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

JUSTICE LEGISLATION AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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JUSTICE LEGISLATION AMENDMENT BILL 2020

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the Justice Legislation Amendment Bill 2020 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 OF THE BILL

The Bill is an omnibus bill which amends a range of legislation, mostly in the Minister for Justice, Consumer Affairs and Road Safety's portfolio:

- *ACT Civil and Administrative Tribunal Act 2008*;
- *Agents Act 2003*;
- *Civil Law (Sale of Residential Property) Act 2003*;
- *Civil Law (Sale of Residential Property) Regulation 2004*;
- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*;
- *Courts Procedures Act 2004*;
- *Crimes (Sentence Administration) Act 2005*;
- *Crimes (Sentencing) Act 2005*;
- *Criminal Code 2002*;
- *Discrimination Act 1991*;
- *Domestic Animals Act 2000*;
- *Fair Trading (Australian Consumer Law) Act 1992*;
- *Fair Trading (Fuel Prices) Act 1993*;
- *Fuels Rationing Act 2019*;
- *Human Rights Commission Act 2005*;
- *Liquor Act 2010*;
- *Liquor Regulation 2010*;
- *Magistrates Court Act 1930*;
- *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*;

- *Motor Accident Injuries Act 2019*;
- *Residential Tenancies Act 1997*;
- *Road Transport (Alcohol and Drugs) Act 1977*;
- *Road Transport (Offences) Regulation 2005*;
- *Spent Convictions Act 2000*;
- *Unit Titles (Management) Act 2011*; and
- *Victims of Crime Act 1994*.

SUMMARY OF AMENDMENTS

Agents Act 2003

The Bill amends the *Agents Act 2003* (Agents Act) to introduce a ‘fit and proper’ test for a person to be licensed as an agent or registered as a salesperson. The Agents Act relevantly sets out the eligibility criteria to be met for a person to be licensed or registered as a real estate agent or salesperson in the ACT, and the grounds which disqualify a person from holding such licence or registration. The Bill introduces a set of suitability matters and empowers the Commissioner for Fair Trading to disqualify a real estate agent or salesperson with a prior criminal conviction, where it is appropriate to do so, and is sufficiently related to the person’s occupation.

Civil Law (Sale of Residential Property) Act 2003 and Civil Law (Sale of Residential Property) Regulation 2004

The Bill amends the *Civil Law (Sale of Residential Property) Act 2003* to remove reference to the Australian Standard in a new requirement introduced in the *Unit Titles Legislation Amendment Act 2020*. Instead, the new requirement references the definition of ‘adaptable housing dwelling’ as prescribed under the Civil Law (Sale of Residential Property) Regulation 2004. The Regulation is being amended to include the definition of ‘adaptable housing dwelling’ to mean a dwelling that complies with Australian Standard AS 4299-1995 (Adaptable Housing). A member of the public can access the Standard by attending any government shopfront during business hours.

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

The Bill amends the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* to create a single licence to deal in X 18+ films, meaning to sell and/or copy X 18+ films, removing the additional options to sell or to copy. This amendment simplifies the licensing options available.

Crimes (Sentence Administration) Act 2005

The Bill amends the *Crimes (Sentence Administration) Act 2005* (CSA Act) to clarify that victims can give oral evidence to the Sentence Administration Board (SAB), that

oral submissions may be kept confidential, and that victims can request their submission be kept confidential.

The Bill also amends the CSA Act to extend the period the SAB may adjourn a parole matter and remand an offender in custody from 7 days to up to 8 days. In addition, a power is provided to the SAB to issue an arrest warrant for offenders who are appearing otherwise than in custody.

Amendments are also made by the Bill to give effect to the existing policy expressed in sections 80 and 212A of the CSA Act that the time a warrant of arrest is outstanding does not count toward the time an offender is serving a sentence of imprisonment by intensive correction order (ICO).

Discrimination Act 1991

The Bill amends the *Discrimination Act 1991* (Discrimination Act) to: clarify that the protected ground of 'gender identity' includes 'gender expression'; amends the protected attribute of 'intersex status' to 'sex characteristics' to include all people on the basis of their sex characteristics, rather than how they identify; and amends the definition of 'sexuality' to be non-exhaustive, to include other kinds of sexuality.

Domestic Animals Act 2000

The Bill amends the *Domestic Animals Act 2000* to update the definition of 'serious injury' in relation to dog bites and adds a definition of 'serious dog bite' to align with Dr Ian Dunbar's Dog Bite Scale. A level 4 or above bite on the scale is considered a serious dog bite. This definition provides more certainty as to what is considered a 'serious injury' in relation to dog bites.

The Bill further amends the *Domestic Animals Act 2000* to introduce a requirement (the contravention of which constitutes an offence), that a person selling or giving away a cat or dog must include an ACT breeding licence number, or the person's rehoming identifier and the unique identifier from the dog or cat's microchip regardless of whether they have bred the animal.

Fair Trading (Australian Consumer Law) Act 1992

The Australian Consumer Law (ACL) offers consumer protections including in the areas of unfair contract terms, consumer rights when buying goods and services, and unsolicited consumer agreements. Following the April 2017 Productivity Commission report 'Consumer Law Enforcement and Administration's recommendation that consideration be given to expand the ACL regulator's powers, including enabling them to compel businesses to cooperate with the ADR process, this Bill introduces a conciliation mechanism for consumer disputes in the ACT. The effect of this is to strengthen enforcement remedies currently available to rectify harm caused by unlawful conduct and encourage compliance.

The ACT conciliation process imposes a monetary limit of \$5,000 for consumer disputes. At the request or with the consent of the consumer, the Commissioner may call compulsory conferences between the business and the consumer. If the

Commissioner wishes to exercise his power to conciliate a dispute, the Commissioner needs to be satisfied that the complaint or matter is appropriate for conciliation (for example, a matter is not a suitable matter to be conciliated if it is before the ACT Civil and Administrative Tribunal (ACAT)). Where the Commissioner requires the business to attend a compulsory conciliation, and the business has no reasonable excuse for non-attendance, such non-attendance is subject to a civil penalty to be determined by the Magistrates Court. The Commissioner will assist parties to make a written record of the conciliated agreement. The Commissioner or the parties can also apply to the ACAT for an order enforcing the agreement's terms, should the terms of the agreement be breached.

Fuels Rationing Act 2019 and Fair Trading (Fuel Prices) Act 1993

The Bill amends the *Fuels Rationing Act 2019* (Fuels Rationing Act) to include hydrogen in the definition of 'fuel'. Hydrogen is a fuel currently in use in the ACT and this amendment ensures that it is covered under the fuel rationing provisions in the Fuels Rationing Act.

The *Fair Trading (Fuel Prices) Act 1993* (Fair Trading (Fuel Prices) Act) regulates fuel prices in the ACT by prescribing requirements and obligations on fuel suppliers, such as displaying accurate fuel prices on the price board and allowing the Minister to determine the maximum base wholesale price, retail price and retail margin in relation to a specified fuel.

Fair trading protections available under the Fair Trading (Fuel Prices) Act are only applicable to consumers of fuel. The current definition of fuel, 'leaded petrol, unleaded petrol or distillate', is out of step with current fuels in use in the ACT. The amendment updates the definition of fuel to include hydrogen, by referring to the Fuels Rationing Act, and includes electricity, so that fuels in use in the ACT are appropriately covered under these protections.

The current provisions that are specifically designed to address petroleum-based fuels continue to operate as intended. In particular, the legislation will be amended to ensure that the term 'regulated transfer' continues to cover only petroleum-based fuels, as the term relates to the specific temperature and quantity of petroleum-based fuel transfers which are not applicable to other kinds of fuels.

The Bill further amends the Fair Trading (Fuel Prices) Act to replace references to 'Prices Surveillance Authority' with 'Australian Competition and Consumer Commission'.

Human Rights Commission Act 2005

The Bill makes a number of amendments to the *Human Rights Commission Act 2005* (HRC Act) to streamline the way in which the ACT Human Rights Commission (the Commission) deals with complaints.

Withdrawal of complaints

The Bill amends the HRC Act to allow the Commission to close a complaint where the complainant has verbally advised the Commission they wish to withdraw their complaint and no longer requires this to be in writing. This amendment reflects the reality where many complaints are only withdrawn verbally.

Referring Commission-initiated considerations to ACAT

The Commission can currently, upon a complainant's request, refer complaints about alleged discrimination and vilification that were not able to be resolved through conciliation to ACAT for hearing and determination. The Commission can also, on its own initiative, consider a commission-initiated consideration (CIC) matter which includes a matter under the Discrimination Act. CICs, unlike complaints received, cannot be referred to ACAT for determination, limiting the Commission's ability to address systemic discrimination.

The Bill amends the HRC Act to allow the Commission to refer CICs dealing with discrimination matters to the ACAT for determination. This amendment allows the Commission to pursue a matter where an individual is unwilling or unable to bring a complaint, or where a systemic issue has been identified and the Commission is best placed to address those issues.

Referring complaints for conciliation

Currently, the HRC Act requires that the Commission may 'refer' a complaint for conciliation if the Commission is satisfied that the complaint 'is likely to be successfully conciliated' and that the matter is 'appropriate for conciliation'. The Bill removes the requirement that the Commission be satisfied that the complaint or matter is likely to be successfully conciliated in order to refer it to conciliation. This will make it easier to refer matters to conciliation, enabling more complainants and respondents to access the Commission's conciliation process. The requirement that 'the matter is appropriate for conciliation' remains.

Removing the requirement that conciliation and consideration be separate

The Bill removes the requirement in the HRC Act that conciliation must be separate from, and independent of, any consideration of the complaint. This has the effect of streamlining the complaints process by allowing officers who investigate complaints to also conciliate complaints. It will also reduce the number of officers that complainants and respondents must deal with and improve continuity of service.

Removing the requirement to enter into written conciliation agreements

Currently, complaints resolved by conciliation may only be closed once there is a written record of the agreement. This does not reflect current practice where many matters resolve without a written agreement and leads to the situation where complaints have been resolved informally by the parties but the complainant may still be issued a discrimination referral notice allowing them to refer the matter to ACAT.

The Bill makes the requirement that the Commission must help parties make a written conciliation agreement a discretionary power.

Removing the expiry provision for internal information sharing

The Bill removes the expiry provision in relation to internal information sharing introduced in the COVID-19 Emergency Response Legislation Amendment Bill 2020 (COVID-19 Bill 2). The COVID-19 Bill 2 introduced an amendment to allow for internal information sharing between commissioners where necessary for the effective exercise of their functions under the HRC Act, insofar as a reasonable person would expect that secondary use or disclosure. Consistent with all amendments in the COVID-19 Bill 2, the amendment was introduced with an expiry provision (at the end of a 12-month period during which no COVID-19 emergency has been in force).

This amendment removes the expiry provision introduced in the COVID-19 Bill 2. The amendment is necessary to provide a clear legislative basis for the sharing of information internally within the Commission beyond the time restriction.

Liquor Act 2010 and the Liquor Regulation 2010

Amendments are made to the *Liquor Act 2010* (Liquor Act) and the Liquor Regulation 2010 in order to complete the implementation of the perpetual (or ongoing) liquor licence scheme.

Amendments are made to explicitly provide for the Minister's power to impose annual liquor licence fees under the Liquor Act; complement existing provisions which make liquor licences ongoing (unless cancelled or surrendered); validate fees collected from holders of ongoing licences from the first commencement date of the *Liquor Amendment Act 2017*; and remove provisions relating to the term or renewal of licences which have become redundant with the move from term licences to ongoing licences.

These provisions are technical in nature, and support the policy intent of the amendments made by the *Liquor Amendment Act 2017*. They are non-prejudicial and do not engage rights protected under the *Human Rights Act 2004*.

Residential Tenancies Act 1997

The Bill amends the *Residential Tenancies Act 1997* to amend the definition of 'adaptable housing dwelling' to mean the definition as prescribed under the *Civil Law (Sale of Residential Property) Act 2003* as well as correct a minor drafting matter.

Road Transport (Alcohol and Drugs) Act 1977

The Bill amends the *Road Transport (Alcohol and Drugs) Act 1977* to expand an existing offence for driving or riding a vehicle (meaning a bicycle, personal mobility device or animal drawn vehicle) while under the influence of alcohol to also include while under the influence of a drug.

Spent Convictions Act 2000

Currently, a conviction for a sexual offence can never become spent in the ACT. This applies to adults as well as those sentenced in the Children's Court. The impacts on children and young people convicted of sexual offences can be lifelong. The Bill amends the *Spent Convictions Act 2000* (Spent Convictions Act) to allow convictions for a sexual offence when the person was a child or young person to become spent upon application to the Court if the Court is satisfied that it is in the public interest to make the order.

Consistent with requirements for children and young people having other convictions spent in the Spent Convictions Act, the provisions stipulate that a Court can only make an order that the conviction be spent where a sentence of imprisonment longer than 6 months has not been imposed and the offender has completed a 5-year crime-free period. The amendment also requires the applicant to notify the Chief Police Officer and the Director of Public Prosecutions (DPP) of an application to the Court, and the DPP must take all reasonable steps upon being notified to contact the victim, and must take their views into account in deciding whether or not to make submissions in relation to an application.

The Court must also consider a number of prescribed factors in making a decision as to whether a conviction should be spent in the public interest: the nature, circumstances and seriousness of the offence; the length of sentence imposed; the length of time since the offence was committed; any views of the victims of the offence; the circumstances of the applicant; and any risks posed by the applicant to public safety if the order was made. The Court can also order that the Court be closed for these matters having regard to the circumstances of the victim and the applicant, including the victim's right to privacy and whether the applicant had their identity protected for the original matter. This is to avoid the situation where both the applicant and the victim were protected for the original criminal proceeding, but this information is later released for an application to have the conviction spent.

The proposed amendments maintain the exclusions under section 19 of the Spent Convictions Act. These include requirements that information about convictions must be provided by a person applying for certain appointments or employment, and for registration under the *Working with Vulnerable People (Background Checking) Act 2011*.

Unit Titles (Management) Act 2011

The Bill amends the *Unit Titles (Management) Act 2011* to clarify that owners corporations may operate more than one bank account.

The Bill also amends the *Unit Titles (Management) Act 2011* to provide that, where an approved form has been made, it must be used for proxy votes.

Victims of Crime Act 1994

An Integrated Courts Management System (ICMS) has been introduced by the ACT Courts and Tribunal (ACTCT). Among other functions, the ICMS provides the courts

and the ACT Civil and Administrative Tribunal (ACAT) with the functionality to produce final orders and aims to improve accuracy and timeliness of providing such orders.

The operation of the ICMS is hindered by current victims of crime levies requirements that provide that an amount of the levy must be stated on the fine order. However, the amount of a levy cannot be currently immediately determined.

The Bill amends the *Victims of Crime Act 1994* to remove the requirement for any levies to be stated on a fine order or penalty notice, and instead provides that a defendant must be given a written notice of any levies. This will allow the courts to give a defendant a 'Fine Order and Penalty Notice' generated by ICMS in the courtroom, and the option for the registry to subsequently send a written notice to the defendant should any levies be payable.

Consequential amendments

The Bill also makes consequential amendments to the *ACT Civil and Administrative Tribunal Act 2008* to support amendments to the ACT Fair Trading Act; to the Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005 to support amendments to the *Domestic Animals Act 2000*; to the *Gaming Machine Act 2004* to support amendments to the *Liquor Act 2010* and the Liquor Regulation 2010; to the *Motor Accident Injuries Act 2019* and Road Transport (Offences) Regulation 2005 to support amendments to the *Road Transport (Alcohol and Drugs) Act 1977*; and the *Crimes (Sentence Administration) Act 2005*, the *Court Procedures Act 2004*, *Crimes (Sentencing) Act 2005* and *Magistrates Court Act 1930* to support amendments to the *Victims of Crime Act 1994*.

CONSULTATION ON THE PROPOSED APPROACH

The proposed amendments are the result of consultation with relevant stakeholders affected by the proposals. Input from stakeholders has informed the amendments proposed in this Bill.

CONSISTENCY WITH HUMAN RIGHTS

Agents Act 2003

The amendment in the Agents Act allows the Commissioner for Fair Trading to determine whether a person is a 'fit and proper' person for the purpose of holding a licence or registration to practice as a real estate agent or salesperson. As a person may be precluded from working as a real estate agent or salesperson on the basis of their criminal conviction, this measure also engages and may limit the right to work under section 27B(1) of the *Human Rights Act 2004* (HRA).

Additionally measure may engage the right to equality and non-discrimination under section 8 (2)-(3) of the *Human Rights Act 2004* (HRA). 'Discrimination' under the HRA encompasses a distinction based on particular grounds (for example, race, sex or 'other status'), which has either the purpose ('direct' discrimination), or the effect

(‘indirect’ discrimination), of adversely affecting human rights. The right would be engaged if ‘criminal conviction’ were to be considered an ‘other status’ ground of discrimination.¹

However, the measure nevertheless is compatible with the right to work and the right to equality and non-discrimination applying the reasonable limit criteria in section 28 of the HRA. The measure aims to achieve the legitimate objective of enhancing public safety. Enhancing public safety in the context of the measure constitutes a pressing and substantial concern noting that agents and salespersons are entrusted with a range of duties and responsibilities including in respect of a person’s home. The measure is rationally connected to that objective, as introducing an appropriately tailored ‘fit and proper’ person test will assist in protecting members of the community from engaging with agents who have relevant criminal convictions that may impact their ability to perform their duties as a real estate agent or salesperson.

The measure is proportionate to the legitimate objective as it contains a range of safeguards. Considerations by the Commissioner against the suitability matters in new section 27A will ensure that refusal of a licence or registration is the least rights restrictive approach reasonably available. A number of safeguards have also been introduced to ensure the test is appropriately tailored to the legitimate objective sought:

- a) providing that the existence of a criminal record for a listed ‘relevant offence’ is a condition precedent to the exercise of the Commissioner’s new proposed power to refuse a licence;
- b) providing that the Commissioner *may* refuse a licence rather than must refuse a licence so that there is sufficient discretion for the Commissioner to take the individual circumstances into account;
- c) providing that, in considering whether to refuse a licence, the Commissioner *must* consider a range of relevant factors such as the relevance of a person’s prior criminal conviction to any public safety risks and the duties required to be undertaken in the person’s capacity as a real estate agent or salesperson. This will ensure that a person’s capability to perform their duties as real estate agents or salespersons will be a relevant consideration; and
- e) decisions made by the Commissioner, in applying the ‘fit and proper’ person test, will be subject to independent review by the ACAT. A relevant person can also apply to the ACAT for a review of a reviewable decision pursuant to section 168 of the Agents Act.

For the sake of clarity, as the ‘fit and proper’ person test will be introduced as a new disqualifying ground and is linked to the eligibility of a person to hold a licence or

¹ See *Thlimmenos v Greece*, European Court of Human Rights Application No. 34369/97 (6 April 2000).

registration, the power of the Commissioner to make a determination on whether a person is a suitable person to hold a licence or registration is derived from section 33 and 57 of the Agents Act. Decisions on licence applications and registration applications are currently subject to review by the ACAT pursuant to items 1, 2, 6 and 7 of Schedule 1 of the Agents Act. As such, decisions made by the Commissioner in applying the 'fit and proper' person test will also be covered by items 1, 2, 6 and 7 of Schedule 1 and no amendments to Schedule 1 will be required.

Crimes (Sentence Administration) Act 2005

Oral submissions and confidentiality

The amendments to the *Crimes (Sentence Administration) Act 2005* (CSA Act) may engage the right to a fair hearing in section 21 of the HRA, as the SAB is able to keep victims' submissions confidential. The right to a fair hearing relates to procedural fairness and requires that all parties to a proceeding must have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceedings. Any limitation imposed by the measure is a reasonable limit on the right to a fair hearing applying the criteria under section 28 of the HRA. The legitimate objective sought by the measure is the safety and privacy of victims of the offender and the measure, by keeping victims' submissions confidential in certain circumstances, is rationally connected to that objective. The measure is proportionate to the objective sought. There can be a serious risk to the safety of victims where particular information is disclosed. In order to achieve the least rights restrictive approach, the measure limits what information can be shared but it does not require that all submissions be kept confidential. Instead, the SAB must ensure that particular personal information is kept confidential, and it is for the SAB to determine whether providing a victim's submission would cause substantial risk in relation to prescribed criteria.

The amendments also engage and promote the right to privacy in section 12 of the HRA which protects the storing, use and sharing of personal and confidential information. The amendments clarify that a victim can request that their submission be kept confidential. The SAB must not disclose particular personal information to an offender, and must ensure, as far as practicable, that board information is not given to a person where there is a substantial risk that giving it would adversely affect the security or good order and discipline of a correctional centre or a NSW correctional centre; jeopardise the conduct of a lawful investigation; endanger the person or anyone else; or otherwise prejudice the public interest.

Custody of offender during board hearing adjournment

The amendments to section 210 of the CSA Act have two purposes. The first is to extend the period for which the SAB may order the remand of the offender from 7 days to up to 8 days. The second is to provide the SAB with the legislative authority

to issue a warrant of arrest for an offender who appears before the board by remote means such as an audio-visual link and who is not already in custody.

These amendments engage the right to liberty under section 18 and the right to a fair hearing under section 21 of the HRA. The right to liberty is engaged and may be limited as the amendments permit the SAB to remand an offender for an increased period of up to 8 days and to issue an arrest warrant which will result in an offender being held in custody. The provisions only apply to offenders who have received a sentence of full-time imprisonment as a result of earlier criminal proceedings but who have since been conditionally released on parole to serve their sentence in the community.

The right to a fair hearing is engaged because the SAB will consider, as part of the process, whether the offender should be remanded in custody and whether the circumstances are met to justify the issuing of an arrest warrant.

Any limitation on the right to liberty is permissible applying the criteria for reasonable limits under section 28 of the HRA as outlined below. *Legitimate purpose (s 28 (2) (b))*

Extending the remand period pursues the legitimate purpose of ensuring the SAB has the time needed to consider fully all the relevant considerations before making a decision in relation to an offender's parole. The current restriction of a maximum adjournment period of 7 days can lead to offenders spending longer in custody due to a second adjournment being required to resolve the issues which led to the initial adjournment.

Section 210(4) means that a 7-day adjournment does not equate to a full week. For example, if the board sits on a Wednesday, the maximum adjournment of 7 days calculated in accordance with section 210(4) would result in the next hearing taking place on the following Tuesday. If the board sits on a Monday, the next hearing would be required to take place no later than the following Friday.

The difficulty of insufficient time for issues to be resolved is particularly the case where the period of adjournment is restricted to the second hearing taking place in the same week as the first hearing. Not only has this been the experience of the SAB but also where, previously, only a short adjournment period was permitted for involuntary detention under mental health legislation. Bail is another example where a longer initial remand in custody may achieve a better long-term outcome for the accused as it allows issues such as accommodation to be resolved and so satisfy a court that bail should be granted. A second adjournment is undesirable for an offender and may impact on any progress made to resolve issues or stabilise their circumstances. A single, slightly longer period of adjournment will often be sufficient to allow an offender's circumstances to settle and for the SAB to assess their case in the context of all the available information.

The purpose of authorising the SAB to issue an arrest warrant for an offender appearing by remote means is to give practical effect to the remand order. When an offender appears before the board remotely there are no custodial officers present to take the offender into custody under the terms of the remand warrant and no obligation on the offender to surrender to custody. In order to give effect to the remand warrant it is necessary to create the ability to issue an arrest warrant which will authorise a police officer to arrest the offender at which point the remand warrant can be put into effect.

Rational connection (s 28 (2) (d))

Extending the possible remand period for one day is rationally connected to (that, is effective to achieve) the objective of giving the SAB enough time to properly consider and address the issues which have led to the adjournment. Authorising the SAB to issue an arrest warrant is rationally connected to (that is, effective to achieve) the objective of giving effect to a decision of the board to remand a person appearing remotely in custody

Proportionality (s 28 (2) (e))

Adding one day to the maximum length of an adjournment and remand in custody is the least restrictive approach possible to achieve the purpose of the measure. A maximum 8-day adjournment provides the SAB with the best possible opportunity to resolve the issues which have led to the adjournment such as housing availability, drug test results and stabilisation on medication without the need for a further adjournment. This means the overall time an offender would spend in custody in order for these issues to be addressed may be shorter, and may avoid the need for an additional second hearing and adjournment, which can confuse and destabilise vulnerable offenders.

The extension of the period of adjournment means the adjournment can be for no longer than 8 days. To ensure the power to adjourn and remand in custody is used circumspectly, the amendments include a provision which requires the SAB to only adjourn for a period which is reasonably necessary taking into account the purpose of the adjournment, the personal circumstances of the offender and the interests of justice. The SAB is restricted to two adjournments for the same inquiry which means the offender can only be remanded in custody for a maximum of 2 full weeks.

When the SAB decides to adjourn a hearing for an inquiry, the offender will always have the opportunity to be heard both in respect of the decision to adjourn and in respect of whether the offender should remain on conditional release on parole or remanded in custody for the period of the adjournment. Where an offender is appearing remotely, and is not otherwise in custody, the offender is participating in the proceedings and so will be aware if a warrant for their arrest is being issued. This will provide an opportunity for the offender to surrender voluntarily on the warrant.

Extension of sentence

These amendments engage the right to liberty (s 18) and the right to a fair hearing (s 21).

The purpose of these amendments is to reflect the existing legislative intent of sections 80 and 212A of the CSA Act. This is that the time an offender is wanted on a warrant of arrest does not count toward the sentence of imprisonment being served by ICO. The rationale for this approach is that when an offender is wanted on a warrant of arrest they are not subject to the obligations under the ICO as imposed by the sentencing court and so not serving their sentence. In particular, the offender will not be being supervised by the director-general which is a core condition of every ICO. Supervision is ended in practice when breach proceedings are commenced and are not undertaken during the period of an outstanding arrest warrant. Arrest warrants are issued in relation to ICO for two main reasons. The first is that a breach of ICO has been alleged and the board issues a warrant of arrest issued under Chapter 5 of the CSA Act (Intensive Correction Orders). The second is where an offender has failed to appear before the board under Part 9 of the CSA Act.

The amendments do not establish any additional restrictions on an offender's rights beyond the existing limitations created by section 80 and 212A and as such, do not limit the rights engaged additionally to those existing provisions. What the amendments do is clarify in legislative terms that the time an offender is the subject of an outstanding arrest will be reflected in the time to be served on the sentence and, if the ICO is cancelled, the SAB can issue a warrant of imprisonment to reflect the adjusted end date. There is no additional deprivation of liberty beyond the term of the original sentence as while the offender is the subject of an arrest warrant, and so in breach of their ICO conditions, they are not, in fact, deprived of their liberty.

At the point at which the SAB decides to cancel an ICO, the offender will have had an opportunity to be heard in relation to the cancellation. Cancellation by the SAB can occur under section 66 of the CSA Act where the offender has withdrawn consent to the ICO, in which case the cancellation is the choice of the offender. Cancellation under section 64 of the CSA Act can occur where the SAB is satisfied that the offender has breached their ICO obligations in which case an inquiry must be held under section 63 which includes inviting the offender to make submissions.

Discrimination Act 1991

The amendments to the *Discrimination Act 1991* (Discrimination Act) engage and promote the right to equality and non-discrimination in section 8 of the HRA. The right includes the right of everyone to enjoy their human rights without distinction or discrimination of any kind, and entitlement to equal protection of the law without discrimination. By ensuring that the protected attributes in the Discrimination Act cover gender expression, sex characteristics and a wider understanding of sexuality,

individuals who experience discrimination based on these attributes have grounds to pursue a complaint.

Domestic Animals Act 2000

The amendment to the *Domestic Animals Act 2000* on selling and advertising requirements for dogs and cats engages the right to privacy in section 12 of the HRA, which protects the storing, use and sharing of personal and confidential information. Where a person does not hold a breeding licence, they must share their rehoming identifier and the unique identifier from the dog or cat's microchip. A rehoming identifier is defined to mean, if the person has an identifier for rehoming a dog or cat under the law of a State, the person's identifier; or in any other case, either the person's ABN, or if they do not have an ABN, their name.

The measure is aimed at improving the traceability of sales of cats and dogs to help eradicate illegal breeding. The information required to be provided is limited to what is necessary to identify the person selling or giving away the animal and is proportionate to the objective.

Strict liability offences apply in section 72K. Section 72K includes an existing strict liability offence with a maximum penalty of 50 penalty units for breeding a cat or dog without holding a breeding licence. New strict liability offences are included for advertising, selling or giving away dogs or cats and requires without including the breeding licence, or microchip identifier and rehoming identifier in the advertisement and provided to the buyer. There is a maximum penalty of 50 penalty units for not providing the details to the buyer and 10 penalty units for not including the information in the advertisement.

Strict liability offences engage the right to be presumed innocent until proved guilty according to law (section 22(1) of the HRA) as they allow for the imposition of criminal liability without the need for the prosecution to prove fault. However, the defence of mistake of fact is available to the defendant. Strict liability offences will not necessarily be inconsistent with the presumption of innocence provided that they are within reasonable limits which take into account the importance of the objective being sought and maintain the defendant's right to a defence. In other words, such offences must accord with the permissible limitation criteria set out in section 28 of the HRA.

In this case, the strict liability offences pursue the legitimate purpose of proactively ensuring compliance with the requirement to provide information in order to improve the traceability of animal breeding and sales and ensure high animal welfare standards. A fault element in the particular regulatory context may render the provisions less effective. In relation to the proportionality of the offence, the prosecution will still be required to prove that the conduct in question occurred (that is, that a dog or cat was advertised for sale, sold or given away without the required information). Further, all breeders in the ACT must be licensed, and registration of

dogs has been made compulsory for an extended period. The breeders should know that they must hold a licence to breed dogs or cats, and must identify themselves when they advertise about the supply of dogs or cats. Implanting identifying microchips in dogs and cats has also been made compulsory in the ACT for some time. All the requirements are clearly stated on the public website of the Transport Canberra and City Services Directorate (TCCS). As such, owners of dogs or cats ought to know that when re-homing their pets, the unique identifiers relating to their pets should be supplied. TCCS will publish information about the requirements in section 72K on its website to educate breeders and owners further about their legal obligations. As such, the offence in question is within reasonable limits which take into account the importance of the objective being sought and the information available to the public, and maintain the defendant's right to a defence.

Fair Trading (Australian Consumer Law) Act 1992

The amendment to the *Fair Trading (Australian Consumer Law) Act 1992* introduces a binding conciliation mechanism for consumer disputes in the ACT that imposes a civil penalty for a business' non-attendance at a conciliation.

The amendment imposes a civil penalty rather than a criminal sanction for a business' non-attendance at a conciliation. The conviction for a crime carries with it a range of consequences beyond the immediate penalty including social stigma and potential disqualification from being accredited in certain professions. In the circumstances and in view of the regulatory context, imposing a civil penalty rather than a criminal penalty is an appropriate and effective mechanism of ensuring compliance with legislation.

The civil penalty order, including determination of the pecuniary amount to be payable by the business to the Territory, is to be made by the Magistrates Court subject to a number of prescribed considerations.

The amendments introducing the civil penalty regime have been framed to account for the fact that civil penalties may amount to 'criminal' penalties for the purposes of human rights law. This particular penalty does not meet the test for being considered 'criminal' for the purposes of human rights law on the basis that:

- the penalty is not classified as criminal under the ACT law;
- the purpose of the penalty is to encourage compliance with legislation and specifically, the compulsory attendance notice (rather than to punish);
- it applies in a particular regulatory context to businesses only rather than the public in general; and
- the severity of the maximum penalty at \$5,000 is appropriate in a regulatory context.

Moreover, in making a civil penalty order, the Court must consider, among other factors, the loss suffered by the Commissioner because of the contravention of the compulsory conciliation notice. This is because the civil penalty regime is partly

designed to recoup, at least in part, the costs the Commissioner has incurred in organising the conciliation.

Further, it is noted that HRA protections only apply to natural persons rather than corporations. While it is possible that the civil penalty may apply to some individuals, most businesses will be corporate entities.

Human Rights Commission Act 2005

Removing requirement of written record of agreement reached during conciliation – section 62

The removal of the requirement that a successful conciliation must be in writing engages the right to a fair hearing in section 21 of the HRA as, once a conciliation is successful, the complainant will not be issued a referral notice to the ACAT and if there is a future dispute as to the nature of the agreement, the parties must rely on their verbal agreement. Any limitation on the right to a fair hearing is reasonable applying the criteria under section 28 of the HRA. The legitimate objective sought by the measure is to create certainty for parties where there has been a successful conciliation verbally agreed, which, in practice, is often the case. Various factors go to the proportionality of the measure, which seeks to balance the need for parties to be certain that a matter is closed and the risk that a party may disagree with what was verbally agreed. The Commission's practice is to explain the risk to the parties if they choose not to create a written agreement. Further, this measure operates to provide the option to verbally close a successful conciliation but still allows parties to form a written agreement if they so choose.

Removing requirement that conciliation and consideration be separate – section 61

Removing the requirement that conciliation be separate from, and independent to, consideration of a complaint engages the right to privacy in section 12 of the HRA as information obtained during conciliation can be used for consideration of the complaint. This measure seeks to achieve the legitimate objective of improving the functioning and accessibility of the consideration and conciliation processes with respect to a complaint. This goes beyond administrative convenience; it prioritises early, accessible resolution of disputes and improves continuity of service provision for complainants. The measure is proportionate to achieving the objective sought. It allows for a single case officer to handle the complaint throughout the consideration and conciliation process rather than multiple officers, thereby reducing the number of people accessing relevant information. The case officer is subject to the existing limitations on the use of information as provided for in the HRC Act.

Allowing for Commission-initiated considerations to be referred to ACAT

Allowing the Commission to refer a Commission-initiated consideration to ACAT positively engages the right to recognition and equality before the law in section 8 of the HRA, including where an individual is unable to make a complaint themselves.

Removal of expiry provision for internal sharing of information

Removing the expiry provision has the effect of continuing to engage human rights for this provision beyond the initial expiry period.

Sharing information received between commissioners engages and limits the right to privacy in section 12 of the HRA which protects the storing, use and sharing of personal and confidential information. The right to privacy may be subject to permissible limitations where the measure pursues a legitimate objective and is rationally connected to, and proportionate to achieve, that objective. The amendment seeks to achieve the legitimate objective of ensuring the Commission is able to effectively exercise its functions; it seeks more than just administrative convenience. The measure is rationally connected to the objective in that it provides a suitably tailored discretion for a commissioner to share information received under a territory or other law with one or more other commissioners where necessary for the effective exercise of their respective functions under the HRC Act.

The amendment only allows the sharing of information insofar as a reasonable person would expect that secondary use or disclosure for the effective exercise of a function under the HRC Act, and introduces a number of safeguards to ensure that any limitation on the right to privacy is only as extensive as necessary to achieve the legitimate objective. The amendment is restricted to the sharing of statutory office-holder information between commissioners and not all staff members, and will ensure that internal sharing of any personal information is in accordance with the *Information Privacy Act 2014*, though noting that when information is shared between commissioners in accordance with the HRC Act, the Commission is not required to notify the person about whom the information relates. As a further safeguard for the right to privacy, secrecy or nondisclosure restrictions or obligations placed on the use or sharing of information acquired under other Acts are extended to other commissioners who receive information under this power.

Road Transport (Alcohol and Drugs) Act 1977

Extending the offence to drive or ride a vehicle (meaning a bicycle, personal mobility device or animal-drawn vehicle) or an animal on a road while under the influence of alcohol to also cover being under the influence of drugs engages the right to freedom of movement and the right to liberty and security of person.

The right to freedom of movement includes the right to move freely within the ACT in section 13 of the HRA. To the extent that the measure limits this right, the measure seeks to achieve the legitimate objective of improving public safety by reducing the risk of serious and fatal crashes in the ACT. The penalties that currently apply to individuals who drive or ride a vehicle or an animal on a road under the influence of alcohol, 50 penalty units, imprisonment for 6 months, or both, will be extended to cover being under the influence of drugs. The penalty is proportionate to the seriousness of the risk posed.

The right to liberty and security of person in section 18 of the HRA requires that a person not be subject to arbitrary arrest and detention. This right is engaged as the measure includes a penalty of imprisonment for 6 months. As stated, the measure aims to improve public safety. The law will not be arbitrary in its application; the penalty is outlined in the legislation, it is appropriate and proportionate for the offence, and will only be enforced when an individual is tested and found to be under the influence of drugs.

Spent Convictions Act 2000

The introduced measure in the *Spent Convictions Act 2000* to allow a person to make an application to the Court that a conviction for a sexual offence committed be spent, where the person was not dealt with as an adult in relation to the conviction, positively engages the right to equality section 8 of the HRA and the right to privacy in section 12 of the HRA. For individuals subject to these convictions, the impacts can be lifelong as employers often require a police check prior to employment. It is not uncommon for an offer of employment to be revoked due to the police check having a criminal conviction on it. The measure also includes a requirement that the Court has the discretion to be closed when considering the application and must consider the victim's privacy and whether the identity of the applicant was protected in relation to the relevant offence. While this measure engages and limits the right to a public hearing under section 21 of the HRA, it constitutes a permissible limit on this right. The discretion pursues the legitimate objective of promoting the right to privacy. It is proportionate as it allows the Court the discretion to direct the absence of the public having regard to the victim's right to privacy; whether the identity of the applicant and the victim were protected in the original criminal proceeding (as is the case in criminal proceedings in the Children's Court); and anything else the Court considers relevant. The discretion is to ensure that where identity was protected in the original proceedings, identity is not later released where there is an application to have the conviction spent.

Justice Legislation Amendment Bill 2020
Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Justice Legislation Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Justice Legislation Amendment Bill 2020* (the Act).

Clause 2 Commencement

This clause provides for commencement of different provisions in the Act.

Section 34, in relation to the *Crimes (Sentence Administration) Act 2005*, part 9 (*Crimes (Sentencing) Act 2005*), part 20 (*Magistrates Court Act 1930*) and part 28 (*Victims of Crime Act 1994*) commence on the 14th day after the Act's notification day.

Amendments to the *Unit Titles Legislation Amendment Act 2020* commence in line with the commencement provisions of that Act. Part 4 (*Civil Law (Sale of Residential Property) Act 2003*) and part 5 (*Civil Law (sale of Residential Property) Regulation 2004*) commence at the same time as part 3 of the *Unit Titles Legislation Amendment Act 2020*. Part 23 (*Residential Tenancies Act 1997*) commences on the commencement of part 10 of the *Unit Titles Legislation Amendment Act 2020*. Part 27 (*Unit Titles (Management) Act 2011*) commences on the commencement of part 12 of the *Unit Titles Legislation Amendment Act 2020*.

Part 2 (*ACT Civil and Administrative Tribunal Act 2008*), part 3 (*Agents Act 2003*), part 6 (*Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*), part 7 (*Court Procedures Act 2004*), part 13 (*Fair Trading (Australian Consumer Law) Act 1992*) and part 26 (*Spent Convictions Act 2000*) commence on a day fixed by the Minister by written notice. Parts 3, 7 and 26 will commence automatically on the first day after 6 months if they have not already commenced, while parts 2, 6 and 13 will commence automatically on the first day after 12 months if they have not already commenced.

All other provisions in the Act commence on the day after the Act's notification day.

Clause 3 Legislation amended

This clause is a formal provision identifying that the Act amends the following legislation:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Agents Act 2003*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Civil Law (Sale of Residential Property) Regulation 2004*
- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*
- *Court Procedures Act 2004*
- *Crimes (Sentence Administration) Act 2005*

- *Crimes (Sentencing) Act 2005*
- *Criminal Code 2002*
- *Discrimination Act 1991*
- *Domestic Animals Act 2000*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Fair Trading (Fuel Prices) Act 1993*
- *Fuels Rationing Act 2019*
- *Gaming Machine Act 2004*
- *Human Rights Commission Act 2005*
- *Liquor Act 2010*
- *Liquor Regulation 2010*
- *Magistrates Court Act 1930*
- *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*
- *Motor Accident Injuries Act 2019*
- *Residential Tenancies Act 1997*
- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Offences) Regulation 2005*
- *Spent Convictions Act 2000*
- *Unit Titles (Management) Act 2011*
- *Victims of Crime Act 1994*

Part 2 ACT Civil and Administrative Tribunal Act 2008

Clause 4 New section 55B

This clause inserts a new section 55B in the *ACT Civil and Administrative Tribunal Act 2008* to give effect to amendments to the *Fair Trading (Australian Consumer Law) Act 1992* (ACT Fair Trading Act) (see part 11). This clause provides that the ACT Civil and Administrative Tribunal (ACAT) may make any order it considers appropriate to give effect to an agreement made under section 34I of the ACT Fair Trading Act.

Part 3 Agents Act 2003

Clause 5 People disqualified from being licensed

Section 27 (1) (a) and note

This clause substitutes section 27(1)(a) of the *Agents Act 2003* (Agents Act) to provide that, in determining whether a person is disqualified from being licensed, a licence for a real estate agent is to be treated differently to other licences. A person can be disqualified for a real estate agent's licence if found unsuitable to be licensed under new section 27A.

Clause 6 New section 27A

This clause inserts new section 27A in the Agents Act to provide a suitability test for the Commissioner for Fair Trading to determine whether an applicant for a real

estate agent licence is unsuitable to be licensed. New section 27A applies if a person has been convicted of a 'relevant offence'.

The intention behind new section 27A is to introduce a 'fit and proper' test in the form of a set of suitability matters such that it is sufficiently clear that a real estate agent, or salesperson (see new section 51A), with a prior criminal conviction for specified relevant offences may be disqualified, where it is appropriate to do so, and it is sufficiently related to the person's occupation as an agent.

The note included under new section 27A(2) clarifies that a determination by the Commissioner for Fair Trading that a person is unsuitable to be a real estate agent pursuant to the new section 27A would form part of the Commissioner's decision to refuse to issue a licence under section 33. The Commissioner's decision to refuse to issue a licence is currently a decision reviewable by the ACAT as set out in Schedule 1 of the Agents Act.

New section 27A(3) outlines the prescribed factors the Commissioner for Fair Trading must have regard to in deciding whether a person is unsuitable to be licensed. As discussed above, these factors are intended to operate as safeguards in relation to the provision.

Clause 7 People disqualified from being registered

Section 51 (1) (a) and note

This clause substitutes section 51(1)(a) of the Agents Act to provide that a person can be disqualified from being registered as a real estate salesperson if found unsuitable under new section 51A. This is similar to new section 27(1)(a) in relation to the licensing of a real estate agent.

Clause 8 New section 51A

This clause inserts new section 51A in the Agents Act which provides a suitability test for the Commissioner for Fair Trading to determine whether an applicant who seeks to be registered as a real estate salesperson is unsuitable to be licensed. New section 51A applies if a person has been convicted of a 'relevant offence'.

The note included under new section 51A(2) clarifies that a determination by the Commissioner for Fair Trading that a person is unsuitable to be a real estate salesperson pursuant to the new section 51A would form part of the Commissioner's decision to refuse to register an applicant under section 57. The Commissioner's decision to refuse to register is currently a decision reviewable by the ACAT as set out in Schedule 1 of the Agents Act.

New section 51A(3) outlines the prescribed factors the Commissioner for Fair Trading must have regard to in deciding whether a person is unsuitable to be registered. As discussed above, these factors are intended to operate as safeguards in relation to the provision.

Clause 9 Dictionary, note 2

This clause inserts two new dot points in note 2 of the dictionary in the Agents Act, to clarify that the meaning of the terms ‘in relation to’ and ‘territory law’ is to be found in the *Legislation Act 2001*.

Clause 10 Dictionary, new definitions

This clause inserts new definitions of the terms ‘ACT dishonesty offence’, ‘non-ACT offence’, ‘relevant offence’ and ‘sexual offence’ in the dictionary in the Agents Act.

Part 4 Civil Law (Sale of Residential Property) Act 2003

Clause 11 Meaning of *required documents*

Section 9 (1) (g) (iv)

This clause omits the words ‘drawings and plans demonstrating compliance with Australian Standard AS 4299-1995 (Adaptable Housing)’ and inserts the words ‘the documents prescribed by regulation’ in section 9(1)(g)(iv) of the *Civil Law (Sale of Residential Property) Act 2003*. This clause relocates the requirement that the documents must comply with Australian Standard AS 4299-1995 into new section 10AA in the *Civil Law (Sale of Residential Property) Regulation 2004*. As the Australian Standard may change, it is appropriate that the documents be prescribed by regulation. A member of the public can access the Australian Standard by attending any government shopfront during business hours.

Clause 12 Meaning of *adaptable housing dwelling*

Section 23A

This clause omits section 23A of the *Civil Law (Sale of Residential Property) Act 2003*, to remove the meaning of ‘adaptable housing dwelling’, to align with the amendment to replace the definition of ‘adaptable housing dwelling’ in the Dictionary in the *Civil Law (Sale of Residential Property) Act 2003*.

Clause 13 Adaptable housing—advertising

Section 23B (1) (a)

This clause omits the words ‘a unit’ and substitutes the word ‘premises’ in section 23B(1)(a) of the *Civil Law (Sale of Residential Property) Act 2003* to align with section 22 of the *Civil Law (Sale of Residential Property) Act 2003* which refers to ‘premises.’ For consistency, this amendment replaces all references to ‘a unit’ with ‘premises.’

Clause 14 Section 23B (1) (b) and (c)

This clause omits the words ‘unit is’ and substitutes the words ‘premises are’ in section 23B(1)(b) and (c) of the *Civil Law (Sale of Residential Property) Act 2003* to

align with section 22 of the *Civil Law (Sale of Residential Property) Act 2003* which refers to ‘premises’. For consistency, this amendment replaces all references to ‘unit is’ with ‘premises are’.

Clause 15 New section 23B (3)

This clause inserts a new section 23B(3) in the *Civil Law (Sale of Residential Property) Act 2003*. The definition of ‘premises’ in this section is the same definition set out in section 20 of the *Civil Law (Sale of Residential Property) Act 2003*.

Clause 16 Dictionary, definition of *adaptable housing dwelling*

This clause substitutes the definition of ‘adaptable housing dwelling’ in the Dictionary to the *Civil Law (Sale of Residential Property) Act 2003* to mean a dwelling prescribed by regulation. The intent of this clause is to remove the reference to the Australian Standard in the definition of ‘adaptable housing dwelling’ in the Act itself, and replace it with reference to the definition of ‘adaptable housing dwelling’ as prescribed under the *Civil Law (Sale of Residential Property) Regulation 2004*.

Part 5 Civil Law (Sale of Residential Property) Regulation 2004

Clause 17 New section 6A

This clause inserts a new section 6A in the *Civil Law (Sale of Residential Property) Regulation 2004* to prescribe the definition of ‘adaptable housing dwelling’ to mean a dwelling that complies with Australian Standard AS 4299-1995 (Adaptable Housing). A member of the public can access the Australian Standard by attending any government shopfront during business hours.

Clause 18 New section 10AA

This clause inserts a new section 10AA in the *Civil Law (Sale of Residential Property) Regulation 2004* to prescribe that drawings and plans demonstrating compliance with Australian Standard AS 4299-1995 (Adaptable Housing) are the required documents under section 9(1)(g)(iv) of the *Civil Law (Sale of Residential Property) Act 2003*.

Part 6 Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

Clause 19 Definitions—pt 6

Section 54A, new definition of *deal in*

This clause inserts a new definition of ‘deal in’ in the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Classifications Act), meaning to do either or both of the following: copy X 18+ films; sell X 18+ films. The intent of

this provision is to have one category of licence where licensees may copy and/or sell X 18+ films.

Clause 20 Section 54C

This clause substitutes a new section 54C into the Classifications Act. Currently, section 54C provides for three kinds of X 18+ film licences that a person may apply for. The substituted provision provides that a person may apply for a licence to deal in X 18+ films.

Clause 21 Grant or refusal of licence

Section 54E (1)

This clause substitutes a new section 54E(1) into the Classifications Act to align with the single category of licence now available under section 54C. The substituted provision provides that on application under section 54C, the commissioner must grant a licence or refuse to grant a licence.

Clause 22 Form of licence

Section 54F (b)

This clause omits section 54F(b) of the Classifications Act to align with the single category of licence now available under section 54C. As only one type of licence is now available, the current provision that the licence state what category of licence it is, is no longer necessary.

Clause 23 Renewal of licence

Section 54H (1), notes

This clause removes the notes from section 54H(1) of the Classifications Act to remove reference to approved forms. This aligns with the removal of approved forms from the Classifications Act.

Clause 24 Change of activity under a licence

Section 54M

This clause omits section 54M of the Classifications Act to align with the single category of licence now available under section 54C. The current section 54M creates an offence if there is a change of activity under the licence. The intent behind the creation of a single licence category however is to allow licensees the flexibility to sell, copy, or sell and copy, X 18+ films.

Clause 25 Surrender of licence

Section 54P (1)

This clause substitutes the words ‘stops selling or copying X 18+ films’ with ‘stops dealing in X 18+ films’ in section 54P(1) of the Classifications Act to align with the new term ‘deal in’. The provision provides that within 7 days after the day a licensee stops dealing in X 18+ films under a licence, the licensee must surrender the licence by giving the licence and written notice of its surrender to the commissioner.

Clause 26 Approved forms—commissioner

Section 68

This clause removes section 68 in the Classifications Act to remove approved forms as these are no longer in use in relation to the Classifications Act.

Clause 27 Dictionary, new definition of *deal in*

This clause introduces the term *deal in* for part 6 in the dictionary of the Classifications Act. It refers to section 54A to provide the meaning of the term, which states that to *deal in*, X 18+ films, means to do either or both of the following: copy X 18+ films; sell X 18+ film.

Part 7 Court Procedures Act 2004

Clause 28 Remission, refund, deferral, waiver and exemption of fees

New section 15 (2) (c) (x)

This clause inserts a new section 15(2)(c)(x) in the *Court Procedure Act 2004* to include an application made under new section 14C in the *Spent Convictions Act 2000* to the list of proceedings where a determined fee may be remitted or refunded or liability for its payment deferred.

Part 8 Crimes (Sentence Administration) Act 2005

Application—pt 3.1

Clause 29 New section 10 (1) (b) (ia)

This clause inserts new section 10(1)(b)(ia) to provide that section 72 (Suspension or cancellation of intensive correction order – recommittal to full-time detention) is included under Part 3.1 of the *Crimes (Sentence Administration) Act 2005* (CSA Act).

Clause 30 Definitions—ch 4

Section 23, (1), definition of *recommitted*, new paragraph (aa)

This clause adds section 72 (Suspension or cancellation of intensive correction order – recommittal to full-time detention) to the definition of ‘recommitted’.

Clause 31 Definitions—ch 5

Section 40, definition of *intensive correction order*

This clause inserts a new definition of intensive correction order which clarifies that the definition encompasses an intensive correction order which has been extended under section 80 of the CSA Act.

Clause 32 New section 43A

This clause inserts new section 43A into the CSA Act. This provides that an intensive correction order ends either at the end of the term of the order or when the order is cancelled under part 5.6. The note points to section 40 of the CSA Act to highlight that an intensive correction order includes the term of the order as extended under section 80 of the CSA Act.

Clause 33 Section 69(4), new note

A new note is inserted by this clause to signpost section 43A of the CSA Act which details when an intensive correction order ends.

Clause 34 Section 80

This clause substitutes section 80 in the CSA Act. The new section 80 applies where a warrant is issued for an offender’s arrest under Chapter 5 of the CSA Act (Intensive Correction Orders) or under section 206(2) of the CSA Act, because either the offender has failed to appear in accordance with a notice under section 63 or a judicial member of the board considers the offender will not appear in accordance with a notice under section 63. Section 80(3) provides that where a warrant is outstanding and the offender is not in custody the offender is not taken to perform their sentence by intensive correction and both the term of the intensive correction

order and the term of the sentence are automatically extended by the outstanding warrant period. Section 80(4) defines when an offender is in custody.

Clause 35 Registrar to send penalty notice

Section 116C (2), new note

This clause inserts a new note in relation to section 116C(2) of the CSA Act to clarify that one or more penalty notices may be given to an offender as a result of a conviction or order by the Supreme Court or Magistrates Court. One penalty notice does not have to state the entire fine payable. This is to align with the changes to the *Victims of Crime Act 1994* to remove the requirement that a fine order must state any victims of crime levy payable.

Clause 36 Notice to victims for parole inquiry

Section 124 (1) (a) (i)

This clause substitutes the words ‘a written submission’ with ‘a submission, orally or in writing,’ in the CSA Act to clarify that a notice to victims for parole inquiry must inform them that the victim can make an oral or written submission to the SAB about a parole order being made for the offender. It is current practice that victims may make an oral or written submission. This substitution ensures that victims are informed they are able to make an oral submission.

Clause 37 Section 124 (1) (a) (ii)

This clause inserts the words ‘orally or’ before ‘in writing’ in the CSA Act to clarify that a victim can tell the SAB orally or in writing about any concern of the victim or the victim’s family about the need to be protected from violence or harassment by the offender. It is current practice that victims may make an oral or written submission. This addition ensures that victims are informed they can tell the SAB orally.

Clause 38 Section 124 (1) (b)

This clause omits the words ‘in writing’ in the CSA Act to remove the suggestion that a submission made or concern expressed to the SAB must be in writing. The intention behind this clause is that victims are able to make oral or written submissions.

Clause 39 New section 124 (1) (ba)

This clause inserts new section 124(1)(ba) in the CSA Act to ensure that victims are notified that they may ask the SAB not to give their submission or concern to the offender or another person. It is already the practice under section 192 that the SAB may keep certain board information confidential. The intent of new section 124(1)(b) is to ensure that victims are aware that they can make this request of the SAB.

Clause 40 Section 124 (2)

This clause substitutes the words ‘make a written submission, or express concern, to the board in writing’ with ‘make a submission, or express concern, to the board’ in the CSA Act. This aligns with the amendments in section 124(1)(a) that victims are able to make oral or written submissions.

Clause 41 Parole applications—notice of hearing

Section 127 (3) (b)

This clause substitutes the word ‘documents’ with ‘information’ in section 127(3)(b) in the CSA Act to align with the new section 192.

Clause 42 Section 192

This clause substitutes a new section 192 into the CSA Act. The new section 192 mirrors the current section in outlining the information the SAB must ensure, as far as practicable, is not given to an offender and in outlining that the SAB must not, as far as practicable, give a person board information if particular substantial risks could flow from that decision.

The new section 192 adopts the term 'board information' rather than the current term 'document', and defines board information to include information disclosed or obtained orally or in writing, and includes a document or part of a document under the control of the SAB. The intent of this section is to clarify the current practice that the SAB may keep oral submissions confidential.

Clause 43 Arrest of offender for board hearing

Section 206 (2), new note

This clause inserts a note to point to section 80 of the CSA Act as extending an offender's intensive correction order during the time a warrant is outstanding. **Clause 44 Custody of offender during board hearing adjournment**

Section 210 (3) (a)

This clause substitutes section 210(3)(a) in the CSA Act to provide that the SAB may order the remand of an offender during a board hearing adjournment for a period not longer than is reasonably necessary, and no longer than 8 days for each adjournment, having regard to the purpose of the adjournment, the personal circumstances of the offender, and the interests of justice.

The intent of this section is to allow for the SAB to adjourn for a full week where necessary.

Clause 45 New section 210 (5) to (7)

This clause inserts new section 210(5) to (7) in the CSA Act to provide that if the offender is not in custody, the SAB may also issue a warrant for the offender's arrest and to be placed in the director-general's custody.

The intent of this section is to give effect to the remand by authorising the arrest of an offender who is not immediately available to be taken into custody because they are not physically present.

The warrant must be in writing signed by the judicial member or the secretary of the SAB, be directed to all police officers or a named police officer, and order the arrest of the offender. A police officer who arrests the offender under the warrant must notify the SAB of the arrest as soon as practicable, but within 12 hours, after the arrest.

Clause 46 Record of board hearings

Sections 211 (2)

This clause substitutes the word ‘documents’ with ‘information’ in section 211(2) in the CSA Act to align with the amendments to section 124 (Notice to victims for parole inquiry).

Clause 47 Section 212A

This clause omits section 212A. This is because the provisions of section 212A have been incorporated into new section 80 of the CSA Act.

Clause 48 Release on licence—notice of board inquiry

Sections 291 (3)

This clause substitutes the word ‘documents’ with ‘information’ in section 291(3) in the CSA Act to align with the amendments to section 124 (Notice to victims for parole inquiry).

Part 9 Crimes (Sentencing) Act 2005

Clause 49 Fines—orders to pay

Section 14 (5), note

This clause omits the note in relation to section 14(5) in the *Crimes (Sentencing) Act 2005* as it refers to section 25(1) of the *Victims of Crimes Act 1994* which is being amended to remove the requirement that any victims services levy payable must be stated on a fine order.

Part 10 Criminal Code 2002

Clause 50 Serious vilification

Section 750 (1) (c) (iv)

This clause omits section 750(1)(c)(iv) of the Criminal Code 2002, which refers to ‘intersex status’, to align with the amendments to replace ‘intersex status’ with ‘sex characteristics’ in the *Discrimination Act 1991* (Discrimination Act).

Clause 51 New section 750 (1) (c) (via)

This clause inserts section 750(1)(c)(via) in the Criminal Code 2002, to include ‘sex characteristics’, to align with the amendments to replace ‘intersex status’ with ‘sex characteristics’ in the Discrimination Act.

Clause 52 Section 750 (2), definition of *intersex status*

This clause omits section 750(2) of the Criminal Code 2002, to remove the definition of ‘intersex status’, to align with the amendments to replace ‘intersex status’ with ‘sex characteristics’ in the Discrimination Act.

Clause 53 Section 750 (2), new definition of *sex characteristics*

This clause inserts section 750(2) in the Criminal Code 2002, to add a new definition of ‘sex characteristics’, to align with the amendments to replace ‘intersex status’ with ‘sex characteristics’ in the Discrimination Act. The definition of ‘sex characteristics’ in this new definition refers to the dictionary of the Discrimination Act for its meaning.

Part 11 Discrimination Act 1991

Clause 54 Protected attributes

Section 7 (1) (k)

This clause omits section 7(1)(k) in the Discrimination Act to remove intersex status from the list of protected attributes.

Clause 55 New section 7 (1) (va)

This clause inserts new section 7(1)(va) in the Discrimination Act to add sex characteristics to the list of protected attributes.

Clause 56 Unlawful vilification

Section 67A (1) (d)

This clause omits section 67A(1)(d) in the Discrimination Act to remove intersex status from the list of attributes for unlawful vilification.

Clause 57 New section 67A (1) (fa)

This clause inserts new section 67A(1)(fa) in the Discrimination Act to add sex characteristics to the list of attributes for unlawful vilification.

Clause 58 Dictionary, definition of *gender identity*, except note

This clause substitutes the definition of ‘gender identity’ in the Discrimination Act to include the words ‘gender expression’. While gender expression was already included within the definition of gender identity, the intent of this clause is to clarify that gender expression is included.

Clause 59 Dictionary, definition of *intersex status*

This clause omits the definition of ‘intersex status’ in the Discrimination Act. As the protected attribute of ‘intersex status’ is being removed and is not referenced elsewhere in the Discrimination Act, there is no need to define ‘intersex status’.

Clause 60 Dictionary, new definition of *sex characteristics*

This clause inserts a new definition of ‘sex characteristics’ in the Discrimination Act. The definition has been taken from the Yogyakarta Principles plus 10.

Clause 61 Dictionary, definition of *sexuality*

This clause substitutes a definition of ‘sexuality’ in the Discrimination Act. Sexuality is now a non-exhaustive definition to include more diverse forms of sexual orientation.

Part 12 Domestic Animals Act 2000

Cause 62 Offences against Act—application of Criminal Code etc

Section 4A, note 1, dot point

This clause substitutes the dot point relating to section 72K in the list of offences in the *Domestic Animals Act 2000* to align with the updated heading of section 72K.

Clause 63 Section 72K

This clause substitutes section 72K in the *Domestic Animals Act 2000* to make it an offence for a person to sell or give away a dog or cat without providing their breeding licence number or, if they do not hold a breeding licence, the person’s rehoming identifier and the unique identifier from the dog or cat’s microchip.

It is also an offence if a person publishes a statement that either constitutes an invitation to buy or otherwise acquire a dog or cat from the person or could reasonably be understood to constitute an invitation to buy or otherwise acquire a dog or cat from the person, and did not provide in the publication their breeding licence number or, if they do not hold a breeding licence, their rehoming identifier and the unique identifier from the dog or cat’s microchip.

If a person has an identifier for rehoming a dog or cat under the law of a State, a rehoming identifier means the person’s identifier. If they do not have an identifier, a rehoming identifier means the person’s ABN, or if they do not have an ABN, their name.

The intent of this section is to require identifiable information to be provided when selling or giving away a cat or a dog, regardless of whether the person has bred the animal themselves, in order to assist in tracing the animal.

Clause 64 Dictionary, new definition of *serious dog bite*

This clause inserts a new definition of ‘serious dog bite’ in the *Domestic Animals Act 2000*. This definition has been adapted from Dr Dunbar’s Dog Bite Scale, where Level 4 or above on the scale is defined to be a serious dog bite.

Clause 65 Dictionary, definition of *serious injury*

This clause substitutes the definition of ‘serious injury’ to include ‘1 or more serious dog bites’. The definition of ‘serious dog bite’ is separately defined. The intention

behind this amendment is to add more clarity as to what a serious injury is in relation to dog bites.

Part 13 Fair trading (Australian Consumer Law) Act 1992

Clause 66 New division 5.1A

This clause inserts a new division and sub-divisions to introduce the conciliation regime for the conciliation of consumer disputes by the Commissioner for Fair Trading under the *Fair Trading (Australian Consumer Law) Act 1992* (the ACT Fair Trading Act).

Sub-division 5.1A.1 Preliminary

New section 34A provides that the division applies only if the value of the remedy sought in relation to a consumer complaint does not exceed \$5,000.

New sections 34B-34C provide definitions of matters relevant to the new division.

Sub-division 5.1A.2 Conciliation

New sub-division 5.1A.2 sets out the framework for conciliation.

New section 34D provides that the Commissioner for Fair Trading may conciliate a consumer complaint only if they are satisfied that the matters raised by the complaint are appropriate for conciliation and the consumer has provided consent.

New section 34E provides that the parties to the conciliation of a consumer complaint are the consumer who made the complaint and the business that is the subject of the complaint.

New section 34F sets out who may attend the conciliation of a complaint on behalf of the consumer and requires the consumer to attend the conciliation subject to exceptions. New section 34F(2) provides that the Commissioner may also agree to another person accompanying the consumer at conciliation.

New section 34F provides that a business who fails to attend a conciliation at the time and place as stated in a compulsory conciliation notice without a reasonable excuse will be subject to a civil penalty. This provision is designed to ensure that conciliation works effectively.

Noting that the consent of the consumer is required under new section 34D for the Commissioner to conciliate a complaint, new section 34F(1) does not penalise the consumer for non-attendance and participation at the conciliation. However, it is within the Commissioner's discretion to deem a complaint to be inappropriate for conciliation in circumstances where the consumer who brought the complaint fails to attend a conciliation of their complaint and does not fall within the criteria in section 34F(1).

New section 34G provides that a business who is required by the Commissioner to attend a conciliation will need to be notified by written notice. A business can only be required to attend if the business is subject to a complaint and where the consumer agrees. The time and place the business is required to attend the conciliation must be stated in the notice.

New section 34H provides that the Commissioner may conduct a conciliation in a way that the Commissioner sees fit. Examples have been included in this section to clarify that conciliation could be conducted by way of a conciliation conference with the parties.

New section 34I provides that the Commissioner must help the parties to make a written record of the agreement reached by the parties at conciliation should a complaint be resolved by agreement. The note added in this new section clarifies that the ACT Civil and Administrative Tribunal (ACAT) may make orders it considers to be appropriate to give effect to a conciliation agreement made under this section.

New section 34J sets out when a conciliation of consumer complaint ends.

New section 34K provides that communication made between parties of the conciliation and documents prepared in connection with conciliation discussions are not admissible in court proceedings unless exceptions pursuant to section 131(2) of the *Evidence Act 2011* (ACT) apply. An exception to the inadmissibility provisions includes circumstances where an application is brought before the ACAT for enforcement of the terms of the conciliated agreement.

Sub-division 5.1A.3 Civil penalties—business failing to attend conciliation

The clause introduces new sub-division 5.1A.3 which sets out machinery provisions for the civil penalty order. Sub-division 5.1A.3 provides that the civil penalty order can be imposed against a business by the Magistrates Court should the business fail to attend and participate in a compulsory conciliation without a reasonable excuse.

New section 34L provides for the definition of ‘civil penalty order’ and ‘civil penalty provisions’.

New section 34M stipulates that the Commissioner is required to make an application for a civil penalty order within 6 years after the alleged contravention. The section also provides that the maximum pecuniary penalty amount subject to this order per contravention is \$5,000.

New section 34M(4) further provides criteria that the Court must take into consideration in determining the appropriate penalty amount to be payable by the business as a safeguard. However, the criteria in new section 34M(4) is intended to also provide the Court with flexibility in determining the appropriate amount based on the merits of each case.

New section 34N clarifies that the pecuniary penalty is a debt owing to the Territory by the business.

Various new provisions have been drafted to provide clarity and legal certainty on how the new civil penalty scheme would operate. This is set out in sections 34O, 34P, 34Q, 34R and 34S.

New section 34O clarifies that a single civil penalty order may be made by the Magistrates Court against the same business for multiple contraventions of a civil penalty provision in certain circumstances. The penalty must nevertheless not exceed the sum of the maximum penalties that could be ordered if a separate penalty was ordered for each contravention.

New section 34P provides for an avoidance of doubt that two or more proceedings for civil penalty orders may be heard together by the Magistrates Court.

New section 34Q provides that the rules of evidence and procedure for civil matters must be applied by the Magistrates Court when hearing proceedings for a civil penalty order.

New section 34R provides that it is not necessary for the applicant to prove any fault element in relation to a business' contravention of a civil penalty provision in proceedings against a business. Examples have been provided on what constitutes a fault element.

New section 34S provides that should a contravention of a civil penalty provision be made by a representative of a corporation, and the representative was acting within the actual or apparent scope of their employment, the contravention must also be attributed to the corporation.

New section 34T provides that where a business wishes to rely on the reasonable excuse provision in new section 34F(4) in a proceeding for a civil penalty order, the business has an evidential burden in relation to the matter.

Clause 67 Dictionary, note 2

This clause clarifies that the term 'lawyer' in the ACT Fair Trading Act has the same meaning as that in the *Legislation Act 2001*.

Clause 68 Dictionary, new definition of *acquire*

This clause inserts a new definition for the word 'acquire' in the dictionary of the ACT Fair Trading Act following amendments to the ACT Fair Trading Act made by new division 5.1A.

Clause 69 Dictionary, definition of *business*

This clause substitutes the definition of 'business' in the ACT Fair Trading Act following amendments made by new division 5.1A.

Clause 70 Dictionary, new definitions

This clause inserts new definitions for the words ‘civil penalty order’, ‘civil penalty provision’, ‘compulsory conciliation notice’ and ‘conciliation’ in the dictionary of the ACT Fair Trading Act following amendments made by new division 5.1A. These terms cross-reference relevant new provisions of the ACT Fair Trading Act for their meaning.

Clause 71 Dictionary, definition of *consumer*

This clause substitutes the definition of ‘consumer’ in the dictionary of the ACT Fair Trading Act following amendments made by new division 5.1A.

Clause 72 Dictionary, new definitions

This clause inserts new definitions for the words ‘consumer complaint’, ‘consumer legislation’ and ‘party’ in the dictionary of the ACT Fair Trading Act. These terms cross-reference relevant new provisions of the ACT Fair Trading Act for their meaning.

Part 14 Fair Trading (Fuel Prices) Act 1993

Clause 73 New part 1 heading

This clause inserts a new part 1 heading, ‘Preliminary’, in the *Fair Trading (Fuel Prices) Act 1993* (Fuel Prices Act) to assist in the new structure of the Fuel Prices Act.

Clause 74 New part 2 heading

This clause inserts a new part 2 heading, ‘Determination of fuel prices’, after section 2A in the Fuel Prices Act.

Clause 75 Commissioner to make recommendations to Minister

Section 3 (2) (d)

This clause substitutes ‘Prices Surveillance Authority’ with ‘Australian Competition and Consumer Commission’. This is on the basis that the Australian Competition and Consumer Commission is the successor to the Prices Surveillance Authority which no longer exists.

Clause 76 New section 3 (3)

This clause inserts a definition of ‘Australian Competition and Consumer Commission’ to mean the Australian Competition and Consumer Commission established under the *Competition and Consumer Act 2010* (Cwlth), section 6AA.

Clause 77 Price display requirements

Section 5A (2), new definition of *discounted fuel price*

This clause inserts a new definition of 'discounted fuel price' in the Fuel Prices Act. It has been relocated from the dictionary as the term 'discounted fuel price' appears only in section 5A(1). It has further been amended to refer to the price per unit of measurement, instead of price per litre, to cover the different units of measurement of fuels. As the definition of fuel is being extended to cover new types of fuel, new units of measurement are relevant. Examples of units of measurement of fuel have been included in a note to this section to reflect this.

Clause 78 New part 3 heading etc

This clause inserts a new part 3 heading, 'Regulated transfer of certain fuels', after section 7 in the Fuel Prices Act. This part is intended to maintain the provisions in relation to a regulated transfer of fuel. This is because the provisions relate to specific temperature and volume measurements which can only be relevant to particular kinds of fuel. For this reason, and so as not to disturb the current operation of the regulated transfer of certain fuels, the definition of 'fuel' in this part remains as meaning 'leaded petrol, unleaded petrol or distillate'. The definitions for 'regulated transfer', 'leaded petrol' and 'unleaded petrol' have also been relocated from the dictionary to this part as they now only remain relevant to this part of the Fuel Prices Act.

Clause 79 New part 4 heading

This clause inserts a new part 4 heading, 'Miscellaneous', after section 11 of the Fuel Prices Act.

Clause 80 Dictionary, definition of *base wholesale price*

This clause amends the definition of 'base wholesale price' in the Fuel Prices Act to refer to a unit of measurement of a fuel, rather than a litre, in order to cover the new kinds of fuels that are now covered under the Fuel Prices Act.

Clause 81 Definition of *discounted fuel price*

This clause removes the definition of 'discounted fuel price' in the dictionary of the Fuel Prices Act as a new definition has been relocated to the new part 2.

Clause 82 Dictionary, definition of *fuel*

This clause substitutes the definition of 'fuel' in the Fuel Prices Act. Fuel was previously defined to mean 'leaded petrol, unleaded petrol and distillate'. However, new types of fuels are used in the ACT and are not covered under the fair trading protections of the Fuel Prices Act. The definition is intended to cover additional types of fuel.

The new definition refers to the definition in the *Fuels Rationing Act 2019* (Fuels Rationing Act) to ensure consistency across legislation. The Fuels Rationing Act

defines fuel to mean 'petroleum, a petroleum product, a petrochemical, any other liquid fuel manufactured for use in an internal combustion engine, or anything else prescribed by regulation'. An amendment is also being introduced in this Bill to the definition of 'fuel' in the Fuels Rationing Act to also include hydrogen. Accordingly, this amendment will also incorporate hydrogen into the definition of 'fuel' in the Fuel Prices Act. Additionally, 'fuel' in the Fuel Prices Act includes electricity to ensure that electricity is included in the consumer protection provisions of the Fuel Prices Act.

Clause 83 Dictionary, definitions of *Prices Surveillance Authority* and *regulated transfer*

This clause omits the definition of 'Prices Surveillance Authority' as the term is being removed from the Fuel Prices Act and therefore does not need to be defined. This clause further omits the definition of 'regulated transfer' in the dictionary of the Fuel Prices Act as it has been relocated to section 7A.

Clause 84 Dictionary, definitions of *retail margin*, *retail price* and *wholesale price*

This clause substitutes the definitions of 'retail margin', 'retail price' and 'wholesale price' in the Fuel Prices Act to refer to a unit of measurement of a fuel, rather than a litre, in order to cover the new kinds of fuels that are now covered under the Fuel Prices Act.

Part 15 Fuels Rationing Act 2019

Clause 85 Meaning of *fuel*

Section 6 (1), definition of *fuel*, paragraph (d)

This clause substitutes paragraph (d) of the definition of 'fuel' in the *Fuels Rationing Act 2019* (Fuels Rationing Act) to remove reference to a 'liquid' in 'any other fuel', and to separately list 'hydrogen' as a type of fuel. The intention behind this provision is to ensure that hydrogen is a type of fuel in the Fuels Rationing Act, particularly as this is a type of fuel being increasingly used in the ACT market. Electricity is not included as a type of fuel as the restriction on electricity is separately managed under the *Utilities Act 2004* and Utilities (Electricity Restrictions) Regulation 2004.

Clause 86 Section 6 (1), definition of *fuel*, examples

This clause substitutes the examples given for different types of fuel listed in the definition of 'fuel' in section 6(1) of the Fuels Rationing Act. It expands on the examples listed to provide some further clarity on the types of fuels that are included in this definition.

Part 16 Gaming Machine Act 2004

Clause 87 Cancellation of authorisation certificate because of cancellation etc of general and on licences

Section 64 (2)

This clause substitutes a new provision in the *Gaming Machine Act 2004* to reflect changes to the *Liquor Act 2010* and *Liquor Regulation 2010*, made in Parts 18 and 19 to support ongoing liquor licences and remove redundant references to term licences.

New section 64(2) provides that if the general licence or on licence ceases to be in force under the *Liquor Act 2010*, the authorisation certificate is cancelled.

A licence ceases to be in force if it is cancelled or surrendered.

Clause 88 Rendering gaming machines inoperable on authorisation certificate ceasing to be in force

Section 131 (a), note

This clause substitutes a new note at section 131 of the *Gaming Machine Act 2004*, referring to section 64(2) of that Act. The substituted note omits the reference to renewal of a general or on licence, consequential on amendments made to the *Liquor Act 2010* and *Liquor Regulations 2010* by Parts 18 and 19.

Part 17 Human Rights Commission Act 2005

Clause 89 Commission's obligation to be prompt and efficient

Section 45 (2) (d)

This clause inserts the words '(other than a matter under commission-initiated consideration)' in section 45(2)(d) of the *Human Rights Commission Act 2005* (HRC Act). This is to clarify that the commission does not have an obligation to be prompt and efficient in relation to commission-initiated considerations unlike a discrimination complaint from a complainant.

Clause 90 Complainant's obligations in relation to complaint

Section 46, note 1

This clause removes the words 'or (d)' in note 1 to section 46 of the HRC Act. This is to align with the amendment to remove the requirement that a complainant must tell the commission in writing if they wish to withdraw a complaint.

Clause 91 Referring complaints for conciliation

Section 51 (1), except note

This clause substitutes section 51(1) in the HRC Act to remove the requirement that the commission must be satisfied that a complaint or matter is likely to be successfully conciliated before referring it for conciliation. The intention is to make it easier to refer matters to conciliation, enabling more complainants and respondents

to access the Commission's conciliation process. The requirement that 'the matter is appropriate for conciliation' remains.

Clause 92 Section 53

This clause substitutes section 53 in the HRC Act to include additional definitions of 'commission-initiated discrimination matter' and 'complaint' in div 4.2A. This is to align with other amendments in div 4.2A of the HRC Act (see new section 53BA).

Clause 93 Section 53A heading

This clause substitutes the heading of section 53A in the HRC Act from 'Referral of discrimination complaints' to 'Referral of discrimination complaints other than commission-initiated discrimination matters'. This is to differentiate between discrimination complaints and commission-initiated discrimination matters which are being introduced in div 2.4A in new section 53BA (see new section 53BA).

Clause 94 New section 53A (3)

This clause introduces a new section 53A(3) in the HRC Act to clarify that a complaint, in this section, does not include a commission-initiated discrimination matter.

Clause 95 Late application in exceptional circumstances

New section 53B (5)

This clause introduces a new section 53B(5) in the HRC Act to clarify that a complaint, in this section, does not include a commission-initiated discrimination matter.

Clause 96 New section 53BA

This section inserts a new section 53BA in the HRC Act to allow for commission-initiated discrimination matters to be referred to the ACAT. The commission may prepare a report of a commission-initiated discrimination matter under section 84 of the HRC Act. New section 53BA provides that the commission then has 60 days after the report has been prepared in which the commission may refer the matter to the ACAT. Where a commission-initiated discrimination matter is referred to the ACAT, the commission must give written notice of the referral to the person complained about. The intention behind this provision is to allow the commission to pursue a matter in the ACAT for determination where an individual is unwilling or unable to bring a complaint, or where a systemic issue has been identified and the commission is best placed to address those issues.

Clause 97 Parties to ACAT proceeding on discrimination complaint

Section 53C, new note

This clause inserts a note to section 53C of the HRC Act to clarify that the commission is the complainant in relation to a commission-initiated consideration.

Clause 98 Relationship between conciliation and consideration

Section 61

This clause omits section 61 of the HRC Act to remove the requirement that conciliation of the complaint must be separate from, and independent of, any consideration of the complaint. The intention is to streamline the complaints process by allowing officers who investigate complaints to also conciliate complaints. This will have the effect of reducing the number of officers that complainants and respondents must deal with and improve continuity of service provision.

Clause 99 Conciliated agreements

Section 62 (1)

This clause substitutes the word ‘must’ with ‘may’ in section 62(1) of the HRA Act. This has the effect of removing the requirement that the commission must help parties in a conciliation form a written record of the agreement they have reached. Instead, the commission may assist the parties to make a written conciliation agreement, or the parties can opt to successfully resolve the conciliation verbally.

Clause 100 Section 62 (2)

This clause substitutes section 62(2) of the HRA to align with the amendment to section 62(1), to clarify that parties to a conciliation agreement must sign the agreement, only where a conciliation agreement (a written agreement) has been made.

Clause 101 Power to ask for information, documents and other things

Section 73 (4), note 2

This clause substitutes the reference to section 78(1)(d) with section 78(1)(c) in note 2 to section 73(4) of the HRC Act. Section 78(1)(c) is the appropriate cross-reference that relates to when the commission may close a complaint due to a complainant not complying with a requirement to provide information or produce a document.

Clause 102 When complaints can be closed

Section 78 (1) (d)

This clause omits the words ‘in writing’ in section 78(1)(d) of the HRC Act to remove the requirement that if a complainant wants to withdraw a complaint they must do so in writing. This is to allow complainants to instead inform the commission verbally.

Clause 103 Expiry—vulnerable person complaint provisions

Section 105B (1) (f)

This clause omits section 105B(1)(f) of the HRC Act which provided for the expiry of section 99A of the HRC Act at the end of a 12-month period during which no COVID-19 emergency has been in force. The effect of this provision is that there is no longer any expiry provision in relation to section 99A.

Section 99A provides that a commissioner (information giver) may give statutory office-holder information to another commissioner (information recipient) who may use the information, if that information is necessary for the effective exercise of a function under the HRC Act. This section has the intention of allowing for information sharing between commissioners to enable them to effectively exercise their functions and allow for the day-to-day coordination of service, oversight and advocacy in the ACT that is expected of the commission. This is necessary for the effective functioning of the commission beyond the expiry period.

Clause 104 Dictionary, new definition of *commission-initiated discrimination matter*

This clause inserts a new definition of ‘commission-initiation discrimination matter’ for division 4.2A in the dictionary of the HRC Act to refer to the new definition in section 53.

Clause 105 Dictionary, definition of *complaint*, new paragraph (c)

This clause inserts a new paragraph (c) in the definition of ‘complaint’ for division 4.2A in the dictionary of the HRC Act to refer to the definition in section 53.

Part 18 Liquor Act 2010

Clause 106 Licence—conditions

Section 31 (2) (b)

This clause omits the term ‘renewed’ from section 31(2)(b) of the *Liquor Act 2010* to reflect that liquor licences are no longer issued on a term basis, requiring renewal. Since liquor licences are ongoing, the term ‘renewal’ is redundant.

Clause 107 Section 32

This clause removes from section 32 of the *Liquor Act 2010* redundant provisions referencing the ‘commencement day’ of amendments introducing ongoing liquor licences. The provisions were necessary to provide for the expiration of term licences but are no longer required since all liquor licences are now ongoing.

This clause inserts new section 32A to provide explicitly that licensees must pay to the commissioner the annual fee determined for the licence.

The note to section 32A states that a fee may be determined under section 227 for this provision. Liquor licence, permit and other fees are listed in the Liquor (Fees) Determination made under section 227 of the Act.

Clause 108 Division 2.5 heading

This clause removes from the heading at Division 2.5 of the *Liquor Act 2010* the word, 'renewal'. With this redundant term omitted, the amended heading reads, 'Division 2.5 Licences—amendment, transfer, etc.'

Clause 109 Sections 42 and 43

This clause omits sections 42 and 43 of the *Liquor Act 2010*. These sections provided for applications for renewal and decisions on applications for renewal respectively. Since all liquor licences are now ongoing, these clauses are redundant.

Clause 110 Offence—failure to return licence

Section 46 (1) (a)

This clause clarifies the application of the offence provision under section 46 of the *Liquor Act 2010*. Since liquor licences no longer expire, the reference to expiry is replaced with a reference to the licence ending.

Clause 111 What is *suitability information* about premises?

Section 78, note 2

This clause substitutes a replacement note 2 to section 78 of the *Liquor Act 2010* which omits the reference to licence renewal, consequential on the omission of section 42.

Clause 112 Determination of fees

Section 227 (2)

This clause omits subsection (2) of section 227 of the *Liquor Act 2010*. The omission of section 42 of the *Liquor Act 2010* renders section 227(2) redundant.

Clause 113 Section 227 (4)

This clause omits subsection (4) to section 227 since the definition of Minister at section 162 of the *Legislation Act 2001* is applied and an additional definition is unnecessary. This is a technical amendment unrelated to other amendments to provide explicitly for ongoing licences.

Clause 114 Regulation-making power

Section 229 (2) (b) (iii)

Section 229(2)(b)(iii) currently provides that a regulation can be made about the calculation of fees based on the term of a liquor licence or liquor permit. This clause substitutes a replacement section 229(2)(b)(iii), omitting a redundant reference a licence, since only permits have terms and licences are ongoing.

Clause 115 New part 24

This clause inserts new Part 24—Validations and transitional

Amendments to the *Liquor Act 2010*, made by the *Liquor Amendment Act 2017* were designed to give effect to ongoing licences and phase out term licences, avoiding the requirement for an annual renewal application and decision process, but not for the payment of an annual fee in respect of the liquor licence. Since their former term licences expired, liquor licensees have not been required to apply for licence renewal or pay fees to renew their licenses, but have been required to pay annual liquor licence fees. However, fee determinations in relation to these fees have continued to reference the licence renewal provision – section 42 - rather than a provision for the payment of an annual licence fee.

New section 270 is a validation provision. It refers to a fee, charge or other amount determined by the Minister under section 227 for section 42 of the *Liquor Act 2010* (Licence—application for renewal), payable during the relevant period and collected by the Territory in relation to continuing (perpetual) licences, and provides that the fee, charge or other amount is taken to have been validly collected by the Territory in accordance with a determination properly made.

Continuing licence and relevant period are defined. Relevant period is defined to mean the period beginning 1 July 2017 and ending on the commencement of this part.

The validation provision removes doubt that the annual payments made by licensees after they transitioned to ongoing licences were validly collected.

New section 271 revokes the Liquor (Fees) Determination 2019 [DI2019-159], schedule, item 501. Item 501 of DI2019-159 sets out fees payable for the renewal of licences under section 42 of the *Liquor Act 2010*. The revocation of item 501 preserves clarity and avoids item 501 becoming inoperative on the omission of section 42. A new fees determination will be made following the commencement of this part.

New section 272 provides for the automatic expiry of Part 24 on the day it commences.

Clause 116 Reviewable decisions

Schedule 1, item 5

This clause omits Schedule 1, table, item 5 of the *Liquor Act 2010*, since this item refers to refusal to renew a licence as a reviewable decision, consequential on the omission of section 42.

Part 19 Liquor Regulation 2010

Clause 117 Licence form—Act, s 30 (1) (b) (vii)

Section 6 (1) (d)

Section 6(1) of the Liquor Regulation 2010 sets out the information a licence must include.

This clause omits from section 6(1) of the Liquor Regulation 2010 the redundant requirement for a licence to show when it expires.

Clause 118 Licence term—Act, s 32 (2)

Section 8

This clause omits section 8 of the Liquor Regulation 2010, about when licences expire, as this section is redundant with all former term licences now expired and ongoing licences having been issued following their expiry.

Clause 119 Licence maximum renewal period—Act, s 42 (1)

Section 12

This clause omits the now redundant section 12 of the Liquor Regulation 2010, which provided for maximum licence renewal periods.

Clause 120 Suitability of premises—cumulative impact

Section 15 (2) (c) and (d) and note

This clause substitutes new sections 15 (c) and (d) and a note to remove redundant references to the commencement date of the 2017 amendments.

Clause 121 Section 15 (3)

This clause substitutes a new section 15(3) about the meaning of *incident register*, which omits a redundant reference to the commencement of section 105 of the *Liquor Amendment Act 2017*.

Part 20 Magistrates Court Act 1930

Clause 122 Minute of decision and notice to defendant

Section 141 (2)

This clause substitutes the words 'must' with 'may' in section 141(2) of the *Magistrates Court Act 1930* to align with the amendment to the *Victims of Crimes Act 1994* that removes the requirement that the amount of any victims services levy payable by a person must be stated on a fine order.

Clause 123 Section 141 (2), note

This clause omits the note to section 141(2) of the *Magistrates Court Act 1930* to align with the amendment to the *Victims of Crimes Act 1994* that removes the requirement that the amount of any victims services levy payable by a person must be stated on a fine order.

Part 21 Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005

Clause 124 Domestic animals legislation infringement notice offences and penalties

Schedule 1, part 1.1, items 40 and 41

This clause substitutes items 40 and 41 to align with changes to section 72K of the Domestic Animals Act regarding offences for selling, giving away or advertising in relation to a dog or cat without providing the required information.

Part 22 Motor Accident Injuries Act 2019

Clause 125 Meaning of *driving offence*

Section 41, definition of *driving offence*, paragraph (c) (iii)

This clause omits the words ‘section 24A (Driver etc intoxicated)’ and substitutes ‘section 24A (Use vehicle or animal on road under influence of alcohol or drug)’ in the *Motor Accident Injuries Act 2019* (MIA Act) to align with the amendment in the *Road Transport (Alcohol and Drugs) Act 1977* (Alcohol and Drugs Act) to cover under the influence of a drug.

Clause 126 No entitlement—serious offences

Section 48 (7), definition of *serious offence*, paragraph (b) (ix)

This clause omits the words ‘section 24A (Driver etc intoxicated)’ and substitutes ‘section 24A (Use vehicle or animal on road under influence of alcohol or drug)’ in the MIA Act to align with the amendment in the Alcohol and Drugs Act.

Clause 127 Section 48 (7), definition of *serious offence*, new paragraph (b) (x)

This clause inserts a new paragraph (b)(x) to section 48(7) in the MIA Act to provide that a serious offence includes section 24A of the Alcohol and Drugs Act, if the offence relates to driving under the influence of a drug. This clause is a consequential amendment to align with the changes in the Alcohol and Drugs Act.

Part 23 Residential Tenancies Act 1997

Clause 128 Adaptable housing—advertising

Section 11AAA (1) (a)

This clause omits the word ‘unit’ and substitutes it with ‘premises’ in section 11AAA(1)(a) of the *Residential Tenancies Act 1997* (RTA) to ensure the subsection applies to all premises and not just units.

Clause 129 Section 11AAA (1) (b) and (c)

This clause omits the words ‘unit is’ and substitutes it with ‘premises are’ in section 11AAA(1)(b) and (c) of the RTA to ensure the subsection applies to all premises and not just units.

Clause 130 New section 11AAA (3)

This clause inserts a new section 11AAA(3) in the RTA to correct a minor drafting error that inserted definitions of ‘adaptable housing dwelling’ and ‘unit’ into section 12 of the RTA. The clause further defines ‘adaptable housing dwelling’ to refer to the definition in the *Civil Law (Sale of Residential Property) Act 2003*. ‘Unit’ is no longer separately defined as the term has been replaced in the relevant sections above with ‘premises’. ‘Premises’ is defined in the dictionary of the RTA.

Clause 131 Lessor’s obligations

Section 12 (4), definitions of *adaptable housing dwelling* and *unit*

This clause omits section 12(4) of the RTA to correct a minor drafting error that inserted definitions of ‘adaptable housing dwelling’ and ‘unit’ into section 12 of the RTA rather than in new section 11AAA.

Part 24 Road Transport (Alcohol and Drugs) Act 1977

Clause 132 Section 24A heading

This clause substitutes the heading of section 24A in the Alcohol and Drugs Act from ‘Driver etc intoxicated’ to ‘Use vehicle or animal on road under influence of alcohol or drug’. The intent behind this provision is to extend the operation of the section to cover being under the influence of drugs.

Clause 133 Section 24A (1)

This clause adds ‘or a drug’ in section 24A(1) in the Alcohol and Drugs Act. The intent behind this provision is to extend the offence in this section to cover being under the influence of drugs, such that a person must not drive or ride a vehicle or animal on a road, or be in charge of a vehicle or animal on a road, while under the influence of alcohol or a drug. The vehicles to which this provision applies are bicycles, personal mobility devices and animal-drawn vehicles. The penalties that

currently apply remain the same at 50 penalty units, imprisonment for 6 months, or both.

Part 25 Road Transport (Offences) Regulation 2005

Clause 134 Short descriptions, penalties and demerit points

Schedule 1, part 1.3, item 18, column 3

This clause substitutes ‘alcohol’ with ‘alcohol/drug’ in the Road Transport (Offences) Regulation 2005. This is a consequential amendment to align with the amendments in the Alcohol and Drugs Act.

Part 26 Spent Convictions Act 2000

Clause 135 New division 2.1 heading

This clause inserts a new division 2.1 heading, ‘Spent convictions—general’, in the *Spent Convictions Act 2000* (Spent Convictions Act), to accommodate spent convictions in relation to youth sexual offences in part 2 of the Spent Convictions Act.

Clause 136 Which convictions can become spent?

Section 11 (2) (b)

This clause substitutes the words ‘a conviction for a sexual offence’ with ‘a conviction for a sexual offence, other than a youth sexual offence conviction’ in section 11(2)(b) of the Spent Convictions Act. The effect of this is that some youth sexual offence convictions can become spent.

The intention behind these amendments to the Spent Convictions Act is to create a mechanism for people convicted of a sexual offence, where the person was not dealt with as an adult in relation to the conviction, to apply to the court for their conviction to be spent in certain circumstances.

Clause 137 When is a conviction spent?

Section 12 (1)

This clause substitutes section 12(1) of the Spent Convictions Act. Where previously convictions that could be spent in section 11 became spent on completion of the relevant crime-free period (unless earlier spent under section 12), this amendment creates a separate process for youth sexual offence convictions to become spent. For a youth sexual offence conviction to be spent, an order has to be made by a court under section 14F.

Clause 138 New division 2.2 etc

This clause creates a new division 2.2, 'Spent convictions—youth sexual offences' in the Spent Convictions Act. This division forms part of the framework in the Spent Convictions Act for youth sexual offences to become spent.

New section 14A defines 'youth sexual offence conviction' to mean a conviction for a sexual offence where the person convicted was not dealt with as an adult in relation to the conviction, and where a sentence of imprisonment of not longer than 6 months was imposed or no sentence of imprisonment was imposed.

New section 14B describes the meaning of 'victim' for the purpose of division 2.2. A victim is a person (primary victim) who suffers harm because of an offence by the offender. If a primary victim dies because of an offence by the offender, a victim is also a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death. In considering whether it is in the public interest to make an order that a youth sexual offence conviction is spent, any views of a victim of the offence must be considered by the court in new section 14F.

New section 14C provides that a person with a youth sexual offence conviction may, on or after the completion of the relevant crime-free period, apply to the court for an order that the conviction is spent. The crime-free period for a person for an offence, where the person was not dealt with as an adult in relation to the conviction, is 5 consecutive years as set out in section 13.

New section 14C further states the requirements of an application to the court. Court refers to the court in which the applicant was convicted, or, if the applicant does not know which court they were convicted in, the Magistrates Court. It is noted that the Dictionary of the *Legislation Act 2001* defines 'Magistrates Court' to mean the Magistrates Court established under the *Magistrates Court Act 1930*. The Magistrates Court Act includes a range of different names when it is exercising specific functions under that Act. For example, the Magistrates Court may exercise the functions of, and be known as, the Children's Court, the Family Violence Court, the Galambany Court, the Industrial Court and may sit in both civil and criminal proceedings.

New section 14D provides that the chief police officer and director of public prosecutions must be notified by the applicant of an application for a youth sexual offence conviction to be spent. The chief police officer and director of public prosecutions may make submissions in relation to the application. Before deciding whether to make submissions, the director of public prosecutions must take reasonable steps to give notice of the application to the victim of the offender and take into account any views expressed by the victim.

New section 14E provides that a court may transfer applications made to it to the court in which the conviction was made.

New section 14F provides that a court hearing an application must be satisfied it is in the public interest to make the order that a youth sexual offence conviction is spent. The section outlines prescribed criteria the court must have regard to when considering whether it is in the public interest to make an order. It also provides that the hearing of the application may be conducted in open court or the court may be closed, having regard to the victim's right to privacy, whether the identity of the applicant was protected in relation to the offence to which the application relates, and anything else the court considers relevant.

This clause also includes a new division 2.3 heading, 'Spent convictions—revival'.

Clause 139 Dictionary, new definitions

This clause inserts a new definition of 'victim' for division 2.2 in the dictionary of the Spent Convictions Act. It refers to section 14B for its meaning.

This clause also inserts a new definition of 'youth sexual offence conviction' for part 2 in the dictionary of the Spent Convictions Act. It refers to section 14A for its meaning.

Part 27 Unit Titles (Management) Act 2011

Clause 140 Owners corporation must have bank account

Section 68 (1), new note

This clause inserts a new note in relation to section 68(1) of the *Unit Titles (Management) Act 2011* to clarify that that an owners corporation may operate more than one bank account.

Clause 141 Requirements for notice of general meetings

Schedule 3, section 3.7 (2) (a)

This clause substitutes schedule 3, section 3.7(2)(a) of the *Unit Titles (Management) Act 2011* to provide that for a notice of a general meeting given to a person entitled to vote on any motion, the notice must include a proxy form, and if that form is approved under section 146, that form must be used.

Clause 142 Proxy votes

Schedule 3, section 3.26 (1), new notes

This clause inserts new notes in relation to schedule 3, section 3.26(1) of the *Unit Titles (Management) Act 2011* to clarify that if there is an approved form for proxy voting under section 146, that form must be used. It also clarifies that a proxy form must accompany notice of a general meeting.

Clause 143 Schedule 3, section 3.26 (2) and note

This clause omits schedule 3, section 3.26(2) and note of the *Unit Titles (Management) Act 2011* to align with the changes made in Schedule 3, section 3.37(2)(a) and section 3.26(1).

Part 28 Victims of Crime Act 1994

Clause 144 Notice of levy

Section 25

This clause removes section 25 of the *Victims of Crimes Act 1994*. The effect of this is to remove the requirement that the amount of a victims services levy payable by a person must be stated on a fine order and any notice of the fine order given to them. Instead, any victims services levy payable may be stated on a fine order or notice, or a person may be notified separately.