

2020

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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2020

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

**Presented by
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Attorney-General**

JUSTICE AND COMMUNITY SAFETY 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*. Climate change impacts of the Bill have also been considered and no impacts have been identified.

This explanatory statement relates to the Justice and Community Safety Legislation Amendment Bill 2020 as presented to the Legislative Assembly. It has been prepared 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, primarily in the Attorney-General's portfolio, including:

- *ACT Civil and Administrative Tribunal Act 2008;*
- *ACT Civil and Administrative Tribunal Regulation 2009;*
- *Administration and Probate Act 1929;*
- *Associations Incorporation Act 1991;*
- *Crimes (Sentence Administration) Act 2005;*
- *Guardianship and Management of Property Act 1991;*
- *Legal Profession Act 2006;*
- *Legislation Act 2001;*
- *Lotteries Act 1964;*
- *Mental Health Act 2015;*
- *Powers of Attorney Act 2006;*
- *Public Sector Management Act 1994;*
- *Public Trustee and Guardian Act 1985;*
- *Residential Tenancies Act 1997;*
- *Retirement Villages Regulation 2013;*
- *Security Industry Regulation 2003;* and
- *Wills Act 1968.*

SUMMARY OF AMENDMENTS

ACT Civil and Administrative Tribunal Act 2008 and ACT Civil and Administrative Tribunal Regulation 2009

The Bill amends the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) and *ACT Civil and Administrative Tribunal Regulation 2009* (ACAT Regulation) to allow amounts which are received by the trust account of the ACT Civil and Administrative Tribunal (ACAT Trust) to be used across prescribed purposes under any of the ACAT Trust's authorising laws.

The amendments will support the sustainability of the ACAT Trust and allow the specific streams of funding received by the ACAT Trust to be more flexibly applied across its prescribed purposes. The Bill further amends the ACAT Regulation to clarify that the prescribed purposes of trust amounts paid into the interest trust account in accordance with section 28(3) of the *Residential Tenancies Act 1997* apply to trust amounts paid into the ACAT Trust in accordance with the *Residential Tenancies Act 1997*. It is a technical amendment that is designed to clarify the operation of what the law has been. It is not an amendment that impacts negatively on rights or individuals.

Crimes (Sentence Administration) Act 2005 and Mental Health Act 2015

The Bill amends the *Crimes (Sentence Administration) Act 2005* (CSA Act) to remove the definitions of director-general where the definition refers to the director-general responsible for the *Children and Young People Act 2008* to ensure the Director-General of the Justice and Community Safety Directorate (JACS) is responsible for the Youth Justice Victims Register. The Bill also amends the *Mental Health Act 2015* (MH Act) so that the Victims of Crime Commissioner (VOCC) is empowered to give written notice of the intention to remove a victim from the Affected Person Register, and that a victim has 28 days to respond to the notice in writing to the VOCC if it is believed the victim should remain on the Affected Person Register.

The amendments to the CSA Act and MH Act reflect the relocation of the Youth Justice Victims Register and Affected Persons Register from the Community Services Directorate and ACT Civil and Administrative Tribunal, respectively, to the VOCC at Victim Support ACT. The VOCC will be administering the Youth Justice Register and Affected Person Register on behalf of the Director-General of JACS.

Administration and Probate Act 1929

The Bill amends the *Administration and Probate Act 1929* (AP Act) to update the language of the provision and to clarify the role of the Public Trustee and Guardian (PTG) in the administration of a deceased person's estate. It confirms that upon a person's death, their real and personal property vests in the PTG in accordance with the common law until an administrator or executor is appointed. The amendment clarifies that the PTG *may* administer a person's estate where a person dies and no one is appointed as the executor or administrator of the person's estate. However, the Bill also clarifies that the PTG is *not required* to administer a deceased person's estate,

act as trustee in any trust created by a deceased person's will, or exercise any discretions, powers, or authorities of a personal representative, trustee or devisee.

The Bill also amends the AP Act to allow intestate estates to vest absolutely (as opposed to contingently) in unmarried persons under the age of 18.

Wills Act 1968

The Bill amends the *Wills Act 1968* (Wills Act) to provide a 30-day survivorship to apply to all persons entitled to take on intestacy. It also clarifies that this 30-day survivorship requirement applies to people born after the death of the intestate who were a foetus in utero at the time of the intestate's death. However, the amendments also provide that the 30-day survivorship rule will not apply where the effect would be that the intestate estate passes to the Territory under section 49CA of the AP Act. The amendments introduce the survivorship clauses in cases of intestacy to promote consistency between testate and intestate estates, reduce delays in the administration of an estate, and to align with Recommendation 40 of the *National Committee for Uniform Succession Laws Intestacy Report* (March 2007).

Guardianship and Management of Property Act 1991

The Bill amends the *Guardianship and Management of Property Act 1991* (GMP Act) to remove the requirement for a principal under an enduring power of attorney (EPOA) to have impaired decision-making capacity before:

- allowing ACAT to make certain directions such as revoking or suspending an EPOA
- allowing the Public Advocate (PA) and PTG to request an attorney under an EPOA to produce records of transactions carried out by the attorney for the principal, where the principal does not have impaired decision-making capacity.

However, the Bill maintains the requirement that the principal must have impaired decision-making capacity before the ACAT can appoint a guardian or manager for the principal under the EPOA. The amendments strengthen the safeguards in the GMP Act and improve protection of older members of our community, including those who may have capacity but are reliant on other persons to carry out important transactions on their behalf. These amendments are also consistent with the overall objectives of the National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023.

Powers of Attorney Act 2006

The Bill amends the *Powers of Attorney Act 2006* (POA Act) to remove, on a permanent basis, the need for a principal under an EPOA to have impaired decision-making capacity before:

- an attorney is required to keep accurate records and accounts of all dealings and transactions made under the EPOA; and
- an attorney for a property matter under an EPOA is required to keep the attorney's property separate from the principal's property.

Prior to the *COVID-19 Emergency Response Legislation Amendment Act 2020* (COVID-19 Emergency Response Amendment Act), the attorney only had the obligations while a principal under the EPOA had impaired decision-making capacity. This condition was removed from the POA Act on a temporary basis by the COVID-19 Emergency Response Amendment Act. The amendments now seek to enable the provisions to operate on a permanent, rather than temporary, basis and maintain the increase in safeguards around the potential for financial abuse of a principal under an EPOA.

Public Trustee and Guardian Act 1985

The Bill amends the *Public Trustee and Guardian Act 1985* (PTG Act) to remove the legal impediments for the PTG to establish its own Wills Bank in the future.

The Bill also amends the PTG Act to enable the PTG to require an individual to provide the PTG with information or documents relevant to the exercise of the PTG's functions under the PTG Act or another Territory law, on a permanent basis. The COVID-19 Emergency Response Amendment Act amended the provisions of the PTG Act for this requirement to also apply to individuals, but only during the COVID-19 emergency period. The amendment will provide the PTG the continued ability to enforce the rights of a protected person by enabling the PTG to require individuals, such as external financial managers, to provide information or documents beyond the COVID-19 emergency period. The power also assists in increasing PTG's operational efficiencies, allowing PTG to undertake its statutory functions under section 26 and 27 of the GMP Act, reducing delays in the enforcement of a protected person's rights.

Associations Incorporation Act 1991

The Bill amends the *Associations Incorporation Act 1991* (AI Act) to allow members of small not-for-profit organisations to review their organisation's statement of accounts. The amendment restores the position of a prior AI Act, where members of small associations were previously allowed to conduct the review. The position was changed inadvertently by amendments introduced by the *Red Tape Reduction Legislation Amendment Act 2018* with the intention of aligning ACT legislation with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Legal Profession Act 2006

The Bill amends the *Legal Profession Act 2006* (LP Act) to include as a 'suitability matter' and 'show-cause event', for the purposes of deciding whether a person is a fit and proper person to be admitted to the Territory legal profession or hold a local practising certificate, circumstances where a legal practitioner is or has been a director of an incorporated legal practice which is or has been under external administration, such as administration or receivership in accordance with the *Corporations Act 2001*. The amendments place the onus on the individual to make appropriate disclosures and justify why they are a fit and proper person to practice law, despite their circumstances. The amendments also aim to protect constituents from dishonest legal

practitioners, and safeguard and maintain the integrity of, and public confidence in, the Territory's legal profession.

The Bill also amends the LP Act to require the relevant law councils in the Territory to remove information about a person in the Territory from the register of disciplinary action upon the death of the person, as the information is no longer required to serve the public interest to protect the Territory community and the integrity of and public confidence in the Territory's legal profession.

Legislation Act 2001 and Public Sector Management Act 1994

The Bill amends the *Legislation Act 2001* (Legislation Act) to require the signature of the Chief Minister and the Minister in order for a statutory instrument to be taken to be signed by the Executive. The amendments seek to ensure a higher degree of oversight over the delegated legislation making powers of the Executive.

The Bill also amends the *Public Sector Management Act 1994* (the Public Sector Management Act) to provide that, where a Minister is authorised to act on the Chief Minister's behalf or on another Minister's behalf pursuant to section 14(3), this is subject to the requirements of sections 41 and 253 of the Legislation Act. The amendment will clarify the operation of section 14 of the Public Sector Management Act in light of the amendments to sections 41 and 253 of the Legislation Act.

Lotteries Act 1964

The Bill amends the *Lotteries Act 1964* (Lotteries Act) to transfer the power to determine fees under the Lotteries Act from the Gambling and Racing Commission to the Minister administering the Lotteries Act. The amendment will align the Lotteries Act with other gaming laws where the Minister is provided with the power to determine fees and will lead to greater administrative efficiencies for the Territory Government.

Residential Tenancies Act 1997

The Bill amends the *Residential Tenancies Act 1997* (RT Act) to change the person who is able to authorise an information booklet that a lessor must provide to a tenant. This information currently takes the form of the 'Renting Book'. The information booklet was previously authorised by the Commissioner for Fair Trading. This amendment will change the person who authorises the information booklet to the Director-General for the Directorate administering the RT Act. This is so the Directorate who has responsibility for developing and implementing changes to the RT Act will also be responsible for updating the Renting Book.

The Bill also amends the RT Act to clarify that an 'occupancy agreement' does not include an agreement to give a person a right to occupy premises where the person given the right to occupy is party to an agreement entered into honestly for the sale or purchase of the premises. The definition of 'occupancy agreement' was introduced by the *Residential Tenancies Amendment Act 2020 (No 2)* and it was not intended to apply to a right to occupy premises during a sale or purchase of premises.

Retirement Villages Regulation 2013

The Bill amends the *Retirement Villages Regulation 2013* (RV Regulation) to update the references to provisions of the *Retirement Villages Act 2012*. The amendments correct the references which resulted from the insertion of section 159(4) into the *Retirement Villages Act 2012* by the *Retirement Villages Legislation Amendment Act 2019*. The insertion of section 159(4) changed the numbering of the paragraphs in section 159. The amendments thereby increase the clarity of the legislation.

Security Industry Regulation 2003

The Bill amends the *Security Industry Regulation 2003* (SI Regulation) to update a reference from the *Casino Control Act 1988* to the *Casino Control Act 2006*. The reference is required to be updated as the *Casino Control Act 1998* was repealed by the *Casino Control Act 2006*.

Consequential amendments

The Bill also makes consequential amendments to section 125(6) and the definition of 'Chapter 5 body Corporate' in the dictionary of the LP Act, and to section 14(4) of the Public Sector Management Act.

CONSULTATION ON THE PROPOSED APPROACH

The proposed amendments are the result of consultation with and input from relevant stakeholders.

CONSISTENCY WITH HUMAN RIGHTS

Administration and Probate Act 1929

Section 38A of the AP Act currently provides that if a person who is entitled to an intestate estate is under 18 years of age and not married or in a civil union, the person is entitled to take a beneficial interest in the intestate estate on marrying, entering a civil union or turning 18. That is, vesting of the intestate estate is contingent on them turning 18, marrying or entering a civil union. The amendment to section 38A of the AP Act by clause 7 of the Bill provides for absolute (as opposed to contingent) vesting of an intestate estate in unmarried people under the age of 18. It thereby engages and promotes the right to equality and non-discrimination in section 8 of the *Human Rights Act 2004* (HR Act). Section 8 includes the right of everyone to enjoy their human rights without distinction or discrimination of any kind. The amendment removes discrimination on the basis of age and relationship status by allowing an intestate estate to vest absolutely in people who are both unmarried and under the age of 18.

Legal Profession Act 2006

The amendments by clauses 16 and 20 of the Bill to section 11 and the dictionary of the LP Act require relevant persons to disclose, and for relevant legal authorities in the Territory to consider, an additional 'suitability matter' or 'show-cause event' in deciding if a person is a 'fit and proper' person to be admitted to the legal profession or to hold a local practising certificate as a solicitor or barrister. Where a legal practitioner is or

was a director of an incorporated legal practice which is in or was a Chapter 5 body corporate, these circumstances must be disclosed and considered by the relevant persons and Territory legal authorities, respectively. The amendments to section 125(6) and the dictionary of the LP Act by clauses 17 and 19 of the Bill clarify that a 'Chapter 5 body corporate' is defined by section 9 of the *Corporations Act 2001* (Cth).

The measure engages the right to work in section 27B(1) of the HR Act insofar as it places conditions on a person's ability to be a member of the legal profession. Any limitation on this right is reasonable and demonstrably justified in accordance with section 28 of the HR Act. The measure seeks to achieve the legitimate purposes of enhancing public safety and maintaining the integrity of, and public confidence in, the Territory's legal profession. The measure is rationally connected to the legitimate purpose, as requiring disclosure or consideration of the additional suitability matter or show-cause event will assist in protecting constituents from dishonest legal practitioners. The measure does not mean that a person affected by the measure will be automatically precluded from admission as a legal practitioner or denied the holding of a practising certificate as a solicitor or barrister. Rather, the additional suitability matter and show-cause event is only one circumstance which must be disclosed to and considered by relevant legal authorities for the purposes of the fit and proper person test to decide if a person is to gain admission to the legal profession and hold a practising certificate as a solicitor or barrister in the Territory. This is the least restrictive means reasonably available to achieve the legitimate objectives of the measure.

Guardianship and Management of Property Act 1991

The amendments to sections 62 and 64 the GMP Act by clauses 12 to 15 of the Bill, which remove the requirement for a principal under an EPOA to have impaired decision-making capacity before certain provisions of the GMP ACT may apply, engages and promotes the right to equality and non-discrimination in section 8 of the HR Act and the right to freedom of expression in section 16 of the HR Act. As principals under an EPOA with decision-making capacity may face difficulties protecting themselves under an EPOA without any external assistance or intervention, such as from elder abuse, the measure ensures that they may seek and receive information from an attorney and are able to enforce their rights on an equal basis with others, including with principals who have impaired decision-making capacity.

The measure also engages and potentially limits the right to privacy under section 12 of the HR Act of principals and attorneys under an EPOA.¹ The measure limits the right as it expands the circumstances where ACAT and the PA or PTG may require an attorney to produce stated books, accounts or other records and these documents may contain personal or sensitive information. Moreover, by broadening ACAT's

¹ The right provides for one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The term 'unlawful' means that no interference can take place except in cases authorised by the law. 'Arbitrary interference' refers to interference with privacy and family that, even if provided for by law, is not reasonable, necessary, and proportionate in the circumstances.

powers, and the circumstances interested persons and someone else with leave may make an application to ACAT, the measure interferes with the personal decision of a principal to have an EPOA.

However, any interference with the right is reasonable and demonstrably justified in accordance with section 28 of the HR Act. The measure seeks to achieve the legitimate purpose of protecting principals under an EPOA and of detecting, reducing and responding to an attorney's misuse of an EPOA. The measure is reasonable, necessary and rationally connected to the legitimate purpose as it may assist in addressing elder abuse and other situations of abuse where significant imbalances of power exist between attorneys and principals under an EPOA. The measure also ensures the same level of accountability and transparency are maintained by attorneys when keeping records for principals with or without impaired decision-making capacity.

Further, the measure is narrow in its scope, enabling ACAT, the PA, the PTG and others to make orders, require records or make an application to ACAT, respectively, only in relation to matters and records arising from relevant EPOAs. Additionally, public sector agencies, such as ACAT, the PA and the PTG, are required to comply with the *Information Privacy Act 2014* (IP Act) and its Territory Privacy Principles (TPP). The TPP restrict the use and disclosure of personal information held by public sector agencies, to the extent that the information is not required under another Territory law.

Powers of Attorney Act 2006

The amendments to sections 47 and 48 of the POA Act by clauses 27 to 30 of the Bill remove a requirement for a principal under an EPOA to have impaired decision-making capacity before requiring an attorney for a property matter to keep accurate records and accounts of all dealings and transactions made under the EPOA and to keep the attorney's property separate from the principal's property. These amendments engage and promote the right to equality and non-discrimination in section 8 of the HR Act and the right to freedom of expression in section 16 of the HR Act, including the freedom to seek and receive information. The measures ensure principals affected by the measure have the ability to enforce their rights on an equal basis with others, such as principals and attorneys where the principal has impaired decision-making capacity. Stronger protections for vulnerable persons in circumstances where they are dependent on others to undertake transactions on their behalf ensures their voices will be heard on an equal basis with others, promoting the rights to freedom of expression and equality before the law.

The measure engages and potentially limits the right of principals and attorneys to privacy in section 12 of the HR Act. The measure limits the right as it regulates the manner in which attorneys are to keep records and that the attorneys must keep records separate to principals. Despite the measure, the interference with the right is lawful and does not amount to an arbitrary interference. The measure is a permissible limitation that is reasonable and demonstrably justified in line with section 28 of the

HR Act. The measure seeks to achieve the legitimate purposes of safeguarding principals under an EPOA and detecting, reducing and responding to the misuse of an EPOA by an attorney, such as financial abuse. The measure is reasonable, necessary and rationally connected to the legitimate purpose as it requires, on a permanent basis, attorneys under an EPOA to maintain the same level of responsibility and transparency in keeping records irrespective of a principal's decision-making capacity.

The measure is proportionate to the legitimate purpose of the amendment and there are no less restrictive means reasonably available to achieve the objective of the amendments. The measure is also reasonable given the requirements are limited to particular circumstances. The measure only requires attorneys under an EPOA to keep accurate records and accounts, and keep their property separate from the principal's property, where there is a property matter and the attorney has decision-making capacity. Further, the proposed amendments do not create any additional powers for principals with decision-making capacity under an EPOA. Currently, principals with decision-making capacity under an EPOA can exercise their discretion to vary an EPOA or create limitations to a new EPOA as they see fit. This discretion to limit an EPOA could currently include a requirement for attorneys to keep accurate records and accounts, and to keep their property separate from the principal, in property matters and when the principal has decision-making capacity.

Public Trustee and Guardian Act 1985

The amendments to section 66 of the PTG Act by clauses 33 and 34 of the Bill engage and promote the right to equality and non-discrimination in section 8 of the HR Act. They extend the power of the PTG on a permanent basis to require an individual, such as external financial managers, to provide it with information or documents relevant to its functions, and they assist in the safeguarding and enforcement of the rights of protected persons on an equal basis with others.

The amendments to the PTG Act engage and potentially limit the right to privacy in section 12 of the HR Act. The amendments enable the PTG to access third party information from an individual that may be relevant to the exercise of the PTG's functions under the PTG Act or another Territory law. Nonetheless, the measure is reasonable and demonstrably justified in accordance with section 28 of the HR Act. The measure seeks to achieve the legitimate purposes of providing the PTG the ability, on a permanent basis, to enforce the rights of a protected person and to reduce any delay in the enforcement of those rights. The measure is rationally connected to the legitimate purpose as it would allow the PTG to comply with its role to examine external managers' accounts under sections 26 and 27 of the GMP Act.² The measure would also allow the PTG to comply with its obligations related to its appointment, such as where it has been appointed as trustee, as administrator for intestate estates, as

² Section 26 of the GMP Act requires a manager to file accounts and other documents relating to the management of the relevant property that are prescribed with the PTG. Section 27 of the GMP Act requires the PTG to examine accounts and documents specified in section 26.

executor and to examine financial accounts. Prior to the introduction of the temporary amendments under the COVID-19 Emergency Response Amendment Act, the PTG was prevented from fulfilling the PTG's role of examining external managers' accounts under sections 26 and 27 of the GMP Act. The PTG was also unable to compel and experienced difficulty obtaining information from individuals, such as financial managers, to provide information to the PTG in order to enforce a protected person's rights.

The measure is proportionate to the legitimate purposes and there are no less restrictive means reasonably available to achieve the purpose the measure seeks to achieve. The measure neither permits the PTG to require individuals to provide third party information which is not relevant to the exercise of the PTG's functions nor provides any offence provisions for non-compliance with the requirement. Further, the PTG Act and other Territory laws provide safeguards on the use of the information by the PTG. Section 65A of the PTG Act makes it an offence for the information holder (which includes anyone who exercises or has exercised functions under the PTG Act) to disclose protected information (being information disclosed to or obtained by an information holder) because of the exercise of a function under the PTG Act by an information holder or someone else. Additionally, as the PTG is bound by the TPP contained in the IP Act, the PTG is unable to use and disclose any personal they receive without limits.

Justice and Community Safety 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 and Community Safety 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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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

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

Clause 1 Commencement

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

The provisions in the Act, except for section 35, commence on the 7th day after the Act's notification day.

Section 35 commences on the commencement of section 25 of the *Residential Tenancies Amendment Act 2020 (No 2)*.

Clause 2 Legislation amended

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

- *ACT Civil and Administrative Tribunal Act 2008*;
- *ACT Civil and Administrative Tribunal Regulation 2009*;
- *Administration and Probate Act 1929*;
- *Associations Incorporation Act 1991*;
- *Crimes (Sentence Administration) Act 2005*;
- *Guardianship and Management of Property Act 1991*;
- *Legal Profession Act 2006*;
- *Legislation Act 2001*;
- *Lotteries Act 1964*;
- *Mental Health Act 2015*;
- *Powers of Attorney Act 2006*;
- *Public Sector Management Act 1994*;
- *Public Trustee and Guardian Act 1985*;
- *Residential Tenancies Act 1997*;
- *Retirement Villages Regulation 2013*;
- *Security Industry Regulation 2003*; and
- *Wills Act 1968*.

Part 2 ACT Civil and Administrative Tribunal Act 2008

Clause 4 Section 115C

This clause substitutes section 115C of the ACAT Act to prescribe the purposes for which a trust amount in the ACAT Trust may be used. The intent of the clause is to clarify that a trust amount in the ACAT Trust is to be flexibly applied across the prescribed purposes identified in the clause.

Part 3 ACT Civil and Administrative Tribunal Regulation 2009

Clause 5 Sections 9 and 10

This clause substitutes sections 9 and 10 of the ACAT Regulation to clarify the prescribed purposes for amounts paid under the *Agents Act 2003* into the ACAT Trust, including to reimburse the Territory for the cost of the ACAT Act, and to provide that the purposes mentioned in section 28 of the RT Act are also prescribed purposes.

Part 4 Administration and Probate Act 1929

Clause 6 Section 38A

The current provision outlines the role of the PTG by reference to the ‘Ordinary in England’. This language does not aid in general understanding of the PTG’s role. This clause substitutes section 38A of the AP Act to clarify the role of the PTG. It provides that, upon a person’s death their real and personal property will vest in the PTG in accordance with the common law until an administrator or executor is appointed. It clarifies that the PTG *may* undertake the administration of a person’s estate, however, it also provides that the PTG is *not required* to administer the estate, act as trustee or any trust created by a person’s will or exercise any discretion, power or authority of a personal representative, trustee or devisee. The intent of the clause is to align with and not displace the common law which allowed the vesting of an intestate deceased estate in the ‘Ordinary in England’ and, as a result of the vesting, provided the Ordinary with roles and functions for the intestate deceased estate at common law.

Clause 7 Section 46

This clause substitutes section 46 of the AP to allow an intestate estate to vest absolutely (as opposed to contingently) in a child. The intention of the clause is to remove any discriminatory language impeding the vesting of an intestate estate in persons who are unmarried and who are under the age of 18.

Part 5 Associations Incorporation Act 1991

Clause 8 Definitions—pt 5 Section 70B, definition of reviewer, paragraph (a)

This clause omits the words ‘a member or’ and substitutes them with ‘an’ in section 70B of the AI Act. The intent of the clause is to remove the impediment for members of a small association to review the association’s statement of accounts. The types of organisations that this amendment is intended to target are community groups that are not registered charities or not-for-profit agencies, such as rotary clubs.

Part 6 Crimes (Sentence Administration) Act 2005

Clause 9 Victims register—young offenders

Section 215A(6)

This clause omits section 215A(6) of the CSA Act in order to remove the definition of the 'director-general' in section 215A as the 'director-general responsible for the *Children and Young People Act 2008*'. The intent of the clause is to ensure that the reference to director-general in section 215A refers to the Director-General of JACS, as the Director-General of JACS is responsible for the Youth Justice Register.

Clause 10 Disclosures to registered victims—young offenders

Section 216A(5), definition of director-general

This clause omits the definition of 'director-general' in section 216A(5) of the CSA Act as the 'director-general of the *Children and Young People Act 2008*'. The intent of the clause is to ensure that the reference to director-general in section 216A refers to the Director-General of JACS, as the Director-General of JACS is responsible for the Youth Justice Register.

Part 7 Guardianship and Management of Property Act 1991

Clause 11 ACAT directions etc for enduring powers of attorney

Section 62(1)

This clause omits the phrase 'if the principal has impaired decision-making capacity' in section 62(1) of the GMP Act. The intent of the clause is to ensure that section 62 generally applies in relation to an EPOA irrespective of whether the principal has impaired decision-making capacity.

Clause 12 Sections 62(4) and (5)

This clause substitutes sections 62(4) and (5) of the GMP Act to provide that ACAT may appoint a guardian or manager for the principal under an EPOA, where ACAT revokes or suspends the EPOA and the principal has impaired decision-making capacity. The intent of the clause is to ensure that the amendment to section 62(1) does not apply to the power of ACAT to appoint a guardian or manager for a principal under an EPOA in circumstances where ACAT revokes or suspends the EPOA and the principal has impaired decision-making capacity. The intention of this clause is to maintain the current situation in that ACAT may only appoint a guardian or manager for a principal under an EPOA where the principal has impaired decision-making capacity.

Clause 13 Request for accounts—enduring powers of attorney

Section 64(1)

This clause omits section 64(1) of the GMP Act. The intent of the clause is to ensure that section 64 applies in relation to an EPOA irrespective of whether the principal has impaired decision-making capacity.

Clause 14 Section 64(2)

This clause omits the phrase ‘the enduring’ in section 64(2) of the GMP Act and inserts the phrase ‘an enduring’ in the provision. The intent of the clause is to improve the legibility of the provision, which is affected by the amendment to section 64(1).

Part 8 Legal Profession Act 2006

Clause 15 Suitability matters

New section 11(1)(ba)

This clause inserts a new section 11(1)(ba) in the LP Act to extend the definition of a ‘suitability matter’ to include whether a person is or was a legal practitioner who was also a director of an incorporated legal practice while the practice is or was an externally-administered body corporate under the *Corporations Act 2001* (Cth).

Clause 16 External administration proceedings under Corporations Act

Section 125(6)

This clause omits section 125(6) of the LP Act. The intent of the clause is to ensure that a consistent definition of ‘Chapter 5 body corporate’ in the LP Act is reflected in the dictionary of the LP Act.

Clause 17 Register of disciplinary action

New section 448(2A)

This clause inserts a new section 448(2A) in the LP Act which provides a requirement for relevant law councils to remove all information of a legal practitioner from the register of disciplinary action once the legal practitioner is deceased.

Clause 18 Dictionary, new definition of Chapter 5 body corporate

This clause inserts a definition of ‘Chapter 5 body corporate’ in the dictionary of the LP Act. The intent of the clause is to ensure that a consistent definition of ‘Chapter 5 body corporate’ is used throughout the LP Act.

Clause 19 Dictionary, definition of show-cause event, new paragraph (aa)

This clause inserts a new paragraph (aa) in the dictionary of the LP Act to extend the definition of ‘show-cause’ event in the dictionary to include whether a person is or was a legal practitioner who was also a director of an incorporated legal practice while the practice is or was becoming a Chapter 5 body corporate.

Part 9 Legislation Act 2001

Clause 20 Making of certain statutory instruments by Executive

Section 41(2)(b)

This clause substitutes the current section 41(2)(b) to provide that the Chief Minister and Responsible Minister are included as signing Ministers. The effect of this is that subordinate laws and disallowable instruments will be taken to have been signed by the Executive and made where it is signed by the Chief Minister and responsible Minister. The intent of the clause is to provide a higher degree of oversight in relation to the subordinate law and disallowable instrument making powers of the Executive. The amendments do not prevent a single minister signing subordinate laws and disallowable instruments where this is provided for in enabling legislation.

Clause 21 Section 41(4)

This clause substitutes the current section 41(4) to provide that where the Chief Minister or Minister cannot sign due to absence from the ACT, illness or are on leave, the Ministers are not required to obtain the signature of the Chief Minister or Minister. The intent of the clause is to provide flexibility for where the Chief Minister or Minister are not available due to the specific reasons outlined. It is also open to the Chief Minister to delegate their functions under section 41 via instrument pursuant to section 254A of the Legislation Act.

Clause 22 Exercise of functions of Executive

Section 253(3)

This amendment changes the signing requirements for statutory instruments which are made by the Executive (other than a subordinate law or disallowable instrument). For instruments made by the Executive, the clause substitutes the current section 253(3) to provide that a statutory instrument must be signed by the Chief Minister and 1 or more other Ministers who are members of the Executive. The intent of the clause is to provide a higher degree of oversight in relation to the regulation making powers of the Executive. The amendments do not prevent a single minister signing a statutory instrument where this is provided for in enabling legislation. It remains open to the Chief Minister to delegate their functions under section 253(3) via instrument pursuant to section 254A of the Legislation Act.

Part 10 Lotteries Act 1964

Clause 23 Section 18A(1)

This clause omits the word 'commission' and substitutes it with 'Minister' in section 18A(1) of the Lotteries Act. The intent of the clause is to provide the Minister administering the Lotteries Act the power to determine fees under the Lotteries Act.

Part 11 Mental Health Act 2015

Clause 24 Removing persons from affected person register

Section 133(3)

This clause substitutes section 133(3) of the MH Act to provide that the director-general is only required to give written notice of intention to remove a person from the register to the affected person and not the VOCC. The clause also clarifies that the director-general may delegate this function to the VOCC. The intent of the clause is to reflect that following the passage of this Bill, the VOCC will be administering the Affected Person Register on behalf of the Director-General of JACS.

Clause 25 Section 133(4)

This clause omits the phrase ‘or the victims of crime commissioner’ in section 133(4) of the MH Act to ensure only the victim, rather the VOCC as well, has 28 days to comply with the requirement of section 133(4). The intent of the clause is to reflect that the VOCC will be administering the Affected Person Register on behalf of the Director-General of JACS.

Part 12 Powers of Attorney Act 2006

Clause 26 Keeping records – enduring powers of attorney

Section 47(1)

This clause omits the phrase ‘while the principal has impaired decision-making capacity’ in section 47(1) of the POA Act. The intent of the clause is to require an attorney under an EPOA to keep accurate records and accounts of all dealings and transactions even where the principal has decision-making capacity.

Clause 27 Sections 47(2) to (4)

This clause omits section 47(2) of the POA Act which provides the requirement for an attorney under an EPOA to keep accurate records and accounts of all dealings and transactions whether or not the principal has impaired decision-making capacity only during the COVID-19 emergency period. This clause also omits section 47(3) which provides the definition of ‘COVID-19 emergency’ and ‘COVID-19 emergency period’ and omits section 47(4) which provides for the expiry period of sections 47(2) and (3). The intent of this clause is to ensure that the amendment to section 47(1) applies on a permanent basis and not only during the COVID-19 emergency period.

Clause 28 Keeping records separate – enduring powers of attorney

Section 48(1)

This clause omits the phrase ‘while the principal has impaired decision-making capacity’ in section 48(1) of the POA Act. The intent of the clause is to require an attorney under an EPOA to keep their property separate from the principal’s property even where the principal has decision-making capacity.

Clause 29 Sections 48(1A), (3) and (4)

This clause omits section 48(1A) of the POA Act which provides that an attorney under an EPOA must keep their property separate from the principal whether or not the principal has decision-making capacity only during the COVID-19 emergency period. The clause also omits section 48(3) the definition of ‘COVID-19 emergency’ and ‘COVID-19 emergency period’, and omits section 48(4) which provides for the expiry period of sections 48(1A) and (3). The intent of this clause is to ensure that the amendment to section 48(1) applies even where the principal has decision-making capacity on a permanent basis and not only during the COVID-19 emergency period.

Part 13 Public Sector Management Act 1994

Clause 30 Ministerial responsibility and functions of administrative units

Section 14(4)

This clause substitutes the current section 14(4) and provides that section 14(3) is subject to sections 41 and 253 of the Legislation Act. The amendment is consequential to amendments to sections 41 and 253 of the Legislation Act. The intent of the clause is to clarify the operation of section 14 of the *Public Sector Management Act 1994* in light of the amendments to sections 41 and 253 of the Legislation Act.

Part 14 Public Trustee and Guardian Act 1985

Clause 31 Section 22(2) and (3)

The clause substitutes section 22(2) and (3) of the PTG Act and substitutes it so as to allow the PTG to accept a will for deposit with it irrespective of whether the PTG is appointed as an executor of the will. The intent of the clause is to remove any legal impediment for the PTG to accept a will.

Clause 32 Public trustee and guardian may require information or documents

Section 66(1)

This clause omits the reference to ‘other than an individual’ in section 66 of the PTG Act to allow the PTG on a permanent basis to require an individual, in addition to an entity, to provide it with information or documents relevant to the exercise of the PTG’s functions under the PTG Act or another Territory law. The intent of the clause is to assist the PTG to enforce the rights of a protected person by requiring external managers to provide information or documents, which helps to reduce delay in the enforcement of the protected person’s rights.

Clause 33 Sections 66(1A), (3) and (4)

This clause omits sections 66(1A) of the PTG Act which provides that the PTG may by written notice given to an individual require an individual to provide it with stated information or documents relevant to the exercise of the PTG’s functions under the

PTG Act or another Territory law. The clause also omits section 66(3) which provides the definition of a COVID-19 emergency and COVID-19 emergency period, and omits section 66(4) which provides for the expiry period of sections 66(1A) and (3). The intent of this clause is to ensure that the amendment to section 66(1) applies to individuals on a permanent basis and not only during the COVID-19 emergency period.

Part 15 Residential Tenancies Act 1997

Clause 34 New Section 71CA(da)

This clause inserts a new paragraph to 71CA of the RT Act to provide that an ‘occupancy agreement’ does not include an agreement to occupy premises which is the subject of an agreement entered into honestly for the sale or purchase of premises. The intent of the clause is to clarify that an occupancy agreement was not intended to apply to a right to occupy premises during a sale or purchase of premises.

Clause 35 Schedule 1, clause 13(1)

This clause omits the reference to ‘commissioner for fair trading’ and inserts director general in clause 13(1) of schedule 1 to the RT Act. The intent of the clause is to allow the Director-General of the Directorate administering the RT Act to also authorise the information booklet (currently the ‘Renting Book’) that a lessor must provide to a tenant.

Part 16 Retirement Villages Regulation 2013

Clause 36 Sections 35, 36 and 37, headings

This clause substitutes the headings of sections 35, 36 and 37 in the RV Regulation from ‘159(4)(a)’ to ‘159(5)(a)’, ‘159(4)(b)’ to ‘159(5)(b)’, and ‘159(5)(d)’ to ‘159(6)(d)’, respectively. This rectifies incorrect section references to the RV Act.

Part 17 Security Industry Regulation 2003

Clause 37 Exempt people – Act, s 9

Section 6(1)(k)

This clause omits the reference ‘*Casino Control Act 1988*’ and inserts ‘*Casino Control Act 2006*’ in section 6(1)(k) of the SI Regulation. This updates the Act reference to the Act currently in force.

Part 18 Wills Act 1968

Clause 38 Section 31C

This clause substitutes the current section 31C of the Wills Act to introduce a 30-day survivorship provision. This provision will mean that if a person is entitled to an interest in an estate (either through the deceased person’s will or on intestacy) and does not

survive the deceased by 30 days or more, they will be taken to have pre-deceased the deceased person. In this circumstance, the devise, bequest, appointment, power or entitlement will lapse (unless the contrary intention appears from the will or from evidence admitted under s 12B (extrinsic evidence)).

However, the 30-day survivorship provision will not apply if the operation of the provision would mean that the deceased person's estate would pass to the Territory under the s 49CA of the *Administration and Probate Act 1929*.

The clause also clarifies that a 'person' in this section includes a person conceived before but born after the deceased person's death.