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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

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# JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2016

## Introduction

This explanatory statement relates to the *Justice and Community Safety Legislation Amendment Bill 2016* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## Overview of the Bill

The *Justice and Community Safety Legislation Amendment Bill 2016* (the Bill) amends 17 Acts and three Regulations. Each amendment is listed and described below. The amendments are intended to improve the operation of each amended law without amounting to a substantial change in policy.

## Summary of amendments

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

The Bill omits a prescribed function of the registrar of the ACT Civil and Administrative Tribunal (the ACAT) from the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act), that is the maintenance of the records of the tribunal. This amendment supports another amendment to the *Territory Records Act 2003*, which will transfer responsibility for maintenance of court and tribunal records to the principal registrar of ACT Law Courts and Tribunal.

### *Associations Incorporation Act 1991 and Cooperatives Regulation 2003*

Changes are made to the *Associations Incorporation Act 1991* (Associations Act) and the *Cooperatives Regulation 2003* to allow Aboriginal and Torres Strait Islander organisations that are registered or incorporated under either Act to transfer their registration to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act). Registration under the CATSI Act is a pre-requisite for any Aboriginal and Torres Strait Islander body seeking Commonwealth funding.

### *Civil Law (Sale of Residential Property) Act 2003*

Under the *Civil Law (Sale of Residential Property) Act 2003* (Sale of Residential Property Act) a buyer has a statutory right of action against the issuer of an inaccurate building and compliance report or pest report, both of which are required documents in the contract of

sale. This statutory right of action is limited to reports that are less than six months old at the date of exchange of contracts of sale.

There is presently no requirement under the Sale of Residential Property Act for a seller to update these reports after six months elapse. Where a property remains on the market continuously for more than six months, a buyer will be unable to rely on the reports to sue the issuer of the report under the statutory right of action. However, the buyer remains liable to reimburse the seller for the cost of obtaining those reports. The Bill amends this Act to specify that buyers are only liable to reimburse the seller for the cost of the original report, as this will be the more expensive of the two.

A further amendment ensures that both building and compliance inspection reports and pest reports are subject to equivalent disclosure requirements. Presently, where a seller has obtained two or more building and compliance inspection reports in the *three months* before the property was advertised or listed for sale, they are required to make these documents available to a prospective buyer on request. However a seller must also make available any two or more pest inspection reports that they have obtained in the *six months* before the property was advertised or listed for sale. The Bill addresses this discrepancy in timeframes by requiring building and compliance reports obtained in the six months before listing or advertising to be disclosed, aligning with the requirements applying to pest reports.

To facilitate transitional introduction of these amendments, the Bill provides that these provisions will not apply in relation to contracts or proposed contracts for sale of residential property that were advertised or offered for sale before the Bill's commencement.

### ***Civil Law (Wrongs) Act 2002 and the Civil Law (Wrongs) Regulation 2003***

An amendment to the *Civil Law (Wrongs) Act 2002* will remove the requirement for annual reporting by insurers who carry on insurance business in relation to property in the ACT, or in relation to an act or omission happening in the ACT.

Reporting requirements for insurers were introduced in 2002 in response to widespread uncertainty relating to the availability and affordability of public liability insurance. The ACT is now the only Australian jurisdiction that continues to collect insurance data and table a report in the legislature. There are only a small number of insurers who process claims in the ACT and, as a consequence, insurers' confidentiality of the data presented in the annual report may be affected.

In view of these changes, amendments to the *Civil Law (Wrongs) Regulation 2003* will facilitate the removal of insurers' annual reporting requirements by omitting redundant corresponding regulations.

### ***Confiscation of Criminal Assets Act 2003***

A minor amendment to the *Confiscation of Criminal Assets Act 2003* (COCA Act) will remove the requirement that, in order to create a charge over confiscated property in the ACT, an interstate restraining or penalty order must be based on a criminal charge or conviction. This amendment is intended to better recognise non-conviction based restraining or penalty orders across jurisdictions.

### ***Coroners Act 1997***

The Bill amends the *Coroners Act 1997* (Coroners Act) to change certain procedures for presenting a Government response to a coroner's report under section 57 following an inquest or inquiry. These amendments are intended to provide certainty that the responsible Minister must present the report and Government response to the Legislative Assembly not later than the first sitting week after the end of six months after receiving the report.

The Bill also seeks to align timeframes for delivery of Government responses to the coroner where the Act requires separate responses to the same coronial report in respect of both a death in custody under section 76 and a public safety issue under section 57. In such circumstances, the Bill will require the coroner's report and both Government responses to be tabled in accordance with the timeframe in section 57 (5) (b) (within six months). The Bill will also require that a response must to be provided to the coroner at the same time for the purposes of section 76, which relates to a death in custody.

### ***Court Procedures Act 2004***

The *Court Procedures Act 2004* (CPA) prescribes, in section 5A, the main purpose of civil procedure provisions under the Act with reference to an inclusive list of objectives. Judges are required to interpret and apply the civil procedure provisions in accordance with the promotion of these objectives. Presently one of the matters mentioned in this section is 'the efficient use of court resources, including administrative resources'.

This wording creates ambiguity about whether, in interpreting and applying civil procedure provisions, Judges are permitted to consider administrative resources in isolation. The effect of this would be to allow judges to exercise purely administrative powers. An amendment will qualify this matter through adoption of wording similar to that used by the *Federal Court of Australia Act 1976* (Cth): 'the efficient use of judicial and administrative resources available for the purposes of the court'.

### ***Crimes Act 1900***

The Bill introduces a specific offence in the *Crimes Act 1900* to clarify that the practice of throwing or directing objects at vehicles (including riders of bicycles) is criminal conduct. There is no specific offence presently prohibiting this conduct in ACT legislation, either in the Crimes Act or road transport legislation. Prosecution of this behaviour using existing

offences (such as assault) is possible but problematic. A specific offence, similar to those implemented in New South Wales, Queensland and South Australia, is required to guarantee this dangerous conduct is properly sanctioned.

### ***Firearms Act 1996***

An amendment to the *Firearms Act 1996* will provide certainty that the registrar may delegate their functions under the *Prohibited Weapons Act 1996* (PWA). Section 35 of the Firearms Act provides that the registrar of firearms may delegate their functions under that Act to a police officer, however there is no equivalent delegation power in the PWA. This amendment will provide certainty that the registrar's functions under both Acts may be validly delegated to, and exercised by, the deputy registrars.

### ***Land Titles Act 1925***

An amendment to the *Land Titles Act 1925* is proposed to allow for electronic lodgement of land titles in the ACT. This amendment is designed to support the Land Titles Business Systems Modernisation initiative, which will upgrade the current business systems that manage ACT land data and land titles.

Presently the Act stipulates that a signature or attestation must be 'in ink' and so does not allow for electronic lodgement, but is otherwise not prescriptive about the manner in which forms may be lodged with the registrar-general.

A number of other amendments to the Land Titles Act are proposed to implement the ACT's agreement to provide data to the Commonwealth for the National Register of Foreign Ownership of Land Titles (provided for in the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* (Cth)).

These amendments will provide a clear authority in ACT law for the registrar-general to collect and disclose tax-related information for the sole purpose of its provision to the Commissioner for Taxation. The Bill will also guarantee that information is treated separately from any that is required by the registrar-general for inclusion on the register of land titles.

### ***Legal Profession Act 2006***

Presently under the *Legal Profession Act 2006* (LPA), if a client makes a complaint about legal costs to the Law Society of the ACT while those costs are the subject of an assessment of costs in the ACT Supreme Court, that complaint will permanently stay the costs assessment (unless the complaint is referred to the Supreme Court by the Law Society). This means that if a client complains about costs and, for example, the Law Society takes no action because the complaint is frivolous or the complaint is withdrawn prior to a decision being made, the practitioner cannot recover costs.

The Bill seeks to address this issue by allowing a costs assessment to proceed in certain circumstances consistent with the equivalent provision of the Legal Profession Uniform Law.

### ***Magistrates Court Act 1930***

The Industrial Court was established on 8 November 2013. Following consultation with other Magistrates in late 2013, the Chief Magistrate decided to exercise jurisdiction in Industrial proceedings as the Industrial Court Magistrate. However at this time an instrument declaring this arrangement was not notified. While the Government considers that the powers were validly exercised, the Bill amends the *Magistrates Court Act 1930* to confirm the validity of the Chief Magistrate's exercise of jurisdiction as the Industrial Court Magistrate between 8 November 2013 and 29 March 2016.

### ***Medicines, Poisons and Therapeutic Goods Act 2008***

The Bill seeks to introduce an express exemption to the offence of supplying sterile injecting equipment in section 74 of the *Medicines, Poisons and Therapeutic Goods Act 2008* (MPTG Act). The exemption is intended to support the implementation of a peer distribution program of sterile injecting equipment for the purpose of preventing the spread of blood-borne disease.

It is intended for this exemption to also apply to the offence of aiding and abetting the self-administration of a declared substance under section 37 of the MPTG Act. The proposed exemption for both offences will apply to a person who distributes sterile needles and syringes for the purpose of preventing the spread of blood-borne diseases.

### ***Prohibited Weapons Act 1996***

In conjunction with the amendment to the *Firearms Act 1999*, a consequential amendment to the *Prohibited Weapons Act 1996* will omit a provision that specifically authorises the delegation of a function under the Act (signing evidentiary certificates about the holder of certain permits) to a police officer. This amendment removes the potential for conflict of interpretation and clarifies that under the amended Firearms Act, this function is delegable to a deputy registrar.

### ***Security Industry Act 2003 and Security Industry Regulation 2003***

The nature of remote security monitoring means that a monitoring centre based in one state or territory may provide monitoring services for clients' properties located in another state or territory. Presently it is uncertain whether individuals or corporations that conduct remote monitoring from another Australian jurisdiction are required to hold a licence under ACT legislation. To limit unnecessary licensing and remove doubt, an amendment is proposed to exempt interstate monitoring centre operators from the licensing requirements of the Act, provided the operator holds an appropriate equivalent licence in the jurisdiction in which they are located.

An amendment to the *Security Industry Regulation 2003* (SI Regulation) is also proposed to omit the training requirements for monitoring centre operators as a precondition to the grant or variation of a licence. This is consistent with reforms by other jurisdictions that, in accordance with the national agreement, no longer require monitoring centre operators to complete a prescribed training course as a prerequisite to licensing (ie the *Security Industry Act 1997* (NSW)).

By nature of their role, monitoring centre operators are not exposed to clients' personal information (ie surveillance recordings) and are not required to personally respond to alarms. Monitoring centre operators instead act as intermediaries who are responsible for monitoring lighted switchboards and, when notified of an alarm, refer patrols to the appropriate premises to investigate. Accordingly, the removal of this training obligation will not have any implications for privacy or safety considerations.

The Bill also amends the *Security Industry Act 2003* (SI Act) to exempt people who sell security equipment by wholesale from the obligation to hold a licence under the Act. This reform is consistent with recent amendments to the *Security Industry Regulation 2007* (NSW) and is anticipated will reduce red tape and unwarranted licensing requirements.

The Bill contains amendments to reduce ambiguity relating to the sale of 'security equipment'. It is considered that the existing definition of 'security equipment' in the Act does not adequately distinguish between devices or equipment that provide or enhance security as a by-product of their normal use (eg a screen door) and devices or equipment that are designed or adapted for the specific purpose of enhancing security (ie CrimSafe doors). Amendments are therefore proposed to qualify that security equipment is mechanical, electronic, acoustic or other equipment designed or adapted to provide or enhance security or for the protection or watching of any property.

The Bill also creates an amendment to allow persons who sell security equipment by wholesale (other than directly to the public) to do so without a licence to sell security equipment. Such an exemption aligns with reform in New South Wales and will reduce excessive licensing requirements in the ACT.

### ***Supreme Court Act 1933***

While the Minister is given statutory authority under the *Supreme Court Act 1933* (Supreme Court Act) to appoint a sheriff, in practice this authority has historically been exercised by the Director-General of the Justice and Community Safety Directorate.

This delegation provides a practical arrangement and reflects that, despite being an officer of the court, a sheriff does not exercise judicial functions. Transfer of this appointment function to the Director-General gives effect to the current administrative practice.



### ***Territory Records Act 2002***

An amendment is proposed to make the principal registrar of ACT Law Courts and Tribunal the principal officer for the purposes of the *Territory Records Act 2002* (Territory Records Act). This amendment is consistent with the principal registrar's role as the principal officer under the *Freedom of Information Act 1989* (FOI Act) and will transfer responsibility from the Chief Magistrate of the Magistrates Court and Chief Justice of the Supreme Court. The move to transfer this role to the principal registrar is also consistent with the functions performed by the registrar of ACAT under both the Territory Records Act and the FOI Act.

### ***Workplace Privacy Amendment Act 2016***

An amendment to the *Workplace Privacy Amendment Act 2016* will defer commencement of provisions allowing a facility for covert surveillance of an employee outside the workplace where the employer demonstrates a reasonable belief that the employee is engaged in unlawful activity. Delayed commencement of two years is considered appropriate in order to conduct a review of the broader surveillance landscape in the ACT relating to civil litigation.

### **Human Rights Implications**

Section 28 of the *Human Rights Act 2004* (HRA) provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

### ***Section 12 - Privacy and reputation***

Section 12 of the HR Act provides:

Everyone has the right-

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

### The nature of the right affected (s 28 (2) (a))

The amendments to the *Land Titles Act 1925* engage section 12 of the HRA, the right to privacy and reputation. This is because the amendments allow the registrar-general to collect information and provide this information on the transfer of a freehold or leasehold interest in real property situated in the Territory to the Federal Commissioner for Taxation ('the Commissioner').

The right to privacy incorporates the protection of information privacy which can be summarised as "the ability to keep from others information about oneself."<sup>1</sup>

Section 12 of the HRA gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy relating to their family, home or correspondence. An interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case.

The UNHRC's General Comment 16 notes:

*'as all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society...'*<sup>2</sup>

Accordingly, the right to privacy requires that the state does not itself arbitrarily or capriciously invade a person's privacy in a manner not based on demonstrable evidence, and adopts legislative and other measures to protect people from arbitrary interference with their privacy from others.

The right to privacy needs to be balanced against other rights and it can be limited as long as it can be demonstrated that the limitation is necessary, reasonable and proportionate.

The concept of arbitrariness requires that any interference with privacy, even when provided for by law, should be reasonable in the particular circumstances. Whether an interference with privacy is permissible will depend on whether a person has a reasonable expectation of privacy in the circumstances, and reasonableness implies that any interference with privacy must be proportionate to the end sought and must be necessary in the circumstances of any given case.<sup>3</sup>

### The importance of the purpose of the limitation (s28(2)(b))

The amendments to the Land Titles Act allow the registrar-general to collect information about all transfers of freehold or leasehold interests in real property situated in the territory and provide this information to the Commissioner, as now required by the *Taxation Administration Act 1953*. The new reporting regime was introduced so the Commissioner

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<sup>1</sup> Bararic Mirko, Faris P, Alexander T, Australian Human Rights Law CCH Australia Limited 2011 P274

<sup>2</sup> UN Human Rights Committee, *General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art 17)*, UN Doc CCPR General Comment 16 (1988), para.7.

<sup>3</sup> *Toonen v Australia*, Communication 4888/1992, UN Doc CCPR/C/50/D/488/1992 (1994), para 8.3.

could have information about transactions that could reasonably be expected to have tax consequences. The broader purpose of the amendments is to ensure that entities are meeting their tax obligations and to ensure the integrity of the Australian taxation system.

*Nature and extent of the limitation (s28(2)(c))*

The provision of data to the Commissioner limits the right to privacy as it means personal information about individuals' land holdings is collected and this information is provided to the Commonwealth. The provision doesn't authorise the Commonwealth to distribute the information more widely and the information the Commissioner holds is subject to the *Privacy Act 1998*.

*Relationship between the limitation and its purpose (s28(2)(d))*

The provision limits the right to privacy because personal information about holding of land titles is given to the Commissioner. The provision of this information fulfils the ACT's obligations under the Taxation Administration Act and enhances the integrity of the Australian taxation system.

*Any less restrictive means reasonably available to achieve the purpose (s28(2)(e))*

The collection of this information by the registrar-general and its provision to the Commissioner is the least restrictive means available to achieve the purpose. The ACT is compelled to collect and provide this data to the Commissioner by virtue of the *Taxation Administration Act 1953*. It is not possible for the ACT to de-identify the data as it would not then fulfil the requirements of the information required under the Taxation Administration Act.

***Section 21 – The right to a fair trial***

Section 21 of the HRA provides:

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, the press and public may be excluded from all or part of a trial—
  - (a) to protect morals, public order or national security in a democratic society; or
  - (b) if the interest of the private lives of the parties require the exclusion; or
  - (c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.
- (3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.

Amendments to the *Court Procedures Act 2004* (the CPA) engage, but do not limit, section 21 of the HRA. ACT judges and magistrates are required to interpret and apply civil

procedure provisions made under the CPA (ie the *Court Procedure Rules 2006*) in accordance with the main purpose of those provisions, which is prescribed in section 5A. The amended section 5A (2) (b) prescribes a list of objectives which form the main purpose of these provisions and, as a result, are to be considered by judges or magistrates in the application of civil procedure rules.

Amendment of this list continues to recognise in law considerations that will affect a magistrate or judge's interpretation of civil procedure rules and so promote transparency of judicial process. This change to the CPA clarifies that a judge or Magistrate cannot interpret and apply civil procedure provisions with reference to administrative resources in isolation from judicial resources. By making this clarification, the amendment engages, but does not limit, the right to a fair trial under section 21 of the HRA.

### ***Sections 21 and 22 – Right to a fair trial and rights in criminal proceedings***

#### ***The nature of the right affected (s 28 (2) (a))***

The amendment to the *Confiscation of Criminal Assets Act 2003* is likely to engage the right to a fair trial under section 21 of the HRA and a defendant's rights in a criminal proceeding under section 22 of the HRA. This is because the amendment provides for recognition of confiscation orders made in other jurisdictions (ie Western Australia and Victoria) that are not based on criminal convictions.

The right to a fair trial has been characterised by Mason CJ and McHugh J as 'a right not to be tried unfairly' or 'an immunity against conviction otherwise than after a fair trial'. Section 22, which provides rights in a criminal proceeding, gives effect to Article 14 of the ICCPR and specifies that 'everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law'. The presumption of innocence reflects the fundamental basis of the adversarial system and requires the state to prove a defendant's guilt before their rights may be justifiably limited by sanctions.

#### ***The importance of the purpose of the limitation (s28(2)(b))***

The purpose of this amendment is to recognise non-conviction based orders validly made by the courts in other Australian jurisdictions in order to provide for their enforcement in the ACT. The effect of the amendment is to ensure that assets that are subject to confiscation orders in other States or the Northern Territory cannot be moved into the ACT to frustrate their enforcement. Such enforcement serves the greater public interest in diminishing capacity for investment of criminal assets in further criminal activity and by reducing the financial incentive for those who may contemplate criminal activity.

#### ***Nature and extent of the limitation (s28(2)(c))***

While the ACT Government notes the concerns in relation to the human rights implications of non-conviction based confiscation orders, recognition of any relevant orders ('confiscation

orders’) made by courts in other Australian jurisdictions is subject to judicial scrutiny and statutory safeguards in the ACT and their jurisdiction of origin.

The current amendment maintains the requirement for the interstate order to be registered under the *Confiscation of Criminal Assets Act 2003* and in the ACT under the *Service and Execution of Process Act 1992* (Cwlth). This provides scope for judicial discretion in the registration, and therefore recognition, of interstate orders. Registration of such orders is not automatic. To the extent that an order could not, on recognition, be enforced in the ACT, registration of the order may be refused or cancelled by the court.<sup>4</sup> Where enforcement of the penalty order would require a public authority to act in a way that is incompatible with a human right under the HRA, this may permit the court or registrar to refuse to register an interstate order or cancel a registered interstate order. The registration of an interstate order may also be cancelled by a relevant court if the registration was improperly made.<sup>5</sup>

In addition, the Director of Public Prosecutions will be required to consider its obligations as a public authority under the *Human Rights Act 2004* in deciding whether to register an authenticated copy of the interstate order in a relevant court.

Applications for a confiscation order are also subject to legislative safeguards and criteria in their jurisdiction of origin. For instance, confiscation orders may often be subject to notification requirements – in Victoria a person must be notified when a non-conviction based confiscation order is granted.<sup>6</sup> The relevant court is empowered to compel an applicant for a confiscation order to give notice of the application to any person who the court reasonably believes may have an interest in the property in question.<sup>7</sup>

Procedures are also codified to permit a person to apply for their affected interest in the property to be excluded from the operation of the confiscation order.<sup>8</sup> Legislation also provides, in certain cases, for a person to seek relief from the confiscated property from undue hardship caused by the operation of a confiscation order.<sup>9</sup> In Western Australia, the court may set aside a freezing order if the affected person establishes that they would suffer undue hardship if the property is confiscated.<sup>10</sup>

All relevant applications under confiscation legislation in Western Australia and Victoria are subject to appellate review.<sup>11</sup> In addition, as a human rights jurisdiction all applications for confiscation orders in Victoria will be required to take account of any human rights considerations.

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<sup>4</sup> *Confiscation of Criminal Assets Act 2003*, s 137(4) and s 141(2).

<sup>5</sup> *Confiscation of Criminal Assets Act 2003*, s 141(1)(a).

<sup>6</sup> *Confiscation Act 1997* (Vic), s 40H.

<sup>7</sup> *Confiscation Act 1997* (Vic), ss 36N and 40J.

<sup>8</sup> *Criminal Property Confiscation Act 2000* (WA), Part 6; *Confiscation Act 1997* (Vic), ss 36U and 40R.

<sup>9</sup> *Confiscation Act 1997* (Vic), s 45.

<sup>10</sup> *Criminal Property Confiscation Act 2000* (WA), s 82(3)(f).

<sup>11</sup> *Criminal Property Confiscation Act 2000* (WA), s 7.

Any less restrictive means reasonably available to achieve the purpose (s28(2)(e))

Allowing registration of non-conviction based interstate confiscation orders is the least restrictive means available to facilitate enforcement in the ACT and prevent movement of criminal assets into the ACT to frustrate valid interstate confiscation orders. By their nature, it is not possible to impose restrictions that dictate or vary the content of interstate confiscation orders.

## **Climate Change Impacts**

This Bill has no identified climate change impacts.

## **CLAUSE NOTES**

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause names the Act.

#### **Clause 2 Commencement**

This clause provides for the commencement of the Act on the seventh day after the Act's notification day.

#### **Clause 3 Legislation Amended**

This clause provides that the Act amends the legislation mentioned in schedule 1.

### **Schedule 1 Legislation amended**

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

##### **Amendment 1.1 Section 112 (1) (d)**

Amendment 1.1 omits section 112 (1) (d) of the ACAT Act to allow for the transfer of a prescribed function of the registrar of the ACAT, this being the maintenance of tribunal records, to the principal registrar of ACT Law Courts and Tribunal.

#### **Part 1.2 Associations Incorporation Act 1991**

##### **Amendment 1.2 Section 81, new definition of *corporation law***

Amendment 1.2 inserts a new signpost definition of *corporation law* into section 81 of the Associations Act with reference to section 82 (1) of that Act.

**Amendment 1.3                      Section 82**

Amendment 1.3 substitutes Section 82 of the Associations Act to allow an incorporated association to seek permission from the registrar-general to apply for registration under either the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth). The amendment also makes minor changes to the structure of the provision for ease of reading.

**Amendment 1.4                      Section 83 (2) (a) (i) and 85**

Amendment 1.4 makes a minor technical amendment to ensure consistency of language throughout the Associations Act. The clause replaces the phrase ‘the Corporations Act as a company limited by guarantee’ with ‘a corporation law’.

**Amendment 1.5                      Section 86**

Amendment 1.5 makes a minor technical amendment to ensure consistency of language. The clause removes the phrase ‘that has been registered as a company’ from section 86 of the Associations Act.

**Amendment 1.6                      Section 86 (b)**

Amendment 1.6 makes a minor technical amendment to ensure consistency of language. The clause omits ‘the company’ from section 86(b) and substitutes the phrase ‘registration under the corporation law (the company)’.

**Amendment 1.7                      Dictionary, note 2**

Amendment 1.7 adds ‘the Corporations Act’ into a list in Note 2 that provides relevant definitions that are contained in the *Legislation Act 2001*, dict, pt 1.

**Amendment 1.8                      Dictionary, new definition of *corporation law***

Amendment 1.8 creates a new signpost definition of ‘corporation law’ for part 6 of the Associations Act, by reference to section 82(1) of that Act.

**Part 1.3                                  Civil Law (Sale of Residential Property) Act 2003**

**Amendment 1.9                      Section 9 (1) (h) (iii)**

Amendment 1.9 substitutes the phrase ‘in that period’ in existing section 9 (1) (h) (iii) of the Sale of Residential Property Act for the phrase ‘in the 6 months before that date’. The effect

of this amendment is to require a seller to disclose any building and compliance inspection reports obtained in the six months before the date the property was advertised, listed or offered for sale, rather than only those obtained in the three months before that date.

**Amendment 1.10                      Section 18 (1) (a) and (b)**

Amendment 1.10 amends section 18 (1) (a) and 18 (1) (b) of the Sale of Residential Property Act to provide that a buyer will be liable to reimburse a seller for the first building and compliance inspection report and first pest inspection report that the seller obtained.

**Amendment 1.11                      New part 8**

Amendment 1.11 inserts new part 8 into the Sale of Residential Property Act to provide for the transitional introduction of amendments 1.9 and 1.10.

New section 48 – Application of amendments

New section 48 provides that the amendments made by the Bill do not apply in relation to a contract or proposed contract for sale of residential property if the property was advertised, offered for sale or listed for sale by an agent before the Bill’s commencement.

New section 49 – Expiry– pt 8

New section 49 provides that new part 8, which includes the transitional arrangements for introduction of amendments 1.9 and 1.10, expires one year after the day it commences. This section also includes an explanatory note that indicates that transitional provisions, such as this provision, continue to have effect after being repealed.

**Part 1.4                                  Civil Law (Wrongs) Act 2002**

**Amendment 1.12                      Section 4, note 1, 3<sup>rd</sup> dot point**

Amendment 1.12 omits a reference to section 203B (Further reports by insurers) in Note 1 in Section 4 of the Wrongs Act.

**Amendment 1.13                      Part 15.2**

Amendment 1.13 omits Part 15.2 of the Wrongs Act. The effect of this amendment will be to remove general reporting requirements of insurers in the ACT.

**Amendment 1.14                      New chapter 17**

Amendment 1.14 inserts a new chapter 17, which provides transitional arrangements that apply to the repeal of Part 15.2 of the Wrongs Act.



### New section 250 – Ongoing confidentiality of general reports of insurers

New section 250 provides that despite the repeal of Part 15.2, provisions that preserve the confidentiality of general reports of insurers provided under that section continue to apply.

### New section 251 – Expiry—ch 17

New section 251 provides that new Chapter 17 expires on the day the Bill commences. This section also includes an explanatory note that indicates that transitional provisions, such as this provision, continue to have effect after being repealed.

#### **Amendment 1.15                      Dictionary, definition of *insurer***

Amendment 1.15 omits a definition of *insurer* from the Dictionary of the Wrongs Act for the purpose of Part 15.2, relating to general reporting requirements of insurers.

#### **Part 1.5                                  Civil Law (Wrongs) Regulation 2003**

#### **Amendment 1.16                      Sections 12 and 12A**

Amendment 1.16 omits Sections 12 and 12A from the *Civil Law (Wrongs) Regulation 2003*. This amendment supports the repeal of Part 15.2 of the Wrongs Act by removing redundant regulations relating to prescribed classes of insurance policy and disclosure of confidential information in general reports.

#### **Part 1.6                                  Confiscation of Criminal Assets Act 2003**

#### **Amendment 1.17                      Section 142 (1)**

Amendment 1.17 substitutes section 142 (1) of the COCA Act to remove existing subsections (a) and (b), which require interstate penalty orders to be based on a criminal charge or conviction. Under the amended section 142 (1), section 142 (creation of interstates penalty charges) only applies if an interstate penalty order is registered under that Act or registered in the ACT under the *Service and Execution of Process Act 1992* (Cwlth).

#### **Amendment 1.18                      Section 142 (2)**

Amendment 1.18 makes a consequential substitution of references in section 142 (2) to subsections 142 (1) (c) and 142 (1) (d). These subsections are replaced with references to subsections 142 (1) (a) and (b) to reflect the changes made in amendment 1.18.

**Part 1.7                      Cooperatives Regulation 2003**

**Amendment 1.19              Section 26A**

Amendment 1.15 replaces a reference to the now-repealed *Aboriginal Councils and Associations Act 1976* (Cwlth) in the *Cooperatives Regulation 2003* with reference to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth). This amendment will provide certainty that a cooperative may apply to become registered or incorporated as a corporation established under the CATSI Act.

**Part 1.8                      Coroners Act 1997**

**Amendment 1.20              Section 57 (5) and (6)**

Amendment 1.20 substitutes subsections (5) and (6) of the Coroners Act to provide that the responsible Minister must present a report received under section 57 (4) to the Legislative Assembly not later than the first sitting week after the end of 6 months after the day the Minister receives that report.

**Amendment 1.21              Section 57 (7), definitions of *Speaker* and *unavailable***

Amendment 1.21 omits redundant definitions of *Speaker* and *unavailable* in section 57, due to omission of the relevant subsections.

**Amendment 1.22              Section 76 (3)**

Amendment 1.22 substitutes section 76 (3) of the Coroners Act to provide that where the responsible Minister must provide a response to the coroner under both section 76 (2) (in relation to a death in custody) and section 57 (5) (b) (in relation to a public safety issue), both responses must be presented to the Legislative Assembly no later than the time prescribed in section 57 (within 6 months).

In all other cases, the response must be provided as soon as practicable after receiving it.

**Part 1.9                      Court Procedures Act 2004**

**Amendment 1.23              Section 5A (2) (b)**

Amendment 1.23 substitutes the phrase ‘the efficient use of the judicial and administrative resources available for the purposes of the court’ into section 5A (2) (b) of the CPA Act. Section 5A lists the objectives that form the main purpose of the civil procedure provisions under that Act and requires the court to interpret these provisions in a manner that promotes the main purpose. This amendment will provide certainty that the Court must interpret civil

provisions in light of both judicial and administrative resources, rather than administrative resources in isolation.

**Part 1.10                      Crimes Act 1900**

**Amendment 1.24                      Section 7A, note 1, new dot point**

Amendment 1.24 inserts a reference to new section 28A into Note 1 of Section 7A, which lists offences under the Crimes Act to which the *Criminal Code*, ch 2 applies.

**Amendment 1.25                      New section 28A**

Amendment 1.25 inserts a new section 28A into the Crimes Act which provides that a person commits an offence if the person intentionally throws an object at, drops an object on, or places an object in the path of, a vehicle, the vehicle is on a road, road-related area or railway, there is a person in the vehicle and the conduct risks the safety of any person.

The maximum penalty for the new offence is imprisonment for 2 years. This maximum penalty is consistent with penalties available for the offence of assault and other offences with the same maximum penalty.

The new section outlines that it is not necessary for the prosecution to prove that the object made contact with the vehicle. Subsection (4) of the new section includes a list of definitions for the purposes of this section.

**Part 1.11                      Firearms Act 1996**

**Amendment 1.26                      Section 35**

Amendment 1.26 omits the phrase ‘this Act’ from section 35 of the Firearms Act and substitutes the phrase ‘this Act or another territory law’. This amendment will extend the ability of the Registrar of Firearms to delegate their functions under the Prohibited Weapons Act to, for instance, the deputy registrar.

**Part 1.12                      Land Titles Act 1925**

**Amendment 1.27                      Section 177**

Amendment 1.27 omits Section 177 from the Land Titles Act to remove the requirement that any application instrument or other document must be attested in ink. This amendment is intended to remove a barrier to the introduction of a process for electronic lodgement of titles.

**Amendment 1.28                      New section 178A**

Amendment 1.28 inserts a new section 178A into part 19 of the Land Titles Act.

### New section 178A – Registrar-general may collect information

New section 178A authorises the registrar-general to collect and give information to the Commissioner for Taxation that the Territory is required to provide under the *Tax Administration Act 1953* (Cwlth), schedule 1, section 396-55. Under the new section, information collected only under this section must not be included on the public register. Any information collected under this section must also not be kept for longer than 5 years.

### **Part 1.13                      Legal Profession Act 2006**

#### **Amendment 1.29                      Section 304 (2)**

Amendment 1.29 amends section 304 (2) of the LPA to qualify the requirement that legal costs that are or have been the subject of a consumer dispute under Chapter 4 of the Act must not be the subject of a costs assessment.

The amended subsection (2) provides that this requirement does not apply to the extent that the relevant council for the legal practitioner (ie the Law Society) is unable to resolve the costs dispute and has notified the parties of its entitlement to apply for a costs assessment or has referred the matter to the Supreme Court for a costs assessment under section 409.

The amended subsection (2) also provides that this requirement will not apply if the costs dispute is withdrawn.

### **Part 1.14                      Magistrates Court Act 1930**

#### **Amendment 1.30                      New chapter 13**

Amendment 1.30 inserts a new chapter 13 into the Magistrates Court Act.

### New section 470 – Declaration

New section 470 declares Lorraine Anne Walker as having been the Industrial Court Magistrate during the period 8 November 2013 to 29 March 2016.

### New section 471 – Validation

New section 471 deems that the declaration in new section 470 is to be taken as having operated for the specified period as if it had been made under section 291U and properly notified on the ACT legislation register.

The provision provides that anything done (or purporting to have been done) by Lorraine Anne Walker during the period mentioned in new section 470 as the Industrial Court Magistrate (or where referred to as the ‘Industrial Magistrate’) is taken to be, and to always have been, valid.

## New section 472 – Expiry – ch 13

New section 472 provides that this chapter expires on the day it commences. Explanatory notes in this section observes that the validating effect of the chapter is unaffected by the repeal of the law and that the expiry of transitional provisions do not end their effect.

### **Part.1.15 Medicines, Poisons and Therapeutic Goods Act 2008**

#### **Amendment 1.31 New section 37 (2A)**

Amendment 1.31 inserts new section 37 (2A) into the MPTG Act, which exempts a person from committing an offence under section 45 of the *Criminal Code* (Complicity and common purpose) in relation to an offence under sections 37 (1) or (2) of the Act only because the person supplies sterile injecting equipment to the other person for the purpose of preventing the spread of blood-borne disease.

#### **Amendment 1.32 New section 74 (1A)**

Amendment 1.32 inserts new section 74 (1A) into the MPTG Act, which exempts a person from committing an offence under section 74(1) of that Act (Supplying regulated therapeutic goods) if the person supplies sterile injecting equipment to someone else for the purpose of preventing the spread of blood-borne disease.

#### **Amendment 1.33 New section 74 (3)**

Amendment 1.33 inserts new section 74 (3) into the MPTG Act, which exempts a person from committing an offence under section 45 of the *Criminal Code* (Complicity and common purpose) in relation to an offence committed by another person under section 74(2) only because the person supplies sterile injecting equipment to the other person for the purpose of preventing the spread of blood-borne disease.

### **Part 1.16 Prohibited Weapons Act 1996**

#### **Amendment 1.34 Section 17 (2) and notes**

Amendment 1.34 omits section 17 (2) of the Prohibited Weapons Act to remove a provision that specifically allows the registrar of firearms to delegate a particular function under the Act to a police officer. This omission will dispel potential ambiguity about the scope of the registrar of firearms' authority under the Firearms Act to delegate functions under the Prohibited Weapons Act to a deputy-registrar, as provided for in amendment 1.26.

### **Part 1.17 Security Industry Act 2003**

**Amendment 1.35**                      **Section 8 (1), definition of *security equipment*, paragraph (b)**

Amendment 1.35 inserts the word ‘specifically’ before the word ‘designed’ in the definition of security equipment in section 8 (1) of the SI Act. The effect of this amendment is to qualify that the definition of security equipment only applies to devices or equipment that are installed for the primary purpose of enhancing security or for protection or watching of any property.

The amendment also inserts examples of equipment or devices that are not specifically designed or adapted to provide or enhance security or for the protection into section 8 (1), paragraph (b). The amendment also includes a note that explains an example is not part of the Act, is not exhaustive and may extend, but does not limit the meaning of the relevant provision.

**Part 1.18**                      **Security Industry Regulation 2003**

**Amendment 1.36**                      **Section 5**

Amendment 1.36 omits Section 5 of the SI Regulation which prescribes equipment to be security equipment, including security screen doors, security windows with built-in locks, and security garage doors that cannot be opened with keys. This section is no longer required due to amendment 1.35, which updates the definition of security equipment in section 8 (1) of the SI Act and provides explanatory examples of security equipment in a note.

**Amendment 1.37**                      **New section 6 (1) (l)**

Amendment 1.37 inserts new section 6 (1) (l) into the SI Regulation, which exempts to the a person who sells security equipment by wholesale only (other than directly to the public) from the application of the SI Act, including licensing requirements.

**Amendment 1.38**                      **New section 6 (2A)**

Amendment 1.38 inserts new section 6 (2A) into the SI Regulation, which exempts an individual or corporation from the requirement to hold a licence authorising the person to act as a monitoring service operator where they operate in another state or territory in respect of property within the ACT.

This exemption will operate only if the individual or corporation holds an authority or licence issued under the law of another state authorising their provision of monitoring services in that other state.

**Amendment 1.39**                      **Table 8, item 4**

Amendment 1.39 omits the prescribed training requirement in Section 8, table 8 of the SI Regulation for persons who apply for an employee licence to act as a monitoring centre

operator. The effect of this amendment is to remove the requirement for applicants to complete a Statement of Attainment in Security Operations as a precondition to the grant of this licence.

**Part 1.19                      Supreme Court Act 1933**

**Amendment 1.40              Section 46**

Amendment 1.40 substitutes Section 46 of the Supreme Court Act to move responsibility for the appointment of the sheriff of the Supreme Court to the relevant director-general .

**Part 1.20                      Territory Records Act 2002**

**Amendment 1.41              Section 8 (b) and (d)**

Amendment 1.41 substitutes Section 8 (b) and (d) of the Territory Records Act to make the principal registrar of ACT Law Courts and Tribunal the principal officer of the ACAT, the Supreme Court and the Magistrates Court or Coroner’s Court. This amendment will require the principal registrar to ensure that both ACT Law Courts and the ACAT comply with the Territory Records Act in relation to their records.

**Part 1.21 Workplace Privacy Amendment Act 2016**

**Amendment 1.42              Section 2**

Amendment 1.42 substitutes a new commencement provision for the *Workplace Privacy Amendment Act 2016*. It provides that the Act, other than section 5 and sections 7 to 16) commence on a day fixed by the Minister by written notice.

Section 5 and sections 7 to 16 commence 2 years after this Act’s notification day.

**Amendment 1.43              Section 13 Proposed new section 34A(2)**

Amendment 1.43 inserts “section 5” after “commencement of the amending Act”. The review will occur as soon as practicable 2 years after the commencement of section 5 of the *Workplace Privacy Amendment Act 2016*.