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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2012**

**EXPLANATORY STATEMENT**

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## **JUSTICE & COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2012**

### **Overview of the Bill**

The Justice and Community Safety Legislation Amendment Bill 2012 (the Bill) amends a number of laws administered by the Justice and Community Safety Directorate.

### **Fair Trading (Australian Consumer Law) (Transitional Provisions) Regulation 2011 – repeal**

The regulation contains a modification provision that is now redundant. The regulation modified the *Fair Trading (Australian Consumer Law) Act 1992* by providing that the definition of fair trading legislation in the Dictionary includes a reference to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. The definition of fair trading legislation has since been amended by the *Justice and Community Safety Legislation Amendment Act 2011* to include a reference to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. The Bill repeals the redundant regulation.

### **ACT Civil and Administrative Tribunal Act 2008**

The Bill makes a number of minor amendments to the *ACT Civil and Administrative Tribunal Act 2008* ('the ACAT Act').

#### Australian Consumer Law

The ACAT has power to hear matters arising under the Australian Consumer Law (ACT) under sections 7 and 9 of the *Fair Trading (Australian Consumer Law) Act 1992*.

Section 16 of the ACAT Act provides for the ACAT's power to determine civil dispute applications, however there is no mention in the section relating to the ACAT's power to determine a consumer contract dispute. The Bill inserts a new sub-section to clarify that the ACAT can hear civil dispute applications made under the Australian Consumer Law (ACT).

#### Divisions

Subsections 88(2)-88(4) of the ACAT Act establish divisions in the ACAT. In practice, the ACAT does not use the division structure. The Bill omits sections 88(2)-(4) of the ACAT Act.

#### Applications

The term 'application' is used throughout the ACAT Act to mean an originating process lodged by a person, although many matters heard in the ACAT are referrals made to it under various enactments or have been heard by the ACAT on its own initiative. The Bill inserts a definition of 'application' that means an originating application under section 9, and for parts 5 to 9 of the ACAT Act a matter referred or appealed to the ACAT under an authorising law or a matter heard or dealt with by the tribunal on its own initiative.

### **Administrative Decisions (Judicial Review) Act 1989**

Section 5(1)(i) provides that a person aggrieved by an administrative decision may seek a judicial review where the decision was otherwise contrary to law. Section 40B(1)(b) of the *Human Rights Act 2004* makes it unlawful for a public authority to fail to give proper consideration to a relevant human right when making a decision. The Bill inserts a note to section 5(1) to refer to section 40B(1)(b) of the *Human Rights Act 2004*.

## **Court Procedures Act 2004**

### Rule-making committee and advisory committee

Section 9(2) of the *Court Procedures Act 2004* provides for the membership of the rule-making committee. Section 9(2)(b) provides that the President of the Court of Appeal is a member of the rules committee, or if the President and the Chief Justice are the same person, a resident judge appointed by the Chief Justice is a member. A President of the Court of Appeal has not been appointed. The Bill substitutes section 9(2)(b) and note 1 with a reference to “a resident judge appointed by the Chief Justice” and omits references to the President from section 10 (which deals with delegations in relation to the rule-making committee).

Section 11(2) of the *Court Procedures Act 2004* provides for the membership of the advisory committee. The Bill inserts section 11(2)(ea) to provide for a presidential member of the ACAT in the membership of the advisory committee. This amendment will give appropriate statutory recognition to the informal role the ACAT has had in the rules advisory committee to date.

### Judgments against the Territory Crown

Section 29 of the *Court Procedures Act 2004* requires a plaintiff with a judgment against the Territory Crown to wait 21 days to see if an appeal has been lodged before enforcing the judgment by giving a copy of the judgment to the treasurer. The 21 day period is inconsistent with appeal provisions in the *Court Procedures Rules 2006* and the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No. 2)*, which both prescribe a 28 day appeal period. The Bill substitutes 21 days in section 29(2)(d) of the *Court Procedures Act 2004* with 28 days.

## **Crimes (Sentence Administration) Act 2005**

Section 17 provides for the remanding authority to issue a warrant when making an order for remand, the purpose of which is to assist the Director-General responsible for remand to validate the remanding authority’s order.

Section 17(3)(a) provides that the remanding authority may state any considerations about the remand which the Director-General must have regard.

Section 17(3)(b) provides that the remanding authority must state when and where the remanding authority orders the return of the remandee to the remanding authority.

In a number of circumstances the Courts are unable to comply with the requirement in section 17(3)(b). For example, when a person is committed by the Magistrates Court for trial or sentence to the Supreme Court, the remandee will not be returning to the remanding authority.

To ensure the purposive intent of the section is achieved, the Bill amends section 17(3)(b) to clarify that the warrant for remand must either state when and where the remanding authority orders the return of the remandee to the remanding authority, or alternatively it must state that the remanding authority orders the return of the remandee to the remanding authority or to another remanding authority at the time and place decided by the registrar.

The Bill also amends section 18(1)(b) so that the Director-General is required to return the remandee to the remanding authority or another remanding authority, as ordered by the remanding authority.

### **Emergencies Act 2004 and Emergencies Regulation 2004**

The Government announced in November 2011 that the ACT Fire Brigade has been renamed to ACT Fire and Rescue, to better reflect the diverse range of services, including rescue services, the organisation provides to the ACT community. The Bill amends the *Emergencies Act 2004* and *Emergencies Regulation 2004* to give statutory effect to the name change. Consequential amendments to other ACT legislation will be progressed in an upcoming Statute Law Amendment Bill.

### **Legal Aid Act 1977**

Section 75 of the *Public Sector Management Act 1994* ('the PSM Act') provides that the merit principles of section 65 of the PSM Act do not apply to a second or subsequent engagement of a person to the same or similar executive office. The effect of this provision is that holders of an executive office may be reappointed for a further term without the need for a merit selection process.

Section 75 of the PSM Act does not apply to executive officer positions in the Legal Aid Commission, preventing the Commission from reappointing an executive officer for more than 3 months without engaging in a full merit selection process. The Bill amends the *Legal Aid Act 1977* to give the Commission powers of reappointment equivalent to those in section 75 of the PSM Act.

### **Magistrates Court Act 1930**

Under section 216 of the Act a stay is immediately in place on a conviction or sentence after the lodgement of an appeal. In these circumstances, it is not clear in whose custody the appellant is lawfully being held. Furthermore, if an appeal is lodged at the Supreme Court, the Magistrates Court may not immediately know an appeal has been lodged.

Section 216 has been redrafted to clarify that pending the grant of bail, the appellant remains in the custody of the person who had custody immediately before the enforcement or execution of the conviction or sentence.

### **Trustee Companies Act 1947 – voluntary transfer of trustee company business**

In March 2008 the Council of Australian Governments (COAG) agreed to the Commonwealth assuming responsibility for the regulation of trustee companies. Legislative amendments giving effect to this arrangement have been progressed in a series of recent JACS Bills.

The *Trustee Companies Act 1947* currently facilitates compulsory transfer determinations only. The Commonwealth legislated in 2011 to permit both compulsory and voluntary transfer determinations by ASIC. The Bill amends section 34B to include both compulsory and voluntary transfer determinations.

### **Unclaimed Money Act 1950**

The Public Trustee has delegated responsibility to administer the provisions of the *Unclaimed Money Act 1950*. In this role, the Public Trustee receives unclaimed money from liquidators

and companies. The Public Trustee also receives unclaimed money pursuant to section 124 of the *Agents Act 2003* and section 259 of the *Legal Profession Act 2006*.

To increase the likelihood of people being reunited with their unclaimed money, the Public Trustee maintains a register of unclaimed money and a web-based search facility. The Bill introduces a new provision in the *Unclaimed Money Act 1950* giving statutory recognition to the Public Trustee's unclaimed money register, premised on legislation existing in NSW and Victoria, and consistent with the ACT Public Trustee's current practice. The new section authorises the Public Trustee to publish details of any unclaimed money received under the *Unclaimed Money Act 1950*, the *Legal Profession Act 2006* and the *Agents Act 2003*.

### **Wills Act 1968**

On 2 July 2010, the former Standing Committee of Attorneys-General (now Standing Council on Law and Justice) agreed to implement legislation in each State and Territory to allow Australia to accede to the *UNIDROIT Convention Providing a Uniform Law on the Form of an International Will 1973*. The Convention provides for a uniform law that prescribes necessary elements for the form of an 'international will' including for example witnessing, writing and certification requirements. Adopting the Convention's 'international will' will improve access to justice for those who hold assets in foreign countries, have beneficiaries located abroad or are themselves beneficiaries under an international will.

In order for the Commonwealth to accede to the Convention's uniform law, all rights and obligations must be legislated domestically. The Parliamentary Counsels' Committee has prepared a model Bill to assist in the implementation of the Convention's uniform law. A new part has been introduced into the *Wills Act 1968* to give effect to the model provisions.

### **Human Rights implications**

The amendments made by this Bill to the *Crimes (Sentence Administration) Act 2005* are likely to promote human rights in criminal proceedings under section 22 of the *Human Rights Act 2004*. In particular, section 22(2)(c) of the *Human Rights Act 2004* provides that anyone charged with a criminal offence is entitled to be tried without unreasonable delay.

The purpose of this amendment is the more effective administration of justice.

Section 17 of the *Crimes (Sentence Administration) Act 2005* requires a remanding authority, such as the Magistrates Court, to issue a warrant for the remand of a remandee in the director-general's custody when making a remand order.

At present, section 17(3)(b) requires the warrant to state that a remandee be returned to the remanding authority. For instance, if the Magistrates Court issues the warrant, the warrant must state that the remandee is to be returned to the Magistrates Court at the time and date stated on the warrant.

This requirement is not appropriate where a remandee is to be returned to a different remanding authority to the remanding authority that issued the warrant. For instance, where the Magistrates Court has committed a remandee to trial in the Supreme Court, the person will need to be transported from the Alexander Maconochie Centre to the Supreme Court on the date on the warrant, not the Magistrates Court.

Also, at the time the warrant is made by the Magistrates Court in such circumstances, trial or sentence dates or appeal hearing dates in the Supreme Court are usually not available. The requirement to provide a return date and time in the warrant may result in a remandee being transported from the Alexander Maconochie Centre to the court cells unnecessarily, only to have his or her matter adjourned to a more appropriate time and date.

A practice has been developed in the courts to refer to a date to be fixed by the Registrar to prevent this problem. The amendments to the *Crimes (Sentence Administration) Act 2005* will give effect to this practice to reduce to a minimum any unnecessary travel to and from the court.

In this way, it is likely that the Bill will minimise the risk of unreasonable delay, thereby enhancing the right to be tried without unreasonable delay. Any possible limitation that may be placed on this human right as a result of the court not being required to state the date and time of the remandee's return to court in the warrant is reasonable, given that it is likely to improve the administration of justice and to reduce the disruption that the unnecessary transportation of remandees from the Alexander Maconochie Centre to the courts can cause to remandees.

The amendments made to the *Unclaimed Money Act 1950* may engage the human right to privacy under section 12(a) of the *Human Rights Act 2004*. The amendments allow the public trustee to keep a register of unclaimed money that includes the name of the owner of the money and any other information the public trustee considers appropriate. The amendments also require the public trustee to make information in the register available so that a person who is entitled to make a claim for unclaimed money can find out about the entitlement.

The new provision inserted by this Bill gives statutory recognition to the current practice of the public trustee to assist in re-uniting people with their unclaimed money, which has been successful to date. The public trustee keeps an unclaimed money register of money received under the *Unclaimed Money Act 1950*, the *Agents Act 2003* and the *Legal Profession Act 2006*. The name of the owner of the money and limited information about the unclaimed money are available on the public trustee website so that an owner of unclaimed money can search for and identify any unclaimed money that may belong to him or her.

This amendment would give effect to the current practice of the public trustee, which meets a public expectation that a person who has unclaimed money belonging to him or her is able to search for that money on a public database. Also, the provisions are drafted to ensure that only a person entitled to make a claim may request the public trustee to provide all the information about the person that is in the register.

The amendments to the *Unclaimed Money Act 1950* therefore impose a reasonable limitation on the human right to privacy.

## CLAUSE NOTES

### Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2012*.

### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act, other than schedule 1, part 1.11, is to commence the day after the Act's notification day.

Schedule 1, part 1.11 inserts new part 3B into the *Wills Act 1968*. This amendment brings into ACT legislation uniform law agreed to by the Standing Council on Law and Justice that is necessary to allow Australia to accede to the *UNIDROIT Convention providing a Uniform Law on the Form of an International Will 1973*.

Schedule 1, part 1.11 is to commence on a day fixed by the Minister by written notice. The Minister is not to fix a day for the commencement of the amendment before the day the *Convention providing a Uniform Law on the Form of an International Will 1973* comes into force in Australia. If the amendment has not commenced within 2 years beginning on its notification day, it automatically commences on the first day after that period. It is likely that the *Convention providing a Uniform Law on the Form of an International Will 1973* will have come into force in Australia by that date.

### Clause 3 Legislation amended-sch 1

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

### Clause 4 Legislation repealed

*Fair Trading (Australian Consumer Law) (Transitional Provisions) Regulation 2011* is repealed.

The regulation contains a modification provision that is now redundant. The regulation modified the *Fair Trading (Australian Consumer Law) Act 1992* by providing that the definition of 'fair trading legislation' in the Dictionary to that Act include a reference to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. The definition of fair trading legislation has since been amended by the *Justice and Community Safety Legislation Amendment Act 2011*, to include a reference to the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. The Bill repeals the redundant regulation.

## Schedule 1 Legislation amended

### Part 1.1 ACT Civil and Administrative Tribunal Act 2008

#### Clause 1.1 Section 9, new note

A new note is added to section 9 (applications under authorising laws). The note acts as a signpost, directing the reader to the new paragraph 112(1)(aa) (a registrar may help a person make an application to the tribunal as the registrar considers appropriate).



## **Clause 1.2 Sections 13 and 14**

Section 13 (help with applications etc) and 14 (advising Attorney-General about systemic problems) are omitted. The content of section 13 is more appropriately relocated to section 112(1)(aa) of the Act as one of the functions of the Registrar. Section 14 is more appropriately relocated to new section 105A, after section 105 (Functions of general president).

These sections have also been relocated so as to not be captured in the new definition of ‘application’ (refer clause 1.11).

## **Clause 1.3 New section 16(ha)**

A new paragraph is added to section 16 (meaning of civil dispute and civil dispute application—Act).

Sections 7 and 9 of the *Fair Trading (Australian Consumer Law) Act 1992* give the ACAT power to determine matters arising under the Australian Consumer Law (ACT).

Section 16 of the ACAT Act provides for the ACAT’s power to determine civil dispute applications, however there is no mention in the section relating to the ACAT’s power to determine a consumer contract dispute under the Australian Consumer Law (ACT). The Bill inserts a new paragraph to clarify that the ACAT can hear civil dispute applications made under the Australian Consumer Law (ACT).

## **Clause 1.4 Section 88(2) to (4)**

Subsections 88(2) – (4) provide for ACAT divisions. These subsections are redundant, because in practice the ACAT does not use the division structure. Subsections 88(2)-(4) are omitted.

## **Clause 1.5 New section 89(2A)**

New section 89(2A) clarifies that, although the general president may have already allocated members to the tribunal for a matter, the general president may allocate 1 or more of the members who have been allocated to the tribunal or any other tribunal member the general president considers appropriate to hear an interim application arising in a matter.

This is intended to remove all doubt that the ACAT should be able to deal flexibly with cases before it. This amendment would improve the objectives of the Act and clarify the existing flexibility granted to the ACAT by section 23.

## **Clause 1.6 New section 89(5)**

New section 89(5) introduces a definition of ‘interim application’, consequential to the procedure for allocating members to an interim application set out in new section 89(2A).

### **Clause 1.7 New section 105A**

A new section 105A is inserted (advising Attorney-General about systemic problems). New section 105A is the same as current section 14, bar a minor reworking of subsection (2), requiring the General President (currently ‘the tribunal’) to tell the Attorney-General about any problem identified under subsection (1). The section has been relocated due to the new definition of ‘application’ in the dictionary.

### **Clause 1.8 New section 112(1)(aa)**

A new paragraph 112(1)(aa) is inserted (registrar to take reasonably practical steps to help a person make an application, as the registrar considers appropriate). New paragraph 112(1)(aa) is the same as current section 13(2). The section has been relocated due to the new definition of ‘application’ in the dictionary.

### **Clause 1.9 Section 112(1), note**

The note in subsection 112(1) is omitted, as new paragraph 112(1)(aa) makes the note in the subsection redundant.

### **Clause 1.10 Dictionary, note 2**

A new note is added to the dictionary, because of the new reference to the Australian Consumer Law (ACT) (refer new paragraph 16(ha)).

### **Clause 1.11 Dictionary, new definition of *application***

A new definition of ‘application’ is inserted in the dictionary.

The term ‘application’ is used throughout the ACAT Act to mean an originating process lodged by a person, although many matters heard in the ACAT are referrals made to it under various enactments or have been heard by the ACAT on its own initiative. Clause 1.11 inserts a definition of ‘application’ that means an originating application under section 9, and for parts 5 to 9 of the ACAT Act a matter referred or appealed to the ACAT under an authorising law or a matter heard or dealt with by the tribunal on its own initiative.

This provides statutory recognition for the range of matters heard by the ACAT.

## **Part 1.2 Administrative Decisions (Judicial Review) Act 1989**

### **Clause 1.12 Section 5(1), new note**

Section 5(1)(i) provides that a person aggrieved by an administrative decision may seek a judicial review where the decision was otherwise contrary to law. Section 40B(1)(b) of the *Human Rights Act 2004* makes it unlawful for a public authority to fail to give proper consideration to a relevant human right when making a decision.

The Bill inserts a note to section 5(1) to refer to section 40B(1)(b) of the *Human Rights Act 2004*.

## **Part 1.3 Court Procedures Act 2004**

### **Clause 1.13 Section 9(2)(b) and note 1**

Section 9(2) of the *Court Procedures Act 2004* provides for the membership of the rule-making committee. Section 9(2)(b) provides that the President of the Court of Appeal is a member of the rules committee, or if the President and the Chief Justice are the same person, a resident judge appointed by the Chief Justice is a member. A President of the Court of Appeal has not been appointed. Clause 1.13 substitutes section 9(2)(b) and note 1 with a reference to “a resident judge appointed by the Chief Justice”.

### **Clause 1.14 Section 10 heading**

Consequential to the removal of reference to the President of the Court of Appeal in the composition of the rule-making committee (see clause 1.13), the heading of section 10 omits a reference to the President.

### **Clause 1.15 Section 10(2)**

Consequential to the removal of reference to the President of the Court of Appeal in the composition of the rule-making committee (see clause 1.13), subsection 10(2) is omitted as it relates to the President making a delegation under this part.

### **Clause 1.16 Section 10(4)**

Consequential to the removal of reference to the President of the Court of Appeal in the composition of the rule-making committee (see clause 1.13), a reference to the President is removed in subsection 10(4).

### **Clause 1.17 New section 11(2)(ea)**

Section 11(2) of the *Court Procedures Act 2004* provides for the membership of the advisory committee. Clause 1.17 inserts new paragraph section 11(2)(ea) to include in the membership of the advisory committee a presidential member of the ACAT, appointed by the general president. This amendment will give appropriate statutory recognition to the informal role the ACAT has had in the rules advisory committee to date.

### **Clause 1.18 Section 29(2)(d)**

Section 29 of the *Court Procedures Act 2004* requires a plaintiff with a judgment against the Territory Crown to wait 21 days to see if an appeal has been lodged before enforcing the judgment by giving a copy of the judgment to the treasurer. The 21 day period is inconsistent with appeal provisions in the *Court Procedures Rules 2006* and the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No. 2)*, which both prescribe a 28 day period in which to lodge an appeal. Clause 1.18 substitutes 21 days in section 29(2)(d) of the Act with 28 days.

## **Part 1.4 Crimes (Sentence Administration) Act 2005**

### **Clause 1.19 Section 17(3)(b), except examples**

Section 17(3)(b) of the *Crimes (Sentence Administration) Act 2005* provides that where a person is remanded in custody pending further proceedings, warrants for remand must state when and where the remanding authority orders the return of the remandee to the remanding authority.

In a number of circumstances the Courts are unable to comply with this requirement. For example, when a person is committed by the Magistrates Court for trial or sentence to the Supreme Court, the remandee will need to be returned from the Alexander Maconochie Centre to the Supreme Court and not the Magistrates Court.

Also, at the time that the warrant is issued by the Magistrates Court in such circumstances, trial and sentence dates and appeal hearing dates in the Supreme Court are usually not available for the matter. This makes the provision difficult for the courts to comply with.

A practice has emerged in the courts of referring to a date to be fixed by the Registrar. This is likely to lead to more certainty in the return date.

Clause 1.19 amends section 17(3)(b) to require that the warrant for remand must either state when and where the remanding authority orders the return of the remandee to the remanding authority, or that the remanding authority must state that the remanding authority orders the return of the remandee to the remanding authority or to another remanding authority at the time and place decided by the registrar.

This amendment would give effect to the sensible practice that has been developed in the courts to ensure that return dates are more certain and improves the administration of justice.

### **Clause 1.20 Section 18(1)(b)**

Consequential to the amendment of paragraph 17(3)(b), clause 1.20 amends section 18(1)(b) so that the Director-General is required to return the remandee to the remanding authority or another remanding authority, as ordered by the remanding authority.

## **Part 1.5 Emergencies Act 2004**

### **Clause 1.21 – 1.37**

The Government announced in November 2011 that the ACT Fire Brigade has been renamed ACT Fire and Rescue, to better reflect the diverse range of services, including rescue services, the organisation provides to the ACT community. Part 1.5 amends the *Emergencies Act 2004* to give statutory effect to the name change. Consequential amendments to other ACT legislation will be progressed in an upcoming Statute Law Amendment Bill.

## **Part 1.6      Emergencies Regulation 2004**

### **Clause 1.38   Section 8**

Consequential to the amendments in part 1.5, the *Emergencies Regulation 2004* is amended to substitute references to ‘fire brigade members’ with ‘fire and rescue members’ and the office of the chief officer (fire brigade) to the chief officer (fire and rescue).

## **Part 1.7      Legal Aid Act 1977**

### **Clause 1.39   New section 68B**

A new section 68B is inserted, which mirrors section 75 of the *Public Sector Management Act 1994* (‘the PSM Act’). Section 75 of the PSM Act provides that the merit principles of section 65 of the PSM Act do not apply to a second or subsequent engagement of a person to the same or similar executive office. The effect of this provision is that holders of an executive office may be reappointed for a further term without the need for a merit selection process.

Section 75 of the PSM Act does not apply to executive officer positions in the Legal Aid Commission, preventing the Commission from reappointing a chief executive officer or an assistant executive officer for more than 3 months without engaging in a full merit selection process. New section 68B gives the Commission powers of reappointment equivalent to those in section 75 of the PSM Act.

## **Part 1.8      Magistrates Court Act 1930**

### **Clause 1.40   New section 216**

Under section 216 of the Act a stay is immediately in place on a sentence after the lodgement of an appeal. In these circumstances, it is not clear in whose custody the appellant is lawfully being held. Furthermore, if an appeal is lodged at the Supreme Court, the Magistrates Court may not immediately know an appeal has been lodged.

Section 216 has been redrafted to provide that pending the grant of bail, the appellant shall remain in the custody of the person who had custody immediately before the stay was issued.

## **Part 1.9      Trustee Companies Act 1947**

### **Clause 1.41   Section 34B heading**

In March 2008 the Council of Australian Governments (COAG) agreed to the Commonwealth assuming responsibility for the regulation of trustee companies. The *Justice and Community Safety Legislation Amendment Bill 2009 (No. 4)* provided for the staggered repeal of various sections of the *Trustee Companies Act 1947* to reflect this decision.

Section 34B of the *Trustee Companies Act 1947* was subsequently inserted by the *Justice and Community Safety Legislation Amendment Act 2010* to facilitate the operation of section 601WBA of the *Corporations Act 2001* (Cth) as enacted at that time. Together, these provisions permit ASIC to order the transfer of trustee company estate assets and liabilities to

another trustee company only where ASIC has cancelled the transferring company's registration.

The *Corporations Act 2001* has subsequently been amended by the *Corporations and Other Legislation Amendment (Trustee Companies and Other Measures) Act 2011* (Cth). Section 601WBA of the Corporations Act now allows ASIC to make a transfer determination on the application of the transferring trustee company (i.e. a voluntary transfer).

The *Trustee Companies Act 1947* currently facilitates compulsory transfer determinations only. The Bill amends section 34B(1)(a) to include both compulsory and voluntary transfer determinations by ASIC. Clause 1.41 amends the heading of section 34B to permit both compulsory and voluntary transfer determinations.

#### **Clause 1.42 Section 34B(1), new note**

Clause 1.42 inserts a new note to subsection 34B(1), consistent with the recent Commonwealth Act introducing the power for ASIC to make both compulsory and voluntary transfer determinations.

### **Part 1.10 Unclaimed Money Act 1950**

#### **Clause 1.43 New part 6**

The Public Trustee has delegated responsibility to administer the provisions of the *Unclaimed Money Act 1950*. In this role, the Public Trustee receives unclaimed money from liquidators and companies. The Public Trustee also receives unclaimed money pursuant to section 124 of the *Agents Act 2003* and section 259 of the *Legal Profession Act 2006*.

To increase the likelihood of people being reunited with their unclaimed money, the Public Trustee maintains a register of unclaimed money and a web-based search facility. The Bill introduces a new provision in the *Unclaimed Money Act 1950* giving statutory recognition to the Public Trustee's unclaimed money register, premised on NSW and Victorian legislation and consistent with the ACT Public Trustee's current practice. The new section authorises the Public Trustee to publish details of any unclaimed money received under the *Unclaimed Money Act 1950*, the *Legal Profession Act 2006* and the *Agents Act 2003*.

### **Part 1.11 Wills Act 1968**

#### **Clause 1.44 New part 3B**

On 2 July 2010, the former Standing Committee of Attorneys-General (now Standing Council on Law and Justice) agreed to implement legislation in each State and Territory to allow Australia to accede to the *UNIDROIT Convention Providing a Uniform Law on the Form of an International Will 1973*. The Convention provides for a uniform law that prescribes necessary elements for the form of an 'international will' including for example witnessing, writing and certification requirements. Adopting the Convention's 'international will' will improve access to justice for those who hold assets in foreign countries, have beneficiaries located abroad or are themselves beneficiaries under an international will.

In order for the Commonwealth to accede to the Convention's uniform law, all rights and obligations must be legislated domestically. The Parliamentary Counsels' Committee has prepared a model Bill to assist in the implementation of the Convention's uniform law. A new part has been introduced into the *Wills Act 1968* to give effect to the model provisions.

**Clause 1.45 New schedules 1 and 2**

New schedules 1 and 2 contain the *Annex to Convention providing a Uniform Law on the Form of an International Will 1973*. New section 16K applies the Convention as having the force of law in the ACT.