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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COURTS AND OTHER JUSTICE LEGISLATION AMENDMENT BILL 2018

EXPLANATORY STATEMENT

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This explanatory statement relates to the Courts and Other Justice Legislation Amendment Bill 2018 (the Bill) 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 is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Overview

Purpose of the Bill

The Bill will amend several pieces of legislation to create further improvements and efficiencies in ACT court and tribunal structures and processes, and the operation of the ACT justice and coronial systems.

The Acts and Regulations amended are the *ACT Civil and Administrative Tribunal Act 2008, ACT Civil and Administrative Tribunal Regulation 2009, Children and Young People Act 2008, Coroners Act 1997, Corrections Management Act 2007, Crimes (Sentence Administration) Act 2005Evidence Act 2011, Evidence (Miscellaneous Provisions) Act 1991, Judicial Commissions Act 1994, Juries Act 1967, Legislation Act 2001, Magistrates Court Act 1930, Oaths and Affirmations Act 1984, Royal Commissions Act 1991, Supreme Court Act 1933, Unit Titles (Management) Act 2011,* and the *Utilities Act 2000.*

The Bill introduces efficiencies in court processes by clarifying and updating processes, definitions and language. The Act will commence on the 28th day after its notification day.

A number of amendments have been made to the *ACT Civil and Administrative Tribunal Act 2008* and *ACT Civil and Administrative Tribunal Regulation 2009*, including to:

- clarify the process for enforcement of ACT Civil and Administrative Tribunal (ACAT) orders in ACT courts (an associated amendment has been made to the *Magistrates Court Act 1930*)

- remove a possible unintentional limitation on the ACAT's subpoena powers in relation to health records

- clarify that the recovery of an expense by an owners' corporation for a units plan can include a reasonable legal expense reasonably incurred in ACAT proceedings (an associated amendment has been made to the *Unit Titles (Management) Act 2011*

- increase the maximum amount that can be awarded under an ACAT occupational discipline order, and

- simplify appointment requirements for ACAT health practitioner members.

A number of amendments have been made to the *Coroners Act 1997,* including to:

- allow the coroner, by order, to obtain medical records in any reportable death, not just deaths where post-mortem orders are made

- allow a coroner to authorise a person to conduct routine non-invasive ancillary examinations, such as taking samples of blood, bone, tissues, bodily fluids and hair (subject to having regard to the desirability of minimising distress or offence to a person because of their cultural attitudes or spiritual beliefs)

- allow a deputy coroner to authorise the release of the body of a deceased person in situations where there is no reason why the body should not be buried or cremated

- simplify the process for authorising a person or people to assist in any examination, reinterment, exhumation, analysis or recovery, and

- give certain coronial investigation scene orders powers to anyone to whom an order is issued.

The *Evidence Act 2011* and *Legislation Act 2001* have been amended to update the presumption for the receipt of postal articles sent by prepaid post to reflect new postal delivery performance standards.

Amendments to the *Evidence (Miscellaneous Provisions) Act 1991* have clarified the process for ACT courts to take evidence and submissions using audiovisual links or audio links with other places (including places outside Australia) in ACT proceedings. Consequential amendments resulting from the audiovisual link and audiolink amendments have also been made to the *Children and Young People Act 2008,* the *Corrections Management Act 2007*, the *Crimes (Sentence Administration) Act 2005* and the *Royal Commissions Act 1991*.

The *Judicial Commissions Act 1994* has been amended to:

- allow the ACT Judicial Council to delegate its early dismissal of complaints function to the Judicial Commission staff in a limited range of circumstances

- clarify when a judicial officer is considered to have failed to comply with a request to undergo a medical examination, and

- amend the situations in which the ACT Judicial Council is required to report to the Attorney-General, to support the independence of the Judicial Council.

A number of amendments have been made to the *Juries Act 1967*, including to:

- set out an updated list of people who may be disqualified based on their own actions, or exempt or able to claim exemption because of other personal circumstances
- provide for reasonable support to be provided to jurors with a disability or with an insufficient understanding of the English language, if such support can reasonably be given
- modernise and streamline the processes for establishing a jury panel and empanelling a jury
- simplify and improve the jury summons enforcement process
- revise the juries oath and affirmation text and process, and allow jurors to make the oath or affirmation individually or as part of a group, and
- allow the court to either supply refreshments to the jury members or to provide each juror with an allowance to purchase refreshments.

Amendments to the *Oaths and Affirmations Act 1984* have removed inconsistencies in the text for an oath or affirmation by a witness or interpreter, and reflect the more modern form of the oath and affirmation text in the *Evidence Act 2011.*

The *Supreme Court Act 1933* has been amended to expand the jurisdiction of the Associate Judge to include the jurisdiction (including the inherent jurisdiction) of the Supreme Court that is exercisable by a single judge, except for trials by indictment and taking part in the Court of Appeal.

The *Utilities Act 2000* has been amended to increase the compensation limit for ACAT consideration of energy and water complaints to $25,000.

Human rights implications

The Bill supports several rights under the *Human Rights Act 2004,* and all limitations on human rights can be justified as 'reasonable limits set by laws that can be demonstrably justified in a free and democratic society' as required by section 28 of the Act.

Right to a fair trial

By improving the efficient operation of the ACT courts and tribunal, the Bill supports the right to a fair trial contained in section 21 of the *Human Rights Act 2004*, which provides that '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'. For example, by strengthening the operation of the Judicial Council through amendments to the *Judicial Commissions Act 1994,* the Bill strengthens the operation and independence of the judicial complaints framework, thereby supporting the existence of a competent, independent and impartial court system in the ACT.

Rights in criminal proceedings

The Bill also supports rights in criminal proceedings, such as the right to be tried without unreasonable delay in section 22(2)(c). For example, by clarifying the process for ACT courts to take evidence and submissions using audiovisual links or audio links, the *Evidence (Miscellaneous Provisions) Act 1991* amendments help to avoid unnecessary delays to criminal proceedings that can result when key witnesses are unavailable to appear in person.

Recognition and equality before the law

Section 8 of the *Human Rights Act 2004* provides that 'everyone has the right to equal and effective protection against discrimination on any ground'. The Bill supports this right, including through its amendment to the *Juries Act 1967* to provide for reasonable support to be provided to jurors with a disability or with an insufficient understanding of the English language, if such support can reasonably be given (see section 16). Requiring the consideration of providing such support is consistent with the decisions by the UN Committee on the Rights of Persons with Disabilities, which found that Australia had breached its obligations under the Convention on the Rights of Persons with Disabilities for failing to provide reasonable adjustments for hearing impaired individuals to participate in jury service (*Gemma Beasley v. Australia*, Communication No. 11/2013, Views of 25 April 2016; and *Michael Lockrey v. Australia*, Communication No. 13/2013, Views of 25 April 2016).

Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

Section 27 of the *Human Rights Act 2004* provides that 'anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.' New section 17A of the *Coroners Act 1997* takes the existing safeguard in section 28, and expands it to apply to any function or decision in relation to an inquest. The safeguard requires a coroner to have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the exercise of a function or decision.

Privacy and reputation

Section 12(a) of the *Human Rights Act 2004* provides that 'everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. New section 19B of the *Coroners Act 1997* provides that, if a person has died in any of the circumstances to which a coroner has jurisdiction to hold an inquest, the coroner may, by order, direct that a person who has responsibility for or control of any medical records relating to the recently deceased person give the records to the coroner or doctor stated in the order. New section 19C provides that a coroner may authorise a person, in writing, to conduct an ancillary examination of the body of a person (which includes non-invasive examinations such as taking samples of blood or hair).

While section 19B and section 19C would engage the right to privacy under section 12(a) if they related to living people, the rights under the *Human Rights Act 2004* do not apply to deceased people. Nevertheless, the amendments can be demonstrably justified in a free and democratic society as required by section 28 of the *Human Rights Act 2004.* Obtaining necessary medical information about a deceased person and conducting appropriate examinations of a deceased person's body are essential components of the coronial process, and as such any privacy implications are directly related to the purpose of the provision. The purpose of these amendments are to delink the ability for the coroner to be able to order the production of medical records from an order for a post mortem examination, as is currently the case under section 21. In many cases, such as where prior to death a deceased person has been in receipt of significant medical treatment, a review by the coronial pathologist of the relevant records of the treating professionals may be sufficient in order to determine a cause of death. This may then prevent the need for an invasive autopsy, something that is a legitimate objective for reasons of efficiency and also for reducing the trauma for friends or family of the deceased that can be associated with an autopsy.

Safeguards have been included in relation to sections 19B and 19C, including that the direction to obtain medical records or the authorisation to conduct an ancillary examination may only be executed in writing, and that the records must be returned to the person who gave them as soon as reasonably practicable after a coroner has dispensed with or completed a post-mortem examination. While it is impossible to obtain the consent of the person to whom the records relate, the section 17A safeguard outlined above provides a requirement to consider the desirability of minimising the causing of distress or offence to people (such as family members) who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the exercise of a function or decision.

A further safeguard is the application of the privacy principles under the *Health Records (Privacy and Access) Act 1997* (the Health Records Act) and the *Information Privacy Act 2014*. Most records relating to section 19B and section 19C would be health records, and so the Health Records Act is particularly relevant. Section 27 of the Health Records Act provides that 'the privacy principles apply in relation to a deceased consumer, so far as they are reasonably capable of doing so, in the same way as they apply in relation to a consumer who is not deceased.' In addition, section 33(1) provides that the Health Records Act 'does not prevent a court of competent jurisdiction from making, or continuing in force, under a law of the Territory an order in such terms that compliance with it would, apart from the order, constitute a contravention of the Act.' Nevertheless, section 33(2) also provides that, 'in deciding whether to make, or continue in force, an order in such terms the court must have regard to the relevant provisions of this Act.' This means that the Coroners Court must consider the privacy principles in making an order.

Forced medical treatment

Section 10(2) of the *Human Rights Act 2004* provides that 'no-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.' Section 35 of the *Judicial Commissions Act 1994* currently provides that if, in the course of examining a complaint, the Judicial Council or a Judicial Commission forms the opinion on reasonable grounds that the judicial officer concerned may be physically or mentally unfit to exercise efficiently the functions of his or her office, the Judicial Council may request that the judicial officer undergo a specified medical examination within a reasonable stated time and give the council a copy of any report of the medical examination. This requirement to undergo a medical examination is an existing requirement that is a limitation on section 10(2). The Bill will amend section 35 to add a requirement that the medical examination must relate only to substantiating the opinion that the judicial officer may be physically or mentally unfit to exercise efficiently the functions of his or her office.

The limitation to section 10(2) can be can be justified as the requirement to undergo the medical examination is closely related to the purpose of the section, that is, to determine whether a judicial officer may be physically or mentally unfit to exercise efficiently the functions of his or her office. The limitation takes the least restrictive means possible, as the medical examination must relate only to substantiating the opinion that the judicial officer may be physically or mentally unfit to exercise efficiently the functions of his or her office. The amendment does not refer specifically to the established concept of requiring a medical examination to relate only to the 'inherent requirements' of a position. This is to avoid introducing two similar but slightly different tests for the medical examination. However the provision (as amended) incorporates in substance the concept of 'inherent requirements'. Therefore, the limitation on section 10(2) can be justified as demonstrably justified in a free and democratic society.

Regulatory impact analysis

There are no regulatory implications arising from the Bill.

CLAUSE NOTES

Part 1 – Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Courts and Other Justice Legislation Amendment Act 2018.*

Clause 2 Commencement

This clause provides that the Act commences on the 28th day after its notification day.

Clause 3 Legislation Amended

This clause identifies the legislation amended by the Bill – the *ACT Civil and Administrative Tribunal Act 2008, ACT Civil and Administrative Tribunal Regulation 2009, Coroners Act 1997, Evidence Act 2011, Evidence (Miscellaneous Provisions) Act 1991, Judicial Commissions Act 1994, Juries Act 1967, Legislation Act 2001, Magistrates Court Act 1930, Oaths and Affirmations Act 1984, Supreme Court Act 1933, Unit Titles (Management) Act 2011,* and the *Utilities Act 2000.*

Part 2 – *ACT Civil and Administrative Tribunal Act 2008*

Clause 4 Section 22 (Tribunal jurisdiction and powers of Magistrates Court)

Section 22 of the *ACAT Civil and Administrative Tribunal Act 2008* (the ACAT Act) provides that the ACT Civil and Administrative Tribunal (ACAT) has, in relation to civil dispute applications, the same jurisdiction and powers as the Magistrates Court has under part 4.2 (Civil jurisdiction) of the *Magistrates Court Act 1930*, other than as prescribed in the rules. This clause inserts a new note to section 22 to clarify the jurisdiction of the ACAT by reference to the extent and limits on the jurisdiction of the Magistrates Court.

Clause 5 Section 41(7) (Powers in relation to witnesses etc)

This clause adds a new section 41(7), which provides that the ACAT is taken to be a court of competent jurisdiction for the *Health Records (Privacy and Access) Act 1977* when exercising its powers under section 41. This clause addresses a recent challenge to the ACAT's ability to subpoena health records under the *Health Records (Privacy and Access) Act 1997* (the Health Records Act). Section 6(2) of the Health Records Act provides that a person is taken not to have lawful authority to contravene a privacy principle unless the person proves that compliance with the privacy principle would have contravened (among other things) 'an order of a court of competent jurisdiction.' The dictionary defines an 'order of a court of competent jurisdiction' to include a subpoena or similar process of such a court. This clause removes any doubt about the ability of the ACAT to subpoena health records under the Health Records Act.

Clause 6 Section 44 (Procedure in absence of party)

Section 44 relates to ACAT procedure where, at the time set for the hearing of an application, a party fails to appear either personally or by a representative. This clause inserts a new note to section 44 to draw attention to section 56(c)(i), which provides that the tribunal may, by order, amend of set aside a tribunal order if the order was made after hearing an application in the absence of a party.

Clause 7 Section 48(1) (Costs of proceedings)

This clause amends section 48(1) to provide that not only the ACAT Act, but also another territory law, may provide an exception to the presumption that the parties to an application must bear their own costs. This amendment relates to an apparent inconsistency between section 48 of the ACAT Act and section 31 of the *Unit Titles (Management) Act 2011* (the UTM Act) identified in recent ACAT proceedings.

Section 48 of the ACAT Act provides that the parties to an ACAT application must bear their own costs unless the ACAT Act otherwise provides or the tribunal otherwise orders, subject to certain specified exceptions. Section 31 of the *Unit Titles (Management) Act 2011* (the UTM Act) provides that if an owners corporation for a units plan has in carrying out its functions incurred an expense (for example, because of a breach of rules by a member of the corporation) the amount spent or the cost of the work is recoverable by the owners corporation from the member as a debt.

In *The Owners - Units Plan 840 v Richardson* [2015] ACAT 77 (Richardson), the tribunal held that, as an expense in section 31 of the UTM Act could include legal expenses according to its plain meaning, an apparent inconsistency exists with the principle in section 48 of the ACAT Act. The ACAT in that case concluded [at 83]:

> ‘The inconsistency between section 31 of the UTM Act and subsection 48(1) of the ACAT Act, in relation to recovery under section 31 of costs incurred in tribunal proceedings, must be resolved by finding that section 31 does not apply to the extent of any inconsistency … This means that costs incurred in tribunal proceedings are not recoverable by the owners corporation as a section 31 expense unless they have been ordered to be paid by the Tribunal or the ACAT Act otherwise provides.’

In *In the Matter of Ruling Tribunal Section 31 of the Unit Titles (Management) Act 2011* [2017] ACAT 56, the ACAT came to the opposite conclusion. The ACAT held [at 99]:

> ‘If, as we have concluded, the starting point is that ‘costs’ of a type referred to in section 48 of the ACAT Act can be characterised as ‘expenses’ under section 31 of the UTM Act, the absence of a power to award those costs under section 48 of the ACAT Act is no longer relevant. It follows that the two sections are not in conflict. Because they do not overlap in relation to the same subject matter, they can operate separately and harmoniously alongside each other.’

However, the tribunal did acknowledge that there nevertheless exists something that can appear to be an inconsistency [at 130]:

> 'Without resiling from the conclusion reached in this case, we acknowledge that it could be contended (including for the reasons outlined by the Tribunal in Richardson) that the result in this case is inconsistent with the principle in section 48(1) of the ACAT Act that parties must bear their own costs.'

For these reasons, this amendment, and the amendments to section 48(2) of the ACAT Act and amendment to section 31(4) of the UTM Act have been included to help clarify that no inconsistency exists between section 48 of the ACAT Act and section 31 of the UTM Act. The general rule that the parties to an application must bear their own costs is intended to remain.

Clause 8 Section 48(2) (Cost of proceedings)

This clause adds a new note to section 48(2), to address the apparent inconsistency identified in *In the Matter of Ruling Tribunal Section 31 of the Unit Titles (Management) Act 2011* [2017] ACAT 56 (see further discussion in relation to clause 7). Clause 8 adds a note to section 48(2) to clarify that a legal expense relating to a proceeding in the ACAT may be recoverable as a debt under section 31 of the UTM Act.

Clause 9 Section 56(c)(i) (Other actions by tribunal)

This clause adds a new note to section 56(2)(i), to draw attention to section 44, the provision that relates to ACAT procedure where, at the time set for the hearing of an application, a party fails to appear either personally or by a representative.

Clause 10 Section 69A (Meaning of appropriate court – pt 7)

This clause adds a new section 69A at the start of Part 7 (Enforcement and offences) to define 'appropriate court' for the purposes of sections 71, 72 and 73 (see also clause 15). The definition provides that if the amount payable under an enforceable money order or the form of relief under an enforceable non-money order is within the Magistrates Court's jurisdiction, the Magistrates Court is the 'appropriate court', or otherwise the Supreme Court is the appropriate court. This change is consequent to changes to sections 71, 72 and 73.

Clause 11 Section 71 (Enforcement of orders)

Section 71 of the ACAT Act states that a money order or non-money order made by the tribunal is, by force of that section, taken to have been filed in the Magistrates Court for enforcement under the *Court Procedures Rules 2006*, part 2.18 (Enforcement) on the day the order is made. However, section 71 does not prescribe any formal steps for filing an order of the tribunal in an appropriate court.

This clause provides a new section 71, which clarifies the process for enforcement of ACAT orders. This amendment follows from the judgment of Refshauge J in *Kaney v Rushton* [2017] ACT SC 11 at [79], in which His Honour stated:

> ‘It is reasonably clear from s 71 of the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act) that it is intended that the enforcement of orders of the ACAT be effected through the established procedures under the Magistrates Court Act. It would be preferable were this to be put beyond doubt as noted above’.

Refshauge J’s comments in Kaney underscored the need to clarify the process of enforcement of ACAT orders in the Magistrates Court or the Supreme Court in certain circumstances.

The new section 71 provides that a money order or non-money order made by the tribunal may be enforced by filing in the appropriate court a copy of the order sealed by the tribunal, and an affidavit in support stating the amount owed under the money order or the non-compliance with the non-money order. The order is taken to be an enforceable order of the appropriate court in which it is filed, for the purposes of the *Court Procedures Rules 2006*, part 2.18 (Enforcement).

Section 71 also includes notes to clarify that, under the *Court Procedures Rules 2006*, certain documents must be served on the enforcement debtor or other liable person before an enforcement proceeding can be started for an enforceable money order or non-money order, and a person entitled to enforce an enforceable money order or non-money order (the original order) may obtain an enforcement order from the appropriate court to enforce the original order.

Clause 12 Section 72(1) (Faulty filed orders referred back to tribunal)

This clause is consequential on the amendments in clauses 10 and 11, and amends the reference to the Magistrates Court to refer instead to the appropriate court.

Clause 13 Section 72(2) (Faulty filed orders referred back to tribunal)

This clause is consequential on the amendments in clauses 10 and 11, and amends the reference to the Magistrates Court to refer instead to the appropriate court.

Clause 14 Section 73(2) (Fixed faulty orders)

This clause is consequential on the amendments in clauses 10 and 11, and includes a reference to enforcement under section 71, and amends the reference to the Magistrates Court to refer instead to the appropriate court.

Clause 15 Dictionary, new definition of appropriate court

This clause adds a new definition in the Dictionary of the Act of ‘appropriate court’, by reference to section 69A (see clause 10).

Part 3 – *ACT Civil and Administrative Tribunal Regulation 2009*

Clause 16 Section 4 (Maximum amount payable under occupational discipline order – Act, s66(2)(h)

Section 4 of the *ACT Civil and Administrative Tribunal Regulation 2009* (the ACAT Regulation) provides a maximum amount payable under an occupational discipline

order of $1,000 for an individual and $5,000 for a corporation. These amounts have not been increased since the regulation was first made in early 2009, which means that the limit may not always reflect the seriousness of the conduct. This clause increases the maximum amount payable to $5,000 for an individual, and $25,000 for a corporation, which will provide the ACAT increased flexibility in determining the appropriate amount payment payable under an occupational discipline order.

Clause 17 Section 6 (Appointment of senior and ordinary members of the tribunal – Act s96)

This clause repeals section 6(2) to (5) of the ACAT Regulation, and substitutes a new section 6(2) which provides more flexible requirements for the appointment of health practitioner members to the ACAT. The Attorney-General will no longer be required to appoint a minimum of 13 health practitioners. This number has proven to be excessive. Instead, the Attorney-General will be required to consider the desirability of the tribunal including as many health practitioner members as are required to allow the tribunal to exercise its functions.

The new provision also streamlines the legislated process for formal consultation on the appointment of health practitioner members, including reducing the role of the Minister for Health in nominating the health practitioner members. In practice, the Attorney-General may continue to consult the Minister for Health when appointing a health practitioner member. However, the revised process is appropriate given that the health practitioner members commonly rule on matters involving employees of the Health Directorate, and the revised process will therefore support the independent operation of the tribunal. The amendment also makes the appointment process for health practitioner members more consistent with the existing appointment process for other ACAT members.

Clause 18 Section 6 (Appointment of senior and ordinary members of the tribunal – Act s96)

This clause is consequential on the amendments in clause 17 and 19, and amends the heading of table 6.1 to simply refer to table 6, to reflect that table 6.1 has been repealed.

Clause 19 Section 6 (Appointment of senior and ordinary members of the tribunal – Act s96)

This clause removes table 6.2 in section 6 of the ACAT Regulation (see clause 17 for further background). Table 6.2 requires a minimum of 13 health practitioners be appointed. This number has proven to be excessive, and removing this table will provide discretion to ensure that an appropriate number of health practitioners are appointed.

Part 4 – *Children and Young People Act 2008*

Clause 20 Section 335(1)(b) (Appearance at disciplinary hearing by audiovisual or audio link)

This clause amends section 335(1)(b) of the *Children and Young People Act 2008* to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Part 5 – *Coroners Act 1997*

Clause 21 Section 15(4) (Control and release of body of deceased)

This clause repeals section 15(4), which currently provides that a deputy coroner may not give a certificate under subsection 15(3). Under subsection 15(3), a coroner may give a certificate authorising the release of the body of the deceased if satisfied there is no reason why the body should not be buried, cremated, or take out of the ACT for burial or cremation. The preparation and signing of a release certificate is a routine administrative task, which is not subject to similar limitations are imposed in other Australian jurisdictions. Allowing deputy coroners to issue the certificates will improve the efficiency of issuing certificates under section 15(3).

Clause 22 Section 17A (Considerations before exercising function or making decision)

This clause inserts a new section 17A in division 3.1, which provides that in exercising a function or making a decision in relation to an inquest, a coroner must have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by the exercise of the function or decision. In some circumstances, this could involve consulting a family member about how the deceased person's cultural attitudes or spiritual beliefs could be best respected during the coronial process.

This provision is an expanded version of former section 28, which had applied only to a decision whether to make an order under section 21(1) or to issue a warrant under section 26 or section 27. The new provision captures the essence of section 28, but extends the safeguard to all situations where a coroner is exercising a function or making a decision in relation to an inquest. For example, section 17A would apply to a decision about an ancillary examination under section 19A, but would also apply to a decision about consent to organ donation under the *Transplantation and Anatomy Act 1978*.

Clause 23 Sections 19A to 19C (Meaning of ancillary examination, Directions to obtain medical records, and Ancillary examinations)

This clause inserts three new sections in part 4: section 19A (Meaning of ancillary examinations), section 19B (Directions to obtain medical records) and section 19C (Ancillary examinations).

Section 19A (Meaning of ancillary examinations)

New section 19A, which provides a definition of ancillary examination for the purpose of section 19C. Ancillary examination is defined as one or more of the following procedures: taking a sample of blood or other bodily fluids, taking a sample of tissue, bone or hair, taking fingerprints, conducting radiographic imaging and examination, and conducting an external examination, including taking photographs.

Section 19B (Directions to obtain medical records)

Prior to the amendments in item 24 and item 25, section 21 permitted a coroner to order the release of medical records in relation to a deceased without subpoena. However, the provision required the making of an order to conduct a post mortem examination as a condition precedent to requesting medical records. Many families of deceased persons object to their loved one receiving an invasive autopsy. In many cases, such as where prior to death a deceased person has been in receipt of significant medical treatment, a review by the coronial pathologist of the relevant records of the treating professionals may be sufficient in order to determine a cause of death.

Therefore, new section 19B provides that if a person has died in any of the circumstances in relation to which a coroner has jurisdiction to hold an inquest, a coroner may, by order, direct a person who has responsibility for or control of any medical records relating to the deceased person, including someone in charge of a hospital or residential institution, to give the records to the coroner or the doctor stated in the order. The person who has responsibility for a person's medical records may be someone in charge of a hospital or residential institution, but it may also be a medical provider such as a general practitioner. The requirement that all records are to be provided allows for complex medical treatment paths to be followed. This provision will enable the coroner to conduct a preliminary assessment of the medical records, which can then inform any decision of the coroner to order a post-mortem examination or to dispense with the need to conduct such an examination.

Section 19C (Ancillary examinations)

Prior to the amendments in item 24 and item 25, section 21 permitted a coroner to order a post mortem examination, without defining the scope of what examinations might be ordered under that section. Section 21 requires that all examinations of a deceased person for the purpose of making coronial findings must be authorised by a coroner, which can lead to a delay in the examination. It is appropriate for examinations of a non-invasive and lesser invasive nature to be able to be routinely authorised and undertaken by trained staff (without the need for a pathologist to personally oversee). This could in some cases remove the need for an invasive autopsy and may permit deceased persons to be more quickly identified and released to their loved ones.

Section 19C provides that a coroner may authorise a person, in writing, to conduct an ancillary examination of the body of a person. Ancillary examination is defined in section 19A (see above), and includes examinations which can assist with determining identity and identifying trauma, disease or injury. It is intended that the authorisation would be able to be a standing direction.

Clause 24 Section 20(1) (Dispensing with post-mortem examination)

This clause amends section 20(1) to make clear that in considering whether to dispense with a post-mortem examination of a body, the coroner may consider any medical records provided to the coroner under section 19B (see clause 22), in addition to any other information.

Clause 25 Section 21(1) (Directions to doctors to conduct post-mortem examinations)

This clause is consequential to the repeal of section 28 by clause 29 of this Bill. Section 28 provides for the coroner to have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by a decision to make a section 21(1) order. As this safeguard is now included as a requirement for consideration in relation to all decisions that relate to an inquest (see clause 22), section 28 can be repealed. Consequently, no specific cross-reference is required.

Clause 26 Section 21(3), (4) and (5) (Directions to doctors to conduct post-mortem examinations)

This clause repeals sections 21 (3), (4) and (5), which are now covered by section 19B (see clause 22).

Clause 27 Section 26(1) (Removal of body to place for post-mortem examination)

This clause is consequential to the repeal of section 28 by clause 29 of this Bill. Section 28 provides for the coroner to have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by a decision to issue a warrant under section 26. As this safeguard is now included as a requirement for consideration in relation to all decisions that relate to an inquest (see clause 22), section 28 can be repealed. Consequently, no specific cross-reference is required.

Clause 28 Section 27(1) (Warrant for exhumation of body or recovery of ashes)

This clause is consequential to the repeal of section 28 by clause 29 of this Bill. Section 28 provides for the coroner to have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by a decision to issue a warrant under section 27. As this safeguard is now included as a requirement for consideration in relation to all decisions that relate to an inquest (see clause 21), section 28 can be repealed. Consequently, no specific cross-reference is required.

Clause 29 Section 28 (Prior considerations before direction post-mortem examinations)

This clause repeals section 28, which currently provides for the coroner to have regard to the desirability of minimising the causing of distress or offence to people who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended by a decision to make a section 21(1) order (Directions to doctors to conduct post-mortem examinations), or issue a warrant under section 26 (Removal of body to place for post-mortem examination) or section 27 (Warrant for exhumation of body or recovery of ashes). This safeguard will now be included as a requirement for consideration in relation to all decisions that relate to an inquest.

Clause 30 Section 33 (Assistance at post-mortems etc)

This clause substitutes a new section 33, which provides a simpler process for authorising a person or people to assist in an ancillary or post-mortem examination, or a reinterment, analysis, or recovery of the ashes of a deceased, or an exhumation of a body.

Section 33 currently requires a coroner to appoint a person to assist in those processes by instrument. Under this provision, in every case where a post mortem examination is conducted, a separate instrument needs to be prepared in respect of the staff who would assist the pathologist in the examination. It would be more efficient to enable a standing authorisation to be made.

The proposed amendment to section 33(2) allows the coroner to authorise a person in writing to assist with the ancillary or post-mortem examination, reinterment, exhumation, analysis or recovery. The removal of the words ‘by instrument’ will permit the making of standing authorisations. Furthermore, under section 33(3), a doctor who is authorised to conduct the ancillary examination or ordered to conduct the post-mortem examination will also be able to authorise a person, in writing, to assist with the examination.

Clause 31 Section 42A(1) (Appearance by audiovisual or audio links)

This clause amends section 42A(1) to refer to the amended title of section 32, ‘Territory courts may take evidence and submissions from another place’ rather than ‘Territory courts may take evidence and submissions from place other than participating State’ (see clause 42).

Clause 32 Section 68C(7) (Coronial investigation scene order), 68D (Establishment of coronial investigation scene) and 68E (Coronial investigation scene powers)

Section 68C(1) allows a coroner to issue an order to a police officer or other person to establish a coronial investigation scene at a stated place, exercise coronial investigation scene powers at the place stated in the order, and enter and stay at the place for those purposes. This provision gives coronial investigation scene powers to a police office or ‘other person’.

Sections 68C(7), 68D and 68E also provide coronial investigation scene powers to police officers, however, those provisions do not also extend the powers to the 'other person' who may have been authorised under section 68C(1) to establish a coronial investigation scene at a place, exercise coronial investigation scene powers at the place, or enter and stay at the place for those purposes. This clause corrects the inconsistency between section 68C(1) and sections 68C(7), 68D and 68E. It corrects an oversight in the initial inclusion of the provisions in relation to coronial investigation scene powers, which will have the legislation operate as intended. The clause amends sections 68D and 68E to give coronial investigation scene orders powers to anyone to whom an order is issued, namely, to a police officer or 'other person'.

Clause 33 Section 68G(1) (Exercise of investigation scene powers under pt 5A)

This clause amends section 68G(1) to apply to a police officer or other person, consistent with section 68C(1) (see clause 32 for further discussion).

Clause 34 Section 68G(1)(a) (Exercise of investigation scene powers under pt 5A)

This clause amends section 68G(1)(a) to apply to an officer or other person, consistent with section 68C(1) (see clause 32 for further discussion).

Clause 35 Section 68G (2) and (3) (Exercise of investigation scene powers under pt 5A)

This clause amends section 68G(2) and (3) to apply to a police officer or other person, consistent with section 68C(1) (see clause 32 for further discussion).

Clause 36 Section 68H (Part does not limit other powers)

This clause amends section 68H to apply to a police officer or other person, consistent with section 68C(1) (see clause 32 for further discussion).

Clause 37 Dictionary, definition of ancillary examination

This clause inserts a new definition of ancillary examination, which defines ancillary examination by reference to section 19A (see clause 22).

Part 6 – *Corrections Management Act 2007*

Clause 38 Section 203(1)(b) (Appearance at disciplinary hearing – audiovisual or audio link)

This clause amends section 203(1)(b) of the *Corrections Management Act 2007* to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Part 7 – *Crimes (Sentence Administration) Act 2005*

Clause 39 Section 207(1) (Appearance at board hearing by audiovisual or audio link)

This clause amends section 203(1)(b) of the *Crimes (Sentence Administration) Act 2005* to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Part 8 – *Evidence Act 2011*

Clause 40 Section 160(1) (Postal articles)

Section 160 provides a presumption (unless evidence sufficient to raise doubt about the presumption is presented) that a postal article sent by prepaid post addressed to a person at a stated address in Australia or in an external territory was received at that address on the fourth working day after the day it was posted. This clause increases the section 160 presumption from the fourth working day to the seventh working day to reflect the new postal delivery performance standards.

Part 9 – *Evidence (Miscellaneous Provisions) Act 1991*

Clause 41 Part 3.4 heading

Clauses 37 to 46 relate to the use of audiovisual or audio links in ACT proceedings.

In *R v Woutersz* [2017] ACTSC 212, at [57], Justice Penfold stated that, while there was no clear obstacle to making an order for evidence to be provided to the ACT Supreme Court by audio-visual link from Canada, 'it would be desirable for the legislature to clarify whether ACT courts are not intended to be able to receive evidence by audio or audio-visual link from locations outside Australia.'

Chapter 3 of the *Evidence (Miscellaneous Provisions) Act 1991* allows the use of audio visual links or audio links in certain ACT proceedings. Parts 3.2 and 3.3 concern the use of audiovisual links or audio links with participating States in ACT proceedings. A participating State is another State where provisions of an Act in terms substantially corresponding to chapter 3 are in force (section 16). Practically, it can be challenging to prove that another State is a participating State (as legislation in other jurisdictions varies to a significant extent). Parts 3.2 and 3.3 have been retained, so that the ACT will remain a participating State for the benefit of other jurisdictions which may rely on equivalent provisions to Parts 3.2 and 3.3 when establishing audiovisual or audio links with the ACT.

However, these amendments will broaden Part 3.4 (which currently concern the use of audiovisual links or audio links with places other than participating States in ACT proceedings) to allow the use of audiovisual or audio links to admit evidence or make a submission to the court by video link from any place within or outside the ACT, including a participating State or a place overseas.

This clause amends the heading of Part 3.4 to reflect the broadened scope of Part 3.4.

Clause 42 Section 32 heading (Territory courts may take evidence and submissions from another place)

This clause substitutes a new heading for section 32, to reflect the broadened scope of the section. Section 32 provides that, subject to any Act or rules of court, a Territory court may, on the application of a party to a proceeding before it or on its own initiative, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from certain places.

The new heading provides that Territory courts may take evidence and submissions from 'another place', rather than just from a 'place other than participating State'. See clause 41 for further background.

Clause 43 Section 32(1)(b) (Territory courts may take evidence and submissions from another place)

This clause amends section 32(1)(b) to reflect that section 32 can be used where the place is in a participating State. See clause 41 for further background.

Clause 44 New section 32(1)(c) (Territory courts may take evidence and submissions from another place)

This clause inserts a new section 32(1)(c), to reflect that section 32 applies to a place outside Australia (other than New Zealand – as the *Trans-Tasman Proceedings Act 2010* (Cwlth), pt 6, div 2 (Remote appearances from New Zealand in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10A.4 (Trans-Tasman proceedings—remote appearances) apply to remote appearances from New Zealand in an ACT proceeding). See clause 41 for further background.

Clause 45 Section 32(2)(b) and (c) (Territory courts may take evidence and submissions from another place)

This clause replaces section 32(2)(b) and 32(2)(c) with a new section 32(2)(b), which provides that the court may make a direction under section 32 only if satisfied that it is in the interests of the administration of justice to make the direction (in addition to the existing requirement under section 32(2)(a) that the necessary facilities are available or can reasonably be made available).

Section 32(2)(b) and 32(2)(c) currently provide that the court may make a direction under section 32 only if satisfied that the evidence or submission can more conveniently be given or made from the place, and the making of the direction is not unfair to any party opposing the making of the direction. Under the proposed amendments, these factors will now be considered as part of the 'interests of the administration of justice' considerations (see clause 46).

Clause 46 Section 32(2A) (Territory courts may take evidence and submissions from another place)

This clause inserts a new section 32(2A), which provides that in considering whether it is in the interests of the administration of justice to make the direction, the court may consider whether the evidence or submission can more conveniently be given

or made from the place, whether the making of the direction is unfair to any party opposing the making of the direction, whether the making of the direction could support court efficiency by reducing costs or delay to the proceeding, and anything else that the court considers appropriate. This new subsection provides guidance to the court as to what it may consider as part of considering the interests of the administration of justice, without limiting the matters that the court may consider in coming to a conclusion about whether or not to make an order under section 32.

Clause 47 Section 32(4) (Territory courts may take evidence and submissions from another place)

This clause repeals section 32(4), which provided that while a person is at a place giving evidence or making a submission, the place is taken to be part of the court. Section 32(4) is now covered by section 35D (see clause 49).

Clause 48 Part 3.6 heading

This clause amends the heading of Part 3.6 from 'Costs and expenses' to 'General matters', to reflect the broadened scope of Part 3.6.

Clause 49 New sections 35A to 35G

This clause inserts in part 3.6 new section 35A (Application – pt 3.6), section 35B (Administration of oaths and affirmations by audiovisual or audio link), section 35C (Putting documents to person by audiovisual or audio link), section 35D (Premises to be considered part of territory court).

Section 35A (Application – pt 3.6)

Section 35A states that part 3.6 applies to any proceeding before a territory court. The note to section 35A notes that the *Trans-Tasman Proceedings Act 2010* (Cwlth), pt 6, div 2 (Remote appearances from New Zealand in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10A.4 (Trans-Tasman proceedings—remote appearances) apply to remote appearances from New Zealand in a proceeding in an Australian court or a prescribed Australian tribunal.

Section 35B (Administration of oaths and affirmations by audiovisual or audio link)

Section 35B provides for the administration of oaths and affirmations by audiovisual or audio link.

Section 35B(1) provides that an oath to be sworn, or an affirmation to be made, by a person (the remote person) who is to give evidence by audiovisual link or audio link may be administered by audiovisual link or audio link, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give evidence in the courtroom or other place where a territory court is sitting. As an alternative, the territory court may allow another person who is present at the place where the remote person is located to administer the oath or affirmation.

Section 35B(2) provides a safeguard to section 35B(1). It provides that a person giving evidence by audiovisual link or audio link from a place outside Australia is not

required to give the evidence on oath or affirmation if the law in force in that place does not permit the person to give evidence on oath or affirmation for the purposes of the proceeding, or would make it inconvenient for the person to give evidence on oath or affirmation for the purposes of the proceeding, and the territory court is satisfied that it is appropriate for the evidence to be given otherwise than on oath or affirmation.

Section 35C (Putting documents to person by audiovisual or audio link)

Section 35C provides, for the avoidance of doubt, that a territory court may direct or allow a document to be put to a person in any way that the court considers appropriate during the court of an examination or appearance of a person by audiovisual link or audio link.

Section 35D (Premises to be considered part of territory court)

Section 35D(1) provides that any place within or outside the ACT where audiovisual link or audio link facilities are being used for a person to give evidence or make a submission in any proceeding is taken, for all purposes, to be part of the territory court that is sitting at a courtroom or other place to conduct the proceeding. This is an expanded equivalent of existing section 32(4).

Section 35D(2) provides that, to remove any doubt, a law relating to evidence, procedure, contempt of court, perjury or otherwise relating to the administration of justice will apply in relation to the place in the same way it applies in relation to the courtroom or other place. For example, it is intended that a person would be liable to prosecution for the offence of perjury under ACT law if they perjure themselves via audiovisual or audio link from another place.

Clause 50 Section 36 (Power to order payment of costs)

This clause amends section 36 to reflect that a territory court should have the power to order the payment of costs in relation to the use of audiovisual or audio link facilities with a participating State or overseas, not just a place other than a participating State as the section currently provides.

Part 10 – *Judicial Commissions Act 1994*

Clause 51 Section 5I (Council – delegation)

Clauses 51 to 59 relate to the ACT Judicial Council. The ACT Judicial Council (the council) commenced operation in February 2017. The functions of the council are to receive complaints in relation to a judicial officer, examine complaints in relation to a judicial officer, refer certain complaints to the Executive or a head of jurisdiction, give information about the process for complaints in relation to judicial officers, and any other function given to the council under the *Judicial Commission Act 1994* or another territory law (section 5F).

Section 35B (Early dismissal of complaint) provides that the council may dismiss a complaint following a preliminary examination of the complaint, if it meets one of several criteria (for example, that the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights).

Section 5I(1) provides that the council may delegate its functions to a member of the council's staff. However, section 5I(2) currently provides that the council cannot delegate its early dismissal function under section 35B to the principal officer. This prevents the principal officer from responding to complainants in a timely manner.

This clause amends section 5I to provide that the council must not delegate its function of dismissing a complaint, referring a complaint or making a recommendation in relation to a complaint, other than to refer its function under section 35B(1)(a), (f) or (g) to a member of the council's staff. Section 35B(1)(a) relates to dismissing a complaint if the complaint is one that the council is not required to deal with. Section 35B(1)(f) relates to dismissing a complaint if the complaint relates to the exercise of a judicial or other function that is or was subject to adequate appeal or review rights. Section 35B(1)(g) relates to dismissing a complaint if the person complained about is no longer a judicial officer. These grounds are the least discretionary of the grounds for early dismissal of a complaint, and can reasonably be exercised by the principal officer in the interests of timeliness and efficient use of council time and resources.

Clause 52 Section 35(1) (Medical examination of judicial officer)

This clause amends section 35(1) to provide additional guidance as to the circumstances in which a judicial officer is considered to have failed to comply with a request by the council to undergo a medical examination. The amendment will provide that the council may request a judicial officer to undergo a specified medical examination within a reasonable stated time, and give the council a copy of any report of the medical examination.

This clause also adds a new section 35(1A), which provides that a specified medical examination must relate only to the physical or mental fitness of the judicial officer to exercise efficiently the functions of his or her office. This is a safeguard, equivalent to an 'inherent requirements' test, to ensure that any medical examination is appropriately limited in scope (see the human rights analysis above).

Clause 53 Section 35(2) (Medical examination of judicial officer)

This clause amends section 35(2) to recognise that there may be situations where a judicial officer has a reasonable excuse why they were unable to attend a medical examination within the reasonable stated time. This provision will provide that if the judicial officer fails to comply with the request without reasonable excuse, a statement to that effect must be included in any report given in relation to the judicial officer.

Clause 54 Section 35D (4) and (5) (Examination of complaint by council)

The following clauses relate to the council's reporting requirements, which have been amended to promote the council's independence. Overall, where the council does not substantiate a complaint and recommend establishing a judicial commission, the council will be required to provide less information to the Attorney-General about the council's findings on material questions of fact, and the evidence or other material on which those findings were based, and set out the council's reasons for dismissing the complaint. However, at other points in the process, the

council will be required to provide additional information about the status of the council's examination of a complaint.

This clause provides that, whether or not the Attorney-General has requested the information, the council must tell the Attorney-General when it starts conducting an examination of a complaint about a judicial officer and when, and the way in which, the complaint is disposed of.

Clause 55 Section 35I(2) (Dismissal of complaint by council)

This clause amends section 35I(2) to remove the requirement that the council provide the report of its examination to the Attorney-General, where the council has dismissed the complaint. The report will still be required to be provided to the judicial officer concerned and in the case of notice by a member of the Legislative Assembly, to the member (section 35I(4)). The council may give a copy of the report, or a summary of the report, to the complainant (section 35I(5)).

Clause 56 Section 35J(2)(b)(ii) (Substantiation of complaint by council)

This clause amends section 35J(2)(b)(ii) to remove the requirement that the council provide the report of its examination to the Attorney-General, where the council is satisfied that the complaint is wholly or partly substantiated, but that it cannot justify parliamentary consideration of the removal of the judicial officer and so should be referred to the relevant head of jurisdiction (that is, the Chief Justice or Chief Magistrate) under section 35J(1)(b). The report will still be required to be provided to the judicial officer concerned and in the case of notice by a member of the Legislative Assembly, to the member (section 35J(4)). The council may give a copy of the report, or a summary of the report, to the complainant (section 35J(5)).

Clause 57 Section 35JA (Notifying Attorney-General about complaint)

Section 14 provides that a person may make a complaint to the council or the Attorney-General about a matter that relates to or may relate to the behaviour or physical or mental capacity of a judicial officer (other than a presidential member of the ACAT). Section 15 provides that the Attorney-General must, as soon as practicable after receiving a complaint, refer the complaint to the council, and tell the complainant that the complaint has been referred to the council.

This clause adds a new section 35JA, which provides that, where the Attorney-General has referred a complaint referred to the council under section 15, the council must, as soon as practicable after dealing with the complaint (that is, finalising the preliminary examination under section 35A), notify the Attorney-General about whether the matter was dismissed under section 35B, or referred to the relevant head of jurisdiction under section 35C. This additional level of notification for complaints referred under section 15 reflects the additional interest the Attorney-General may have in complaints he or she has referred to the council. The Attorney-General will not otherwise be informed of complaints at the preliminary examination stage.

Clause 58 Section 43A(1) (Appearance by audiovisual or audio links)

This clause amends section 43A(1) to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Clause 59 Section 61B (Information about complaint to be provided to Attorney-General)

This clause adds a new section 61B, which provides that the council must, at the request of the Attorney-General, provide the Attorney-General with the following information in relation to a particular judicial officer:

- whether a complaint has been made, when a complaint was made or when the matter about which a complaint was made is alleged to have happened
- the subject matter of the complaint
- the stage of the procedure for dealing with a complaint that the complaint has reached
- for a complaint that has been disposed of, the way in which the complaint was disposed of, and
- other information the council considers relevant.

This section provides a new mechanism for the Attorney-General to request timely information about a matter in which the Attorney-General has a specific interest. The section also provides a public interest test, whereby unless a complaint has been referred to a judicial commission, the council is not required to provide information about the complaint against a particular judicial officer if the council considers it is not in the public interest to provide the information.

Part 11 – *Juries Act 1967*

Clause 60 Section 10 (Persons not qualified to serve as jurors)

This clause repeals section 10 (Persons not qualified to serve as jurors), as an updated list of disqualified people, exempt people and people who may claim exemption will now be set out in the regulations (see clause 89).

Clause 61 Section 11 (Disqualified people, exempt people and people who may claim exemption)

This clause amends section 11 (which currently relates only to exempt people and people who may claim exemption) to provide that a regulation may prescribe a person who is disqualified from serving as a juror, is exempt from serving as a juror, or may claim exemption from serving as a juror. This change reflects that the list of disqualified people, exempt people and people who may claim exemption will now be set out in the regulations (see clause 89).

Clause 62 Section 14 (Excusing of jurors)

Section 14 currently provides that a judge or the sheriff may excuse a person from attendance as a juror if a judge or the sheriff is satisfied that a person summoned or appointed to attend to serve as a juror ought to be excused from attendance because of illness or pregnancy, because the person has the care of children or aged or ill persons, or because of circumstances of sufficient importance and urgency. This clause will replace that list of specific circumstances with a more general 'sufficient reason' provision, which allows a judge or the sheriff to excuse a person from attendance as a juror if the person has shown sufficient reason to be excused from attendance. This amendment will provide more flexibility in excusing a person from attendance as a juror. The provision includes pregnancy, illness and the care of children or of aged or ill people as examples of sufficient reasons to be excused from attendance.

Clause 63 Section 15 (Partners or coworkers as jurors)

Section 15 applies where two or more people who are employed in the same establishment or are partners in the same partnership have been summoned or appointed to attend as jurors on the same day. This clause amends section 15 to provide that the judge or the sheriff may excuse one or more of the partners or coworkers from attending as jurors on that day if satisfied that attendance would substantially inconvenience or adversely impact the establishment or partnership. This additional consideration addresses a concern in relation to section 15 as currently written. Section 15 currently provides scope for people to be excused when two employees of a large public employer have been called at the same time, notwithstanding the fact that such an employer may have hundreds of employees, a significant number of whom could be expected to be on leave at any one time in the normal course of events.

Clause 64 Section 16 (Reasonably support because of insufficient understanding or disability)

Section 16 currently provides for the discharge of jurors because of comprehension difficulty or disability. Under proposed changes to sections 10 and 11, people with language difficulty or mental or physical disability will no longer be considered not qualified to serve as jurors, but will rather be able to claim exemption from jury duty. Accordingly, this clause provides for the court to provide reasonable support to a person who has an insufficient understanding of the English language or is suffering from a mental or physical disability, if the person has not claimed an exemption or otherwise been excused from attendance.

Under proposed section 16, the judge must consider if support that would enable the person to properly discharge the duties of a juror can reasonably be given, and if satisfied that such support can reasonably be given, must make a direction that the support be given. The provision provides an interpreter (including an Auslan interpreter) and an assistance animal, disability aid or support person as examples of support. As discussed in the human rights analysis, requiring the consideration of such providing such support is consistent with the decisions by the UN Committee on the Rights of Persons with Disabilities.

The provision provides that, in determining if support can reasonably be given, the judge may consider whether the support would impose a disproportionate or undue burden on court resources, facilities and time frames, whether a non-juror's presence during jury deliberations would inhibit or restrict discussion, or unduly pressure or influence any juror, and any other issue the judge considers relevant. This recognises the reality that it may not always be possible or reasonable to provide support to a person to serve as a juror. For example, a person with a hearing impairment may not be able to effectively perform the functions of a juror during a trial at which voice identification is expected to be an issue.

Proposed section 16 also provides that if the judge makes a direction allowing an interpreter or support person to assist the person to properly discharge the duties of a juror, the common law rule against having a non-juror in the jury room is not a relevant consideration, a direction to allow a non-juror to be present during jury deliberations is solely for assisting the person to properly discharge the duties of a juror, and the direction is subject to the interpreter or support person agreeing to make an oath or affirmation (see

If the judge is not satisfied that support that would enable the person to properly discharge the duties of a juror can reasonably be given, the judge may discharge that person from further attendance on the Supreme Court under that summons or appointment.

Clause 65 Section 24(2)(a) (Choosing jurors)

Section 24(2) provides that, in specified circumstances, the sheriff shall choose the name of another person whose name appears on the jury list, in substitution for a name previously chosen from the jury list. This clause makes a minor amendment to allow the sheriff to choose a name from the jury list in substitution for a person who has been excused from serving as a juror, in addition to the existing substitutions that can be made if the person whose name is chosen from the jury list is dead, exempt from serving as a juror or has become a disqualified person.

Clause 66 Section 24(3) (Choosing jurors)

This clause provides that the names of persons chosen from the jury list must be chosen randomly, whether by electronic or other means. This replaces the previous requirement that the choosing of names of persons shall be by lot or by use of a computer programmed to make a random selection.

Clause 67 Section 24(4) (Choosing jurors)

This clause defines the 'jury roll' as the list of names chosen from the jury list under section 24(1) or (2), for ease of reference to that list in other parts of the Act.

Clause 68 Section 24(5) (Choosing jurors)

This clause modernises the language of section 24(5), and replaces a reference to 'the list referred to in subsection (4)' with a reference to the 'jury roll' (see clause 67).

Clause 69 Section 24(7) (Choosing jurors)

This clause replaces a reference to 'the list referred to in subsection (4)' with a reference to the 'jury roll' (see clause 67).

Clause 70 Section 24 (8), (9) and (10) (Choosing jurors)

This clause modernises the language of sections 24 (8), (9) and (10), replaces references to 'the list referred to in subsection (4)' with references to the 'jury roll' (see clause 67), and refers to the schedule of the regulation that outlines who is considered to be a disqualified person (see clause 89).

Clause 71 Section 27 (Preparation of jury pool, allocation of identifying numbers and excused jurors)

The previous process for preparing a panel of jurors, listing jurors who have been excused, allocating identifying numbers and preparing jury cards was quite complex. This clause simplifies the process, including through the use of a new term – 'jury pool'. The clause provides that the sheriff must prepare a pool of jurors for the jury precept by listing the names of people who have been served with a jury summons and have not been disqualified, excused or exempted from serving as a juror (the jury pool), and allocate a unique number (an identifying number) to each person in the jury pool. The sheriff must also notify any person who is excused from attendance at the Supreme Court in compliance with the requirements of the jury summons.

Clause 72 Section 27A (Record of identifying numbers)

This clause removes the requirement that the record of identifying numbers for a panel of jurors must not be kept in the panel, and instead requires that the record must be kept in a way that maintains its confidentiality. The goal of not keeping the panel of jurors in the panel is to maintain the confidentiality of the identifying numbers. This minor amendment achieves the same objective, but also captures other conduct that may threaten the confidentiality of the identifying numbers. The clause also replaces a reference to the panel of jurors with a reference to the jury pool.

Clause 73 Section 28 (Sheriff's return to precept) and Section 29 (Inspection of jury pools)

Section 22 provides that, from time to time and as often as necessary, a judge shall issue a precept directed to the sheriff requiring him or her to summon persons to attend on the Supreme Court to serve as jurors. This clause substitutes a new section 28, which provides that on the day and at the time stated in a jury precept for the attendance of the people summoned under the jury precept, the sheriff must return into the Supreme Court the jury precept and must give it to the proper officer together with the jury pool. This provision includes a reference to the jury pool and removes outdated requirements such as that the proper officer shall place the jury cards in a ballot box. The clause also substitutes a new section 29, which replaces references to the jury panels with references to the jury pool (see clause 71).

Clause 74 Section 30 (Informalities etc not to invalidate verdict)

This clause replaces a reference to the jury panel with a reference to the jury pool(see clause 71).

Clause 75 Section 31(1) (Empanelling a jury)

This clause substitutes a new section 31(1), which removes the reference to drawing jury cards from a ballot box, and provides instead that the proper officer must randomly choose, whether by electronic or other means, the identifying number for a person in the jury pool.

Clause 76 Section 31(3) (Empanelling a jury)

This clause omits the outdated reference to drawing jury cards and substitutes a reference to calling identifying numbers (see clause 76).

Clause 77 Section 31(4)(a) (Empanelling a jury)

This clause replaces a reference to the jury panel with a reference to the jury pool(see clause 71).

Clause 78 Section 31(4)(b) (Empanelling a jury)

This clause substitutes a new section 31(4)(b), which removes the outdated requirement for the sheriff to give the proper officer a card for the person that states the identifying number for the person.

Clause 79 Section 31(6) and (7) (Empanelling a jury)

This clause omits the outdated references to returning jury cards to the ballot box, and refers instead to identifying numbers being returned to the jury pool.

Clause 80 Section 31A(4) and (5) (Expanded juries in some criminal trials)

This clause omits the outdated reference to drawing jury cards and substitutes a reference to selecting the jurors to be discharged by randomly selecting, by electronic or other means, identifying numbers.

Clause 81 Section 33 (Standing persons by)

This clause omits the outdated references to returning jury cards to the ballot box, and refers instead to identifying numbers being returned to the jury pool.

Clause 82 Sections 41, 42 and 42A, penalty

The current penalty for the jury summons enforcement provisions in section 41 (Nonattendance), section 42 (Leaving without permission) and section 42A (Failing to comply with conditions) is low in comparison to other jurisdictions, which provides little disincentive to the conduct covered in these offences. This clause will increase the penalty for these offences from 5 penalty units to 10 penalty units.

Clause 83 Section 42B (Contravention of s 41, s 42 and s 42A)

Section 42B currently provides that if a judge considers that a person may have contravened section 41 (Nonattendance), section 42 (Leaving without permission) or section 42A (Failing to comply with conditions), the judge may issue a warrant requiring the sheriff to apprehend the person and bring him or her before the Supreme Court, after which the judge may, if satisfied that the person committed the offence, impose on the person a fine. That process represents an inefficient use of a Supreme Court judge's time, and is rarely used. It is more appropriate for such an offence to be resolved through the use of a penalty notice system.

This clause provides that, if a judge or sheriff is satisfied that a person has contravened section 41, section 42, or section 42A, the sheriff may serve a notice on the person stating that if the person does not wish to have the matter referred to the Supreme Court, the person must pay to an officer stated in the notice at a stated place and time a penalty amount equivalent to 5 penalty units for the contravention, or show cause to the sheriff within a stated time why the penalty should not be imposed for the contravention.

If the sheriff is not satisfied that a person has shown reasonable cause why a penalty should not be imposed for the contravention, the sheriff must tell the person and state a further period of time within which the person may pay the penalty amount (5 penalty units). The person may refuse to be dealt with under the penalty notice system (see subsection (5)). However, the person may be liable for further enforcement proceedings for the offence, which may include liability for a penalty higher than the penalty notice amount (up to a maximum penalty of 10 penalty units).

Clause 84 Personation of jurors

This clause amends section 43 to refer to a jury pool instead of a panel of jurors (see clause 71).

Clause 85 Section 45 (Oath by jurors)

This clause inserts a new subsection (2) to section 45, which provides that a person may make the oath or affirmation before serving as a juror individually or as part of a group of people. This will lead to efficiency in the use of court time.

Clause 86 New section 45A (Oath by interpreter) and section 45B (Oath by support person)

This clause includes new sections 45A and 45B, which require that an interpreter or support person must make an oath or affirmation in the form listed in the schedule (see clause 89) before assisting a juror to discharge their duties. This amendment is related to the new requirement for the court to consider providing reasonable support to a juror because of insufficient understanding or disability (see clause 64).

Clause 87 Section 49 (Food and refreshment for jury)

This clause substitutes a new section 49 (Food and refreshment for jury), which provides that the sheriff may either order that the jury be give the refreshments that the sheriff considers appropriate, or alternatively order that each juror be paid the

amount determined by the Minister for a meal. Currently, the sheriff can only order that the jury be given refreshments, not an allowance.

Clause 88 Section 53 (Juries Regulation 2018 – sch 2)

This clause provides for the commencement of the *Juries Regulation 2018*, which includes provisions as outlined in the clauses below. Subsection 53(5) provides that section 53 and schedule 2 (which contains the *Juries Regulation 2018*) expire on the day they commence. This does not affect the continued operation of the *Juries Regulation 2018*.

Clause 89 New schedule 2 (Juries Regulation 2018)

This clause includes the text of the *Juries Regulation 2018*. It starts with provisions stating the name of the regulation and the effect of notes in the regulation. It then states that a person mentioned in various parts of the regulation are disqualified, exempt, or may claim an exemption from jury service. A person listed in part 1.2, column 2 is disqualified for the period mentioned in column 3, a person listed in part 1.3, column 2 is exempt for the period mentioned in column 3, and a person listed in part 1.4 may claim an exemption. The effect of part 1.2, 1.3 and 1.4 is outlined below.

Part 1.2 – Disqualified people

Part 1.2 relates to people disqualified from jury service. People included in this part are disqualified based on their own actions, not personal characteristics or circumstances.

Currently under section 10 of the *Juries Act 1967*, all people convicted of an offence punishable by imprisonment for 1 year or longer (who have not subsequently been granted a pardon in relation to the offence) are disqualified from jury service for life. Part 1.2 replaces the previous provision with targeted periods of disqualification based on the specific type of offence or order. For example, a person who has been convicted of an offence with a sentence of 3 months or more will be disqualified from jury service for 10 years after the day the sentence ends.

Section 10 currently provides that an undischarged bankrupt is also disqualified from jury service. There is no reason why an undischarged bankrupt cannot make a cogent decision on a criminal matter. There is no record of this provision being used to disqualify a juror in the ACT in recent times. This clause removes the disqualification of an undischarged bankrupt.

A person who is unable to read and speak the English language, or is, because of mental or physical disability, incapable of serving as a juror, is currently disqualified from jury service under section 10. Under the proposed changes, those categories of people will be removed from the disqualified list, and instead they will be able to choose to claim exemption under part 1.4, or if they wish to serve as a juror, the court must consider whether the person can reasonably be supported to serve as a juror (see clause 64).

Section 10 currently provides that a person of unsound mind is disqualified from jury service. This use of outdated language has been replaced with a reference to a person who is subject to a mental health order under the *Mental Health Act 2015*. People in this category will now be able to claim exemption under part 1.4, and if necessary they will be able to be discharged by the judge because of their mental disability under section 16, if no reasonable support can be provided.

Part 1.3 – Exempt people

Part 1.3 of the Regulation largely re-enacts Part 2.1 of existing Schedule 2, and provides a list of people who are exempt because of personal circumstances, such as being employed in a particular occupation.

One key change is that certain exempt people will now be exempt for a specified period after their appointment or employment in a certain position ends. For example, a public servant providing legal professional services in the staff of the Legal Aid Commission or the Office of the Director of Public Prosecutions will now be exempt from jury service for 2 years after their employment in that position ends, to reflect that there may be a perceived bias if such a person served as a juror soon after finishing employment in that position.

A commissioner under the *Human Rights Commission Act 2005,* the public trustee and guardian under the *Public Trustee and Guardian Act 1985,* and a protected person under the *Guardianship and Management of Property Act 1991* are now also included as exempt from jury service.

Part 1.4 – People who may claim exemption

Part 1.4 of the Regulation largely re-enacts Part 2.2 of existing Schedule 2, and provides a list of people who are able to claim exemption because of their personal occupations or circumstances. While the list of people who are able to claim an exemption remains similar, one key change is that a person can now only claim exemption if they are aged 70 years or older, rather than 60 years or older. The ability for a person regularly employed by an airline in the capacity of operating crew will now also no longer be able to claim an exemption (but may apply to be excused under section 14 at the discretion of the court – see clause 62).

Clause 90 Schedule 1, part 1.1

This clause substitutes new text for an oath by a juror, which allows a person taking the oath to promise instead of swearing, and to name a god recognised by the person's religion instead of referring to Almighty God.

Clause 91 Schedule 1, new parts 1.1A and 1.1B

This clause includes a new part 1.1A and part 1.1B, which provide the text for an oath or affirmation by an interpreter or support person assisting a juror (see clause 64 and clause 86). The interpreter or support person must swear, promise, or solemnly and sincerely declare and affirm that they will well and truly interpret the proceedings and the jury's deliberations and that they will not otherwise participate in

the jury's deliberations or disclose anything about those deliberations, except as allowed or required by law.

Clause 92 Schedule 1, parts 1.2, 1.3 and 1.4

This clause substitutes new parts 1.2, 1.3 and 1.4 to schedule 1.

New part 1.2 provides amended text for an oath or affirmation by a person in charge of a jury. The text is amended to reflect that a juror may be accompanied by a support person or interpreter (see clause 64). The text therefore provides that the person will not allow anyone to speak to any juror, except as allowed or required by law. The amended text also allows a person taking the oath to promise instead of swearing, and to name a god recognised by the person's religion instead of referring to Almighty God.

New part 1.3 provides amended text for an oath or affirmation by a person in charge of jurors on a view. The text is amended to reflect that a juror may be accompanied by a support person or interpreter (see clause 64). The text therefore provides that the person will not allow anyone to speak to any juror, except as allowed or required by law. The text is also amended to allow a person taking the oath to promise instead of swearing, and to name a god recognised by the person's religion instead of referring to Almighty God.

New part 1.4 provides amended text for an oath or affirmation by a person appointed to conduct a view, which allows a person taking the oath to promise instead of swearing, and to name a god recognised by the person's religion instead of referring to Almighty God.

Clause 93 Schedule 2

This clause repeals Schedule 2. The contents of Schedule 2, which related to jury service are now covered in the *Juries Regulation 2018* (see clause 89).

Clause 94 Dictionary, definition of ballot box

This clause repeals the definition of ballot box, which is no longer required.

Clause 95 Dictionary, definition of disqualified person

This clause amends the definition of disqualified person to refer to section 11(a) instead of section 10 (see clause 61).

Clause 96 Dictionary, definition of identifying number

This clause amends the definition of identifying number to refer to section 27(1)(b) instead of section 27(3)(a) (see clause 71).

Clause 97 Dictionary, definition of jury card

This clause repeals the definition of jury card, which is no longer required.

Clause 98 Dictionary, new definition of jury pool

This clause includes a new definition of jury pool, which defines jury pool by reference to section 27 (see clause 71).

Clause 99 Dictionary, definition of panel of jurors

This clause repeals the definition of panel of jurors, which is no longer required.

Clause 100 Dictionary, new definition of person called

This clause substitutes a new definition of person called, which defines person called to mean a person whose identifying number is called out by the proper officer.

Clause 101 Dictionary, new definition of support person

This clause includes a new definition of support person, which defines support person by reference to section 5AA(3) of the *Discrimination Act 1991.*

Part 12 – *Legislation Act 2001*

Clause 102 Section 250(2) (When document taken to be served)

The note to section 250(2) provides that the *Evidence Act 2011,* section 160 provides a rebuttable presumption that a postal article sent by prepaid post addressed to a person at an address in Australia or an external territory was received on the 4th working day after posting. This clause amends the note to reflect the proposed amendment to the *Evidence Act 2011* in clause 40.

Part 13 – *Magistrates Court Act 1930*

Clause 103 Section 72B(1) (Defendant's appearance in non-bail proceedings – audiovisual links)

This clause amends section 72B(1) to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Clause 104 Section 266A (Civil disputes under ACT Civil and Administrative Tribunal Act)

This clause amends the note in section 266A(2) to reflect the proposed amendment in the *ACAT Civil and Administrative Tribunal Act 2008* enabling an ACAT order to be enforced by an appropriate court (that is, either the Magistrates Court of the Supreme Court) under section 71 of the ACAT Act.

Clause 105 Sections 311(1)(a) (Appearance by audiovisual or audio links etc) and 316(2)(a) (Record of proceedings)

This clause amends section 311(1)(a) and 316(2)(a) to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place'

rather than ‘Territory courts may take evidence and submissions from place other than participating State’ (see clause 42).

Part 14 – *Oaths and Affirmations Act 1984*

Clause 106 Section 5 (Certain provisions subject to court rules)

Section 8 currently provides for an oath or affirmation to be taken by a person who is to interpret a spoken language in a proceeding. Section 9 currently provides for an oath or affirmation to be taken by a person who is to interpret statements in a proceeding made by means of signs. This clause, together with clauses 112 to 114, and schedule 3 of clause 116, combines the existing separate oath or affirmation provisions and establishes a single oath and a single affirmation that applies to an interpreter of either spoken language or signs. This approach is consistent with the approach taken in Schedule 1 of the *Evidence Act 2011*. As part of this broader change, this clause amends section 5 to refer to the new title of section 8 (Oath or affirmation by interpreter).

Clause 107 Section 8 (Oath or affirmation by interpreter)

This clause relates to the establishment of a single affirmation that applies to an interpreter of either spoken language or signs (see clause 111 for background). The clause amends the title of section 8 to ‘Oath or affirmation by interpreter’, as revised section 8 applies to both interpreters of spoken language and interpreters of signs.

Clause 108 Section 8 (Oath or affirmation by interpreter)

This clause relates to the establishment of a single affirmation that applies to an interpreter of either spoken language or signs (see clause 111 for background). The clause amends section 8 to apply to both interpreters of spoken language and interpreters of signs.

Clause 109 Section 9 (Oath or affirmation by interpreter of signs)

This clause relates to the establishment of a single affirmation that applies to an interpreter of either spoken language or signs (see clause 111 for background). This clause repeals section 9 (Oath or affirmation by interpreter of signs), as this provision will be covered as part of section 8 (Oath or affirmation by interpreter).

Clause 110 Section 21(2) (Alternative form and manner for oath)

This clause adds a new section 21(2), which provides that it is not necessary that a religious text be used in taking an oath.

Clause 111 Schedules 1 to 5

This clause amends the text of the oaths and affirmations in the *Oaths and Affirmations Act 1984* to be consistent with the more modern form of the oath and affirmation text found in the *Evidence Act 2011.* The oaths and affirmations that have been changes relate to the oath or affirmation of office, the oaths or affirmations by a member of the Legislative Assembly, the oath or affirmation by a witness, the oath or affirmation by an interpreter and the oath or affirmation by a deponent to an affidavit.

A key change common to each oath is that the new oaths allow a person to 'promise', rather than 'swear', and name a god recognised by the person's religion rather than 'Almighty God'. Similarly, the affirmations have been updated to require a person to 'solemnly and sincerely declare and affirm' rather than just 'solemnly declare and affirm'. As outlined in clauses 111 to 114, a single combined oath and affirmation has been established that applies to both interpreters of spoken language and interpreters of signs.

Part 15 – *Royal Commissions Act 1991*

Clause 112 Section 34A(1) (Appearance by audiovisual or audio links)

This clause amends section 34A(1) of the *Royal Commissions Act 1991* to refer to the amended title of section 32, 'Territory courts may take evidence and submissions from another place' rather than 'Territory courts may take evidence and submissions from place other than participating State' (see clause 42).

Part 16 – *Supreme Court Act 1933*

Clause 113 Section 8(1)(a) (Exercise of jurisdiction)

This clause contains a consequential amendment relating to clause 120. The amendment removes a reference to the jurisdiction of the court exercised by the Associate Judge under the rules, and instead replaces it with a reference to the jurisdiction of the court exercised by the Associate Judge under section 9.

Clause 114 Section 8(2) (Exercise of jurisdiction)

This clause contains a consequential amendment relating to clause 120. The amendment removes a reference to the rules providing for the jurisdiction of the Associate Judge.

Clause 115 Section 9 (Exercise of jurisdiction by associate judge)

This clause amends section 9 to outline the jurisdiction of the Associate Judge of the Supreme Court (also known as the Master). The Associate Judge's jurisdiction is currently provided for in the court rules. By outlining the Associate Judge's jurisdiction in the Act, this amendment provides increased clarity about the role of the Associate Judge. This amendment also expands the jurisdiction of the Associate Judge, by providing that the Associate Judge may exercise the jurisdiction (including the inherent jurisdiction) of the court that is exercisable by a single judge, other than for a trial on indictment or a matter before the Court of Appeal. Under the Dictionary of the Act, 'Court of Appeal' means the Supreme Court constituted as a Court of Appeal under Part 2A (Court of Appeal). Section 9 will also provide that the associate judge may exercise the jurisdiction of the court in presiding at a pre-trial hearing under the *Evidence (Miscellaneous Provisions) Act 1991,* division 4.2.2B.

Part 17 – *Unit Titles (Management) Act 2011*

Clause 116 Section 31(4) (Recovery of expenditure resulting from member or unit occupier's fault)

This clause adds a new definition of 'expense' to section 31(4), to address the apparent inconsistency identified in *In the Matter of Ruling Tribunal Section 31 of the Unit Titles (Management) Act 2011* [2017] ACAT 56 (see further discussion in relation to clause 8). The new definition provides that an expense includes a reasonable legal expense reasonably incurred, including a legal expense relating to a proceeding in the ACAT.

Part 18 – *Utilities Act 2000*

Clause 117 Section 181(5) (Payment for loss or damage)

This clause amends section 181(5) of the *Utilities Act 2000* to provide an increased payment amount of $25,000 for ACAT consideration of energy and water complaints. The compensation limit has not been increased since it was set on 1 July 2001. The new payment amount aligns with the ACAT jurisdiction limit of $25,000. For this reason paragraph 181(5)(b), which allowed for another amount to be prescribed by regulation, has been repealed.