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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
2002 (NO 2)

EXPLANATORY MEMORANDUM

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Attorney General
Mr Jon Stanhope MLA
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JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2002 (NO 2)

Outline

The Justice and Community Safety Legislation Amendment Bill 2002 (No 2) (the Bill) amends a number of laws administered by the ACT Department of Justice and Community Safety. The laws amended include:

- *Administration and Probate Act 1929*;
- *Consumer Credit (Administration) Act 1996*;
- *Fair Trading Act 1992*;
- *Fair Trading (Consumer Affairs) Act 1973*;
- *Fire Brigade Act 1957* and Regulations;
- *Instruments Act 1933*
- *Juries Act 1967*;
- *Law Officer Act 1992*;
- *Leases (Commercial and Retail) Act 2001*;
- *Legal Practitioners Act 1970*;
- *Liquor Act 1975*;
- *Magistrates Court Act 1930*;
- *Public Trustee Act 1985*;
- *Supreme Court Act 1933*;
- *Trustee Act 1925*; and
- *Unclaimed Moneys Act 1950*.

The proposed amendments are detailed below.

The *Administration and Probate Act 1929* presently allows for grants of probate sealed and issued by a Court of another State or Territory of Australia, or of a Commonwealth country, to be resealed in the ACT. The amendment will overcome the difficulty created when Hong Kong returned to Chinese rule on 1 July 1997, thereby ceasing to be a member of the Commonwealth, and will also allow for other jurisdictions to be added as necessary.

The amendment to section 35 of the *Consumer Credit (Administration) Act 1996* clarifies that finance brokers can only demand, accept or receive commissions from borrowers after the credit has been provided, and are free to accept commissions from the finance industry. The disciplinary powers contained in the *Consumer Credit (Administration) Act 1996* have also been amended to ensure that these powers can also be exercised against credit providers that are exempt from registration, but who are still required to comply with the Code, and providers who are unregistered and trading illegally.

The amendments to the *Fair Trading Act 1992* replace the current pyramid selling provisions with the model legislation that was recently developed at a national level, in which the ACT participated. Although the model provisions are yet to be adopted by the Commonwealth, as the project has not been given priority, there are no impediments to the ACT proceeding with the amendment.

The amendments to the *Fair Trading (Consumer Affairs) Act 1973* allow the Commissioner for Fair Trading to adopt an order made by the Commonwealth Minister by disallowable instrument. There are currently a substantial number of product safety orders made by the Commonwealth Minister that cannot be enforced by the Territory.

The *Building Act 1972* and Regulations require the Fire Commissioner to be consulted regarding fire protection for any building works, and for the Fire Commissioner to give written evidence that the building works meets the Building Code's requirements regarding fire protection. However, the *Fire Brigade Act 1957* and Regulations did not provide a power for the Fire Commissioner to assess building works for compliance, or require the Fire Commissioner to provide written evidence of the compliance. The *Fire Brigade Act 1957* has been amended to correct this situation. Furthermore, Regulation 3 of the *Fire Brigade Regulations 1958* has been simplified and redrafted in accordance with current methods.

A number of amendments were made to the *Juries Act 1967*. Currently, only persons who have attained the age of 60 years can claim exemption, whereas all other categories are automatically exempt. The first amendment of the *Juries Act 1967* is the alteration of the status for ministers of religion, editors of newspapers, household officers and staff of the Governor-General, and education professionals. Persons in these categories are no longer automatically exempt, but may claim exemption.

The *Juries Act 1967* has also been amended to allow two new categories of persons to be able to claim exemption. The first category is registered and enrolled nurses, recognising the important work of this profession. The second category is members of religious groups the beliefs of which are inconsistent with jury service, which acknowledges that it is undesirable to compel people to act contrary to any beliefs they may hold.

The amendments to the *Law Officer Act 1992* clarify that the functions of the Attorney-General under the Act does not prevent any other person authorised by the Territory, or by a law of the Territory, from instituting or conducting litigation of a type referred to in section 4 of the *Law Officer Act 1992*.

The amendment to the *Leases (Commercial and Retail) Act 2001* adopts drafting practices utilised in the *Magistrates Court (Civil Jurisdiction) Act 1982* to ensure a consistency between the two Acts.

The amendments to the *Legal Practitioners Act 1970* allow trust moneys to be banked as soon as practicable within five banking days. The amendment overcomes inadvertent breaches of the current rule that requires payment within one day. The amendment also provides that money may be paid out of a trust account by electronic funds transfer.

A recent case in the Administrative Appeals Tribunal highlighted a deficiency with the definition of “bar-room” in the *Liquor Act 1975*. The practice was for a bar-room to be identified on an attached plan, due to the difficulty in describing the exact floor area of the bar within the overall plan of the licensed premises. It was held that this did not comply with the Act. Another failing of the Act had been that bar-room or rooms of a premises were determined by the applicant for a licence, and licence holders altering their premises. As the Act contains offences to which the bar-room area is pivotal, this has been found to be inappropriate. The amendments change the Act so that areas of a premises to be regarded as a bar-room are now determined by a relevant decision-maker, and the definition of bar-room no longer needs to be stated within the licence.

The *Magistrates Court Act 1930* amendment will allow infringement notices to be issued for all offences, whereas previously offences for which a penalty of imprisonment could be imposed were excluded. It is expected that this amendment will improve the effectiveness of a number of provisions in ACT legislation, and will ease a burden upon the courts.

The Public Trustee has limited powers to handle and apply funds of a person under disability, which includes those under 18 years of age, those who are of unsound mind, and those who are incapable. Presently the Public Trustee cannot advance maintenance funds to a parent of a person under disability, unless full receipts and accounts are provided by the parent. The amendment provides the Public Trustee with a more streamlined process for administering funds for people under a disability, permitting payments to persons, such as a parent, “for the maintenance, education, advancement or benefit” of a person under disability.

The *Magistrates’ Court Act 1930* contains a provision which permits the Registrar to discover information from Government agencies concerning the address of a specified person who is liable to pay a fine. The amendments to the *Supreme Court Act 1933* insert a similar provision.

The *Trustee Act 1925* amendments require charitable trustees to consider written advice provided to them by a person who may be beneficially entitled under the trust. This will ensure natural justice is given by trustees when administering such a trust. Also amended are the circumstances in which a person may make an application to the Supreme Court in the event of a breach of a charitable trust, and the powers of the Supreme Court to appoint a new trustee, and provide rules for dealing with trusts that refer to unincorporated associations. The final amendment to the *Trustee Act 1925* gives the Minister the power to require a charitable trust to provide details of the activities of the trust, and a certified audit of the books and accounts of the trust, to enable appropriate public scrutiny.

Finally, two minor amendments were made. Section 37 of the *Instruments Act 1933* and Section 3A of the *Unclaimed Moneys Act 1950* have been omitted as both are redundant.

The Bill also includes a number of technical amendments to the above Acts. Explanatory notes on these amendments have been included in the Bill.

Financial Implications

Nil.

Clause Notes

Clause 1 – Name of Act – states the title of the Act, which is the *Justice and Community Safety Legislation Amendment Act 2002 (No 2)*.

Clause 2 – Commencement – states when the Act commences. The amendments to the *Fire Brigade Act 1957* and the *Fire Brigade Regulations 1958* commence on the day after notification. The remaining amendments commence 28 days after notification.

Clause 3 – Act amended – pt 2 – provides that this part amends the *Administration and Probate Act 1929*.

Clause 4 – Interpretation for Act, Section 5(1), new definition of *administration bond* – defines *administration bond* to mean a bond or guarantee, with or without sureties, as prescribed under the rules.

Clause 5 – Sections 14 to 19 – omits sections 14 to 19 from the *Administration and Probate Act 1929* that dealt with administration bonds.

Clause 6 – Administration pendente lite and receiver, Section 23(1) - omits the words *and with or without a bond or sureties* from section 23(1) of the *Administration and Probate Act 1929*.

Clause 7 – Section 60 – makes minor amendments to the section to accord with current drafting practices and to adjust terminology. The heading for the section has also been adjusted for these reasons.

Clause 8 – Duties of registrar, Section 76(2) – amends the section to remove a reference to administration bonds and also makes minor amendments to the section to accord with current drafting practices.

Clause 9 – New sections 79A and 79B – Two new sections, section 79A and 79B, are created, and placed at the commencement of Part 5. Section 79A contains the provision previously found in section 80(7), and expands its application to all of Part 5 of the Act. Section 79B contains the provision previously found in section 83.

Clause 10 – Section 80 – replaces the current section 80 with a new section 80, 80A, 80B and 80C.

Section 80 contains the provision that was formerly subsection 80(1), and makes minor amendments to the section to accord with current drafting practices and to adjust terminology. A reference to ‘a State or Territory’ has been replaced with a reference to a *reciprocating jurisdiction*, defined to mean a State, a Commonwealth country, or a country or part of a country prescribed under the regulations.

Section 80A contains the provisions that were formerly subsections 80(2) and (3), and makes minor amendments to the section to accord with current drafting practices and to adjust terminology.

Section 80B contains the provisions that were formerly subsections 80(4) and (5), and makes minor amendments to the section to accord with current drafting practices and to adjust terminology.

Section 80C contains the provision that was formerly subsection 80(6), and makes minor amendments to the section to accord with current drafting practices and to adjust terminology.

Clause 11 – Seal not to be attached until duty is paid etc, Section 82(2) – makes minor amendments to the section to accord with current drafting practices and to adjust terminology due to the amendment to section 4 of the Act.

Clause 12 – Inclusion of orders to collect and Scotch confirmation, Section 83 – omits section 83 from the *Administration and Probate Act 1929* as the terms of this provision are now achieved by the new section 79B.

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Clause 13 – Act amended – pt 3 – provides that the Act amended is the *Consumer Credit (Administration) Act 1996*.

Clause 14 – Section 4 – instructs that Division 2.2 (Provision of consumer credit) and Division 2.3 (Registration of consumer credit providers) do not apply to a bank.

Clause 15 – New section 18A – inserts a new section in Division 2.4 providing a meaning for the term *credit provider* to be applied to that Division. The new section 18A broadens the concept of a *credit provider* to include unregistered credit providers, credit providers whose registration is suspended, banks and entities pretending to be credit providers. The amendment ensures the provisions of the *Consumer Credit (Administration) Act 1996* can be applied to anyone providing credit.

Clause 16 – Disciplinary action, Section 24(1)(f) – adds a reference to the credit provider to the terms of the provision, and adjusts the provision to conform with current drafting styles.

Clause 17 – New section 24(7) and (8) – creates two new subsections in section 24. Subsection (7) will allow the Commissioner (for Fair Trading) to extend the time in which a direction is to be complied with. Subsection (8) instructs that such an extension can occur before or after the end of the stated time period, and can be as a result of an application from the person directed, or on the Commissioner's own initiative.

Clause 18 – Section 24A – extends the application of the section to a credit provider

(defined in section 18A) that is neither registered or exempted, and despite a direction from the Commissioner (for Fair Trading) to become registered, the credit provider has not become registered and has continued to provide consumer credit. The section has also been adjusted to conform with current drafting styles.

Clause 19 – Section 29 – this amendment alters both the heading and the wording of the section. The heading now becomes *Exemption – particular entities*. The section directs that Division 3.2 (Finance broking) and Division 3.3 (Registration of finance brokers) does not apply to persons listed in paragraphs (a) to (k) of the section 29, which are unchanged.

Clause 20 – Section 30 – the amendment makes minor changes to terminology applying modern drafting practices, and like the amendment to section 29, directs that Division 3.2 (Finance broking) and Division 3.3 (Registration of finance brokers) do not apply, whereas previously all of Part 3 did not apply.

Clause 21 – Commissions, New section 35(6) – inserts into section 35 a new definition of *commission* to be applied for the section. The definition directs that for a finance broking transaction, commission means a commission from a debtor on behalf of whom the credit was sought, but does not include a commission from a credit provider in relation to the transaction.

Clause 22 – New section 49A – inserts a new section in Division 3.4 providing a meaning for the term *finance broker* to be applied to that Division. The new section 49A broadens the concept of a *finance broker* to include unregistered finance brokers, finance brokers whose registration is suspended, entities exempted under sections 29 or 30, and entities pretending to be finance brokers. The amendment ensures the provisions of the *Consumer Credit (Administration) Act 1996* can be applied to anyone acting as a finance broker.

Clause 23 – Disciplinary action, Section 55(1)(f) – adds a reference to the finance broker to the terms of the provision, and adjusts the provision to conform with current drafting styles.

Clause 24 – New section 55(7) and (8) – creates two new subsections in section 55. Subsection (7) will allow the Commissioner (for Fair Trading) to extend the time in which a direction is to be complied with. Subsection (8) instructs that such an extension can occur before or after the end of the stated time period, and can be as a result of an application from the person directed, or on the Commissioner's own initiative.

Clause 25 – Section 55A – extends the application of the section to a finance broker (defined in section 49A) that is neither registered or exempted, and despite a direction from the Commissioner (for Fair Trading) to become registered, the finance broker has not become registered and has continued to be involved in finance broking. The section has also been adjusted to conform to current drafting styles.

Clause 26 – Review of decisions – credit providers, Section 128(h) – alters the provision so that the reference to a *registered credit provider* is now a reference to a *credit provider*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 27 – Section 128(j) – alters the provision so that the reference to a *registered credit provider* is now a reference to a *credit provider*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 28 – Review of decisions – finance brokers, Section 129(h) – alters the provision so that the reference to a *registered finance broker* is now a reference to a *finance broker*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 29 – section 129(j) – alters the provision so that the reference to a *registered finance broker* is now a reference to a *finance broker*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 30 – Further amendments, mentions of *registered credit provider* – replaces references to a *registered credit provider* in sections 19, 21, 22, 23, 24(1) and 24(3) with a reference to a *credit provider*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 31 – Further amendments, mentions of *registered finance broker* – replaces references to a *registered finance broker* in sections 50, 52, 53, 54, 55(1) and 55(3) with a reference to a *finance broker*. This amendment is consistent with other amendments made to the *Consumer Credit (Administration) Act 1996*.

Clause 32 – Act amended – pt 4 – provides that the Act amended is the *Fair Trading Act 1992*.

Clause 33 – New division 2.1 heading – inserts a new heading of *Division 2.1 False and Misleading Conduct* after section 25.

Clause 34 – New division 2.2 and heading – creates a new heading of *Division 2.2 Pyramid Selling* as well as new sections 25A through to section 25D.

New section 25A lists definitions applicable to Division 2.2 dealing with pyramid selling.

New section 25B prohibits participation in a pyramid selling scheme.

New section 25C specifies what constitutes a pyramid selling scheme. If a scheme requires some or all new participants to make a payment to one or more participants, and the payment entitles the new participant to receive payments from future new participants, then the scheme is considered a pyramid selling scheme.

A scheme will be regarded as a pyramid selling scheme regardless of who tells new recruits of the prospect of earning recruitment payments, or who is to make the payments, or even who introduces new participants to the scheme.

A scheme may still be a pyramid selling scheme, despite factors listed in subsection 25C(3), such as entry requirements other than a participation fee, and the marketing of goods or services by the scheme as well as recruitment payments.

Where a scheme involves the marketing of goods and/or services, new section 25D specifies matters that a court may have regard to in determining if such a scheme is also a pyramid selling scheme.

Clause 35 – Pyramid selling, Section 27 – omits section 27 from the *Fair Trading Act 1992* as the provisions concerning pyramid selling are now contained in sections 25A to 25D.

Clause 36 – Act amended – pt 5 – provides that the Act amended is the *Fair Trading (Consumer Affairs) Act 1973*.

Clause 37 – Section 29 – extends this provision to allow the Minister to adopt orders made by the Commonwealth, and alters the structure of the provision in accordance with modern drafting techniques.

Clause 38 – Notification of decisions, Section 35(1) – adopts modern drafting styles and makes minor changes due to the amendment to section 29.

Clause 39 – Section 35(6) – adopts modern drafting styles and makes minor changes due to the amendment to section 29.

Clause 40 – Section 35(8) – adopts modern drafting styles and makes minor changes due to the amendment to section 29.

Clause 41 – Appeals, Section 36(2) – replaces a reference to subsection 29(1) with a reference to section 29.

Clause 42 – Act amended – pt 6 – provides that the Act amended is the *Fire Brigade Act 1957*.

Clause 43 – New section 5 – creates a new section 5 in the *Fire Brigade Act 1957* which instructs the Chief Fire Officer to give written advice when consulted in accordance with Regulation 15 of the *Building Regulations 1972*.

Clause 44 – Regulations amended – pt 7 – provides that the Regulation amended is the *Fire Brigade Regulations 1958*.

Clause 45 – Regulation 3 – Regulation 3 of the *Fire Brigade Regulations 1958* has been amended to accord with current drafting practices, and to remove some elements that are now governed by the *Legislation Act 2001*.

Clause 46 – Act amended – pt 8 – provides that the Act amended is the *Instruments Act 1933*.

Clause 47 – Payment of determined fee, Section 37A – omits section 37A from the *Instruments Act 1933* as the section is redundant.

Clause 48 – Act amended – pt 9 – provides that the Act amended is the *Juries Act 1967*.

Clause 49 – Section 11 – replaces the existing section 11 of the *Juries Act 1967* with a provision instructing that persons mentioned in Schedule 2, part 2.1 are exempt from jury service, and persons mentioned in Schedule 2, part 2.2 may claim exemption from jury service.

Clause 50 – New schedule 2 – creates a new schedule with two parts. Part 2.1 lists persons exempt from jury service, and Part 2.2 specifies those who may claim an exemption from jury service. The categories of exempt persons previously contained in section 11 have been incorporated into the new schedule, with all but paragraphs (b), (f), (l), (m) and (q) included in Part 2.1. Paragraphs (b), (f), (l), (m) and (q) of the old section 11 have been included in Part 2.2

In addition to persons of a type previously in paragraphs (b), (f), (l), (m) and (q) of the old section 11, Part 2.2 now also permits practicing and enrolled nurses to claim an exemption from jury service, as well as practicing members of religious societies whose beliefs are incompatible with jury service.

Clause 51 – Act amended – pt 10 – provides that the Act amended is the *Law Officer Act 1992*.

Clause 52 – Section 4 heading – replaces the existing heading with *Functions of Attorney-General*

Clause 53 – Section 4(1) – minor change removing the subsection number, so the provision now commences with *The functions* rather than *(1) The Functions*.

Clause 54 – Section 4(2) – replaces subsection (2) with a *note* concerning the functions of an entity and the effect of the *Legislation Act 2001*.

Clause 55 – Section 5 – updates the provision in accordance with modern drafting practices. Also creates a new section 5A, concerning the effect of the Attorney-General's functions on certain litigation. This new provision clarifies that the functions, prerogatives and privileges held by the Attorney-General do not grant the Attorney-General the exclusive right to institute or to conduct litigation on behalf of the Territory.

Clause 56 – Act amended – pt 11 - provides that the Act amended is the *Leases (Commercial and Retail) Act 2001*.

Clause 57 – Section 144 – replaces the existing section 144, and heading, with a provision concerning the Court’s *Power to grant relief*. The section itself adopts drafting practices utilised in the *Magistrates Court (Civil Jurisdiction) Act 1982* in order to ensure a consistency between the two Acts.

Clause 58 – Act amended – pt 12 - provides that the Act amended is the *Legal Practitioners Act 1970*.

Clause 59 – Section 91 – alters the requirements for payment of trust money into a general trust bank account. The timing of the payment is extended, requiring payment as soon as practicable, and no later than 5 banking days. This is to ensure suburban legal practitioners are not disadvantaged due to the closure of suburban bank branches.

Clause 60 – Payments from trust bank accounts, Section 94(1) – alters the provision to also allow payments from a trust bank account by electronic transfer, whereas previously payments could only be made by cheque.

Clause 61 – Act amended – pt 13 – provides that the Act amended is the *Liquor Act 1975*.

Clause 62 – New section 40A – creates a new section in the *Liquor Act 1975* concerning bar-rooms. The provision provides the relevant decision-maker must decide which areas of a premises are and are not bar-rooms under the Act, and must make such a decision in writing. This applies to general licences, club licences, on licences and special licences already in force, and for applications for such licences.

The section also contains a transitional provision to ensure premises currently operating are regarded as having an approved bar-room, and this transitional provision will operate for a year following commencement.

Clause 63 – Application for alteration, Section 94(3) – omits section 94(3) as this provision is now inconsistent with the manner in which a bar-room is determined under section 40A.

Clause 64 – Section 94 – advises that the subsections will be renumbered when the Act is next republished in accordance with the *Legislation Act 2001*.

Clause 65 – Review by administrative appeals tribunal, New section 173(ba) – inserts a new paragraph to ensure that a determination, by the relevant decision-maker, about whether an area is or is not a bar-room is a decision that can be reviewed by the Administrative Appeals Tribunal.

Clause 66 – Section 173 – advises that the paragraphs will be renumbered when the Act is next republished in accordance with the *Legislation Act 2001*.

Clause 67 – Dictionary, definition of *bar-room* – replaces the existing definition of a bar-room. A bar-room is now, for licensed premises, a part of the premises that the relevant decision-maker has decided, under section 40A, to be a bar-room.

Clause 68 – Act amended – pt 14 - provides that the Act amended is the *Magistrates Court Act 1930*.

Clause 69 – Regulations about infringement notice offences, Section 119(1) – provides that an infringement notice can be issued for any specified offence. Previously, offences for which a penalty of imprisonment could be imposed were exempted. This exception had produced an unintended effect upon the ability to issue infringement notices for offences such as being unlicensed, which can, in some circumstances, carry a penalty of imprisonment.

Clause 70 – Act amended – pt 15 - provides that the Act amended is the *Public Trustee Act 1985*.

Clause 71 – Section 25(7) – omits section 25(7) from the *Public Trustee Act 1985*.

Clause 72 – Section 25 – advises that the subsection will be renumbered when the Act is next republished in accordance with the *Legislation Act 2001*.

Clause 73 – New section 25A – the section establishes that amounts or property accepted by the public trustee on behalf of a person under a disability, must be held by the public trustee in trust.

Under subsection 2, if the money or the property is for the maintenance, education, advancement or benefit of a person under a disability, subject to any direction by the Magistrates Court, the public trustee may, under paragraph (a), pay an amount, or issue property to any person the public trustee considers appropriate, or under paragraph (b), may use an amount or property itself.

Subsection 3 instructs that where amounts are paid to a person under subsection 2(a), the public trustee does not need to supervise the amount.

Clause 74 – Act amended – pt 16 – provides that the Act amended is the *Supreme Court Act 1933*.

Clause 75 – New section 49A – creates a new section permitting the Registrar of the Supreme Court to ask the Commissioner for Housing, the Chief Police Officer or the Chief Executive of a government agency to provide any details held about the address of a person liable to pay a fine imposed by the Supreme Court.

Clause 76 – Act amended – pt 17 – provides that the Act amended is the *Trustee Act 1925*.

Clause 77 – New section 5 and 5A – inserts a new section 5, in Part 1, and instructs that if an instrument establishing a trust names an unincorporated entity, the people who make up that entity are to be regarded as having been individually named. The provision also clarifies that section 5 does not apply to the interpretation of the instrument establishing the trust.

Clause 78 – New sections 51A and 51B – creates two new sections, 51A and 51B.

Section 51A gives the Minister the power, in certain circumstances, to demand information concerning the affairs of the trust or of the activities of the trustee acting in that capacity. The Minister can exercise this power only if it appears the Act, a law of the Territory or the legal obligations of the trustee may have been breached, or are being breached. A demand for such information must be in writing and should state a time in which the information is to be provided. Furthermore, it is an offence under section 51A for the trustee not to comply with a written request from the Minister within the stated time period. The maximum penalty for this offence is 200 penalty units.

This is a strict liability offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable.

However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Section 51B gives the Minister the power to authorise a person to inquire into the activities of a trustee acting in that capacity, and/or to audit the trustee's books and accounts. An authority under this section must be in writing.

Clause 79 – Section 70 – grants power to the Supreme Court, on application by a relevant person or on its own initiative, to remove, replace or appoint a trustee, or any other order in relation to a trust that the Court deems appropriate. In making such an order, the Court need not find fault or failing on the part of the trustee.

The section also prescribes the persons who may make such an application to the Supreme Court, which includes, amongst others, the Attorney-General, a trustee, or a beneficiary.

Clause 80 – Section 94A – provides that a relevant person, which includes amongst others the Attorney-General, a trustee of the trust, or a beneficiary of the trust, may, subject to conditions, apply to the Supreme Court for relief in relation to the administration of a trust for charitable purposes.

Such an application is conditional upon the presence of a breach, or a suspected breach of the trust, or if an order of the court is necessary for the administration or management of the trust, or will be to the advantage of the trust. Applications must set out either the breach or suspected breach alleged and the relief being sought, or the required direction or order and its need.

Clause 81 – New section 106 – inserts a requirement for trustees of trusts established for charitable purposes, either wholly or partially, to give due consideration to any information, representation or advice submitted by a relevant person. Submissions of this nature are required to be in writing.

A relevant person includes, amongst others, a person named in the instrument establishing the trust as someone who is, or may be entitled to receive property from the trust, or a person named as someone who must be consulted before a distribution of property.

Clause 82 – Act amended – pt 18 - provides that the Act amended is the *Unclaimed Moneys Act 1950*.

Clause 83 – Delegation by the Treasurer, Section 3A – omits section 3A from the *Unclaimed Moneys Act 1950* as the section is redundant.