Motor Vehicles Act 1977

Clause 1.32 Sections 5 and 5A

Sections 5 and 5A are omitted to remove the offices of the Registrar and Deputy Registrar of Motor Vehicle Dealers. The Commissioner for Fair Trading will carry out the functions of the Registrar of Motor Vehicle Dealers.

Clause 1.33 Section 5B(2)(a) and (b)

Sections 5B(2)(a) and (b) are amended to substitute ‘registrar’ with ‘the commissioner’ and to substitute ‘deputy registrar’ with ‘an investigator under the FT (ACL) Act’ under people who are inspectors under the *Sale of Motor Vehicles Act 1977*. This is to allow the Commissioner for Fair Trading and investigators to carry out functions under the *Sale of Motor Vehicles Act 1977* without the need for separate appointments under the Act.

Clause 1.34 Section 5C

Section 5C provides for identity cards issued under the *Sale of Motor Vehicles Act 1977*. The section is substituted with a new section which provides that the requirement to be issued with an identity card applies only to inspectors appointed under section 5B(1). This allows other inspectors, including the Commissioner for Fair Trading and investigators, to carry out functions under the Act without the need to be issued with another identity card as inspectors under the Act.

Clause 1.35 Section 94

Section 94 provides that the Registrar may delegate the Registrar’s functions under the *Sale of Motor Vehicles Act 1977* to a public servant. This section is omitted as the office of Registrar of Motor Vehicle Dealers is removed. As the Commissioner has a power to delegate his or her functions generally under the FT (ACL) Act to a public servant, section 94 is unnecessary.

Clause 1.36 Dictionary, new definition of *commissioner*

A definition of ‘commissioner’ is inserted into the dictionary.

Clause 1.37 Dictionary, definitions of *deputy registrar* and *registrar*

Definitions of deputy registrar and registrar are omitted as the offices of the Registrar and Deputy Registrar of Motor Vehicle Dealers are removed. The Commissioner for Fair Trading will carry out the functions of the Registrar of Motor Vehicle Dealers and investigators appointed under the FT (ACL) Act will carry out the functions of the Deputy Registrar.

Clause 1.38 Further amendments, mentions of *registrar*

Further mentions of ‘registrar’ in the Act are substituted with ‘commissioner’ to enable the Commissioner for Fair Trading to carry out the functions of the office of the Registrar of Motor Vehicle Dealers without the need for an appointment to the office of Registrar.

Part 1.10 Smoke-Free Public Places Act 2003

Clause 1.39 New section 10(1)(aa)

Section 10(1)(aa) is inserted to include an investigator under the FT (ACL) Act as an inspector under the *Smoke-Free Public Places Act 2003*. This is to remove the need for investigators under the FT (ACL) Act to carry out functions under the Act without the need for separate appointments as inspectors under the Act.

Part 1.11 Tobacco Act 1927

Clause 1.40 Part 5

Part 5 is omitted to remove the offices of the Registrar and Deputy Registrar of Tobacco. This allows the Commissioner for Fair Trading to carry out functions under the Act without the need to be appointed to the office of the Registrar of Tobacco.

Clause 1.41 New section 32(2)(d)

Section 32 provides for authorised officers under the *Tobacco Act 1927*. Section 32(2)(d) is inserted to include investigators under the FT (ACL) Act as ‘authorised officers’.

Clause 1.42 New section 34(1A)

Section 34 provides for identity cards issued to authorised officers. New section 34(1A) is inserted to provide that only authorised people appointed under section 32(1) are required to be issued with an identity card. This will remove the need for another identity card to be produced for other authorised officers, including investigators.

Clause 1.43 Section 34(1)

Section 34 provides for identity cards issued to authorised officers. New section 34(1A) limits the need for identity cards to be issued to authorised people appointed under section 32(1). The words ‘(other than a public health officer or police officer)’ are therefore omitted as they are unnecessary.

Clause 1.44 Dictionary, new definition of *commissioner*

A definition of ‘commissioner’ is inserted into the dictionary.

Clause 1.45 Dictionary, definitions of *deputy registrar* and *registrar*

Definitions of deputy registrar and registrar are omitted as the offices of the Registrar and Deputy Registrar of Tobacco are removed. The Commissioner for Fair Trading will carry out the functions of the Registrar.

Clause 1.46 Further amendments, mentions of *registrar*

Further mentions of ‘registrar’ in the Act are substituted with ‘commissioner’ to enable the Commissioner for Fair Trading to carry out the functions of the office of the Registrar of Tobacco without the need for an appointment to the office of Registrar.