

**2010**

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT  
BILL 2010**

**EXPLANATORY STATEMENT**

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## **Justice and Community Safety Legislation Amendment Bill 2010**

### **Overview of the Bill**

The Justice and Community Safety Legislation Amendment Bill 2010 (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

The detail of these amendments is listed below.

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

Section 77 of the ACAT Act provides for the referral of questions of law within the tribunal. Section 78 of the ACAT Act provides for correction requests. Section 79 of the ACAT Act provides for appeals within the tribunal. The amendment disapplies these sections from administrative review of a decision under land, planning and environment legislation specified in section 22P of the ACAT Act (that is, the *Planning and Development Act 2007*, the *Heritage Act 2004* and the *Tree Protection Act 2005*). This change is intended to ensure certainty in relation to these types of reviews (consistent with section 22P of the ACAT Act which provides that the tribunal must decide applications under these Acts within 120 days after the day the application is made).

Appeals to the Supreme Court, in relation to decisions under land, planning and environment legislation may only be in relation to a question of law from the original decision of the ACAT. These amendments are intended to restrict the number of occasions on which a party may canvass the merits of a decision, rather than the legal basis on which the decision was made. This restores the position relating to appeals in relation to land, planning and environment matters that existed under section 44 of the *Administrative Appeals Tribunal Act 1989*.

Other amendments clarify who can be added as a party, the time for lodging applications for review, and the tribunal's power to make a cost order.

### **Emergencies Act 2004**

The *Emergencies Act 2004* currently empowers the chief officer of a service to appoint a volunteer to a service, such as the Fire Brigade or Ambulance. The Bill provides the Commissioner of the Emergency Services Agency (ESA) with a power to appoint a volunteer to assist the Commissioner to carry out additional functions under the Act, such as interactive mapping services in the management of an emergency.

These additional appointment arrangements provide emergency services support volunteers with the same protections from liability and victimisation that other volunteers have under the Act.

### **Fair Trading (Consumer Affairs) Act 1973**

The Bill amends the *Fair Trading (Consumer Affairs) Act 1973* to include the *Eggs (Labelling and Sales) Act 2001* in the dictionary definition of ‘fair trading legislation’. Under the *Eggs (Labelling and Sales) Act 2001* the Commissioner for Fair Trading does not currently have power to prosecute or investigate offences under the Act. This amendment will give the Commissioner inspectorate powers and enable him to delegate them to investigators in the Office of Regulatory Services who will investigate possible breaches of the *Eggs (Labelling and Sales) Act 2001* (for example, by entering the premises of an egg retailer and checking that the signage/display is compliant).

### **Magistrates Court Act 1930 and Supreme Court Act 1933**

Both the *Magistrates Court Act 1930* and the *Supreme Court Act 1933* are amended to allow for the formal exchange of judicial officers between State and Territory courts. The amendments are based on model provisions approved by the Standing Committee of Attorneys-General (SCAG), designed to underpin a program of exchange between judicial officers of interested State and Territory courts.

The *Supreme Court Act 1933* is additionally amended following the recent ACT Supreme Court matter of *Financial Integrity v Farmer & Anor* [2009] ACTSC 143. In that case it became apparent that there may be a risk of a defendant arguing in certain limited circumstances that the Supreme Court does not have the jurisdiction to award equitable damages. The amendment removes any doubt as to this jurisdiction.

### **Prohibited Weapons Act 1996**

The *Prohibited Weapons Act 1996* is amended to clarify the sorts of items that are exempt from the operation of the Act. Currently the Act exempts from the offence provisions a police service or force of a foreign country which possesses or uses a prohibited weapon for taking part in a training activity conducted by the Australian Federal Police and carried out in the ACT. The amendment clarifies that this exemption extends to “prohibited articles” which includes items such as “a modified article of clothing, accessory or adornment a purpose of which is to disguise or conceal a weapon”.

### **Road Transport (Mass, Dimensions and Loading) Act 2009 and Trade Measurement Act 1991**

In April 2007 the Council of Australian Governments agreed to establish a national system of trade measurement. Currently, the States and Territories are jointly responsible for the administration of trade measurement. Each jurisdiction has implemented substantially uniform trade measurement legislation. The system provides a national legal framework to ensure that weights and measures used in trade are accurate.

The *National Trade Measurement Act 2008* was passed by the Commonwealth Parliament on 1 December 2008. The transfer to the Commonwealth of full responsibility for administration and enforcement of ACT trade measurement will be

effective from 1 July 2010. The repeal and amendment of the ACT *Road Transport (Mass, Dimensions and Loading) Act 2009*, *Trade Measurement Act 1991*, *Trade Measurement (Administration) Act 1991* and transitional provisions included in this Bill facilitate a smooth hand-over from the ACT Government to the Commonwealth.

### **Trustee Companies Act 1947**

In March 2008 the Council of Australian Governments agreed to the Commonwealth assuming responsibility for the regulation of trustee companies, which is to take place in 2010. The Justice and Community Safety Legislation Amendment Bill 2009 (No. 4) provided for the staggered repeal of various sections of the *Trustee Companies Act 1947* to reflect this decision.

The Bill amends the *Trustee Companies Act 1947* to enable the Australian Securities and Investment Commission (ASIC) to make a compulsory determination in relation to the transfer of estate assets from a trustee company whose licence has been cancelled under section 601WBA of the *Corporations Act 2001* (Cwlth).

ASIC may only make the determination if satisfied that legislation to facilitate the transfer that satisfies the requirements of section 601WBC of the *Corporations Act 2001* (Cwlth) has been enacted in the State or Territory in which the transferring and receiving companies are registered. Accordingly this Bill introduces amendments to meet these requirements.

### **Wills Act 1968**

A new part is inserted into the *Wills Act 1968* to implement the Standing Committee of Attorneys-General initiative to introduce statutory wills provisions. The amendments give the Supreme Court the power to make an order authorising a will to be made, altered or revoked for a person who does not have testamentary capacity. This amendment is intended to avoid circumstances where a person may not benefit due to the laws of intestacy and testamentary capacity, and is consistent with statutory wills provisions in other jurisdictions.

## **Clause Notes**

### **Clause 1      Name of Act**

Provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2010*.

### **Clause 2      Commencement**

Provides the following varied commencement dates for the Act:

- Schedule 1, part 1.3 (amendments to the *Fair Trading (Consumer Affairs) Act 1973*) amendment 1.24 commences on the day after this Act's notification day;
- Schedule 1, part 1.8 (amendments to the *Trustee Companies Act 1947*) will commence on the later date of the:
  - date of commencement of the *Justice and Community Safety Legislation Amendment Act 2009 (No 4)*, part 1.5 (amendments to the *Trustee Companies Act 1947*); and
  - day after this Act's notification day.
- Provides the following provisions commence on July 1 2010:
  - section 4;
  - schedule 1, part 1.3 (*Fair Trading (Consumer Affairs) Act 1973*), amendments 1.21 to 1.23; and
  - schedule 1, part 1.6 (*Road Transport (Mass, Dimensions and Loading) Act 2009*).
- All other provisions in the Act commence on the 28<sup>th</sup> day after this Act's notification day.

### **Clause 3      Legislation amended**

Provides that the Act amends legislation mentioned in schedule 1.

### **Clause 4      Legislation repealed**

This clause lists the legislation that this Bill repeals. This legislation is being repealed as State and Territory trade measurement law will become redundant once enforcement of the new Commonwealth law starts on 1 July 2010.

## Schedule 1 Legislation amended

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

#### Clause 1.1 – New section 25(3)

Section 25 of the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) makes provision about the rules the ACT Civil and Administrative Tribunal (ACAT) may make. The law is amended to make it clear that if a law giving jurisdiction to the tribunal provides that the tribunal may not extend the time for doing a thing, the tribunal cannot prescribe a longer time.

#### Clause 1.2 – New section 29(6)

Section 29 of the ACAT Act deals with the parties to an application and provides for the joinder of parties to an application. The new section 29(6) provides that the tribunal may only join a person who could have been a party under an authorising law.

#### Clause 1.3 – Section 32(2), new note

Section 32 of the ACAT Act deals with frivolous and vexatious applications. The amendments insert a new note, directing the reader to the amendment to section 48 (providing that the tribunal may make an order for costs in some circumstances).

#### Clause 1.4 – New section 48(2)(d)

Section 48 of the ACAT Act provides the general rule that parties before the ACAT must bear their own costs, except in certain circumstances (such as where a party causes unreasonable delay or obstruction). The amendment inserts a new section 48(2)(d) to enable the tribunal to make an order for reasonable costs (except holding costs) where the tribunal considers that the application is a frivolous and vexatious application for the administrative review of a decision under the the *Heritage Act 2004*, the *Planning and Development Act 2007*, and the *Tree Protection Act 2005*. This change is intended to ensure certainty in relation to these types of reviews (consistent with section 22P of the ACAT Act which provides that the tribunal must decide applications under these Acts within 120 days after the day the application is made).

#### Clause 1.5 – New section 48(3)

The amendment inserts a new section 48(3) consequential to the amendment above to provide that “reasonable costs arising from the application” include reasonable legal costs but not holding costs.

#### Clause 1.6 – Section 60(4) and notes

Section 60 of the Act requires the tribunal to provide a party with a statement of reasons for the making of a tribunal order where requested by the party. Subsection

(4) currently excludes interim orders made by the tribunal, under section 53, from the requirement to give a statement of reasons.

Existing subsection (4) is repealed and replaced with a new provision which retains the existing exemption and includes a new exemption, which excludes orders of a procedural nature. The exclusion of procedural orders in the exemptions is necessary to clarify for users of the tribunal system that section 60 does not extend to orders of an ancillary nature. The amendment does not exclude the giving of reasons for substantive matters, such as a refusal on an application to join an action, or the Tribunal from giving reasons where it considers it appropriate to do so.

The amendment also inserts some examples of the types of orders which would be considered orders of a procedural nature. These examples include adjournments, order of a default nature and an order joining a party to a proceeding. The provision does not preclude the tribunal providing a statement of its reasons of its own volition

#### **Clause 1.7 – New section 77(1A)**

Section 77 of the ACAT Act provides for the referral of questions of law within the tribunal. The amendment inserts a new section 77(1A) which disapplies this section from administrative review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007*, and the *Tree Protection Act 2005*). This change is intended to ensure certainty in relation to these types of reviews (consistent with section 22P of the ACAT Act which provides that the tribunal must decide applications under these Acts within 120 days after the day the application is made).

#### **Clause 1.8 – New section 77A**

The ACAT Act is amended to insert a new provision (section 77A) which is consequential to the amendment above. It makes transitional provision saving the operation of referrals of questions of law made before commencement of the amendments. Note that section 84 of the ACAT Act provides that the ACAT may refer a question of law to the Supreme Court.

#### **Clause 1.9 – New section 78(1A)**

Section 78 of the ACAT Act provides for correction requests. The amendment disapplies this section from administrative review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007*, and the *Tree Protection Act 2005*). This change is intended to ensure certainty in relation to these types of reviews (consistent with section 22P of the ACAT Act which provides that the tribunal must decide applications under these Acts within 120 days after the day the application is made).

#### **Clause 1.10 – New section 78A**

The Act is amended to insert a new section 78A consequential to the amendments above. It makes transitional provision saving the operation of correction requests made before commencement of the amendments.

### **Clause 1.11 – New section 79(1A)**

Section 79 of the ACAT Act provides for appeals within the tribunal. The amendment disapplies this section from administrative review of a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007*, and the *Tree Protection Act 2005*). This change is intended to ensure certainty in relation to these types of reviews (consistent with section 22P of the ACAT Act which provides that the tribunal must decide applications under these Acts within 120 days after the day the application is made).

### **Clause 1.12 – New section 79A**

A new section 79A is inserted consequential to the amendment above and makes transitional provision saving the operation of appeal applications made before commencement of the amendments.

### **Clause 1.13 – Section 86(1)**

Section 86 of the ACAT Act provides for appeals to the Supreme Court and the amendment provides that the section applies to applications other than those mentioned in section 86(1A).

### **Clause 1.14 – New section 86(1A)**

The amendment provides that a party to an application for a decision under the *Heritage Act 2004*, the *Planning and Development Act 2007*, and the *Tree Protection Act 2005*) may appeal to the Supreme Court, but only in relation to a question of law from the original decision of the ACAT. This provision is intended to restrict the number of occasions on which a party may canvass the merits of a decision, rather than the legal basis on which the decision was made. This restores the position relating to appeals in relation to land, planning and environment matters to that existed under section 44 of the *Administrative Appeals Tribunal Act 1989*.

## **Part 1.2      Emergencies Act 2004**

### **Clause 1.15 – Section 12**

The amendment repeals, and inserts a new, section 12 into the *Emergencies Act 2004*.

Section 12 provides that the Emergency Services Commissioner may delegate his/her functions under the Act, or any other territory law, to a public servant or a member of an emergency service.

This section is repealed and replaced with a new provision which inserts an additional category of person to whom the Emergency Services Commissioner can delegate his/her functions. The new category is emergency services support volunteers.

### **Clause 1.16 – New section 59CA**

Inserts new section 59CA into the *Emergencies Act 2004*. New section 59CA provides the Emergency Services Commissioner with the power to appoint an emergency services support volunteer. This new category of volunteer can be appointed to assist the Commissioner to perform his/her functions and to assist the emergency services to perform the functions given to those services.

The new power is subject to the limitation that the Commissioner must not appoint a person to this new category of volunteer where the person would be performing a main function of an emergency service and therefore would be more appropriately appointed as a volunteer to that particular emergency service.

### **Clause 1.17 – Section 183(1)**

Amends section 183(1) of the *Emergencies Act 2004* to remove the words ‘member or casual volunteer (the *volunteer*)’. This omission is consequential on the amendment made in clause 1.18 which creates a definition of volunteer to incorporate the existing types of volunteers under the Act and the new category of volunteer created by these amendments.

### **Clause 1.18 – New section 183(4)**

Inserts new section 183(4) into the *Emergencies Act 2004*. New subsection (4) provides a definition for volunteer to incorporate the existing types of volunteers under the Act (volunteer members of the emergency services and casual volunteers) and the new category created by these amendments (emergency services support volunteers).

### **Clause 1.19 – New section 198(4)(ba)**

Inserts new section 198(4)(ba) into the *Emergencies Act 2004*. New paragraph (ba) has been inserted to recognise the new category of volunteer created by these amendments (emergency services support volunteers).

### **Clause 1.20 – Dictionary, new definitions**

Inserts a new definition of *commissioner’s guidelines* into the dictionary of the *Emergencies Act 2004* consequential on the amendments above.

Inserts a new definition of *emergency services support volunteer* into the dictionary of the *Emergencies Act 2004* consequential on the amendments above.

## **Part 1.3 Fair Trading (Consumer Affairs) Act 1973**

### **Clause 1.21 – Section 8(2), definition of *consumer and trader legislation*, paragraph (f)**

Amends the *Fair Trading (Consumer Affairs) Act 1973* by removing the definition of *trade measurement legislation* in section 8(2) of the Act because it will become redundant on the repeal of the ACT trade measurement law.

### **Clause 1.22 – Section 8(2), definition of *trade measurement legislation***

Amends the *Fair Trading (Consumer Affairs) Act 1973* (the Act) by removing trade measurement legislation as part of the definition of ‘consumer and trader’ legislation in section 9(2)(f) of the Act as it will become redundant on the repeal of the ACT trade measurement law.

### **Clause 1.23 – New schedule 2**

Inserts a new Schedule 2 into the *Fair Trading (Consumer Affairs) Act 1973* (the Act) to provide transitional provisions which will allow a smooth transition for the administration of trade measurement from the ACT to the Commonwealth Government.

New section 2.1 provides the definitions of terms used for interpreting the new Schedule 2. In particular, the section provides a definition of ‘continuing matter’ for the purposes of finalisation of certain administrative and enforcement matters.

New section 2.2 provides for the finalisation of certain administrative and enforcement matters, specified under the definition of ‘continuing matter’ in section 2.1, during the three year period following the repeal of the Trade Measurement Acts. The section will also provide for the employment of trade measurement inspectors during that time so that these matters can be finalised.

New section 2.3 allows for the finalisation of disciplinary actions against a licensee where a notice was served on that person before 1 July 2010, when the Commonwealth takes over responsibility for trade measurement and at this date, disciplinary action was not yet taken.

New section 2.4 facilitates the commencement or continuation of appeals in circumstances where an appeal was or could have been commenced prior to 1 July 2010 when the Commonwealth takes over responsibility for trade measurement.

New section 2.5 allows a trade measurement inspector to make a decision about retaining, returning or disposing of things seized in the course of administering the trade measurement law, prior to 1 July 2010, to ensure the finalisation of outstanding administrative matters when responsibility is handed over to the Commonwealth.

New section 2.6 allows for the recovery of unpaid trade measurement fees after 1 July 2010, when the Commonwealth takes over responsibility for trade

measurement so that the ACT Government will not lose revenue as a result of the take over.

New section 2.7 allows for an inspector to obtain a search warrant where the inspector believes an offence under the repealed Trade Measurement Acts has been committed before 1 July 2010, when the Commonwealth takes over responsibility for trade measurement, so that evidence can be effectively gathered, for the prosecution of an offence against the repealed Acts.

New section 2.8 allows for the ACT to disclose information to the Commonwealth about trade measurement matters so that the new Commonwealth law can be effectively administered and enforced in the ACT.

New section 2.9 provides that from 1 July 2010, when the Commonwealth takes over responsibility for trade measurement, a reference in another Act or document to the repealed Trade Measurement Acts is a reference to the new Commonwealth trade measurement law as the latter will be the relevant law in force at the time.

New section 2.10 allows for regulations to be made with respect to any transitional matter where the regulations are necessary because of the repeal of the Trade Measurement Acts. This facilitates a smooth, efficient transition of responsibility for trade measurement from the ACT to the Commonwealth Government.

New section 2.11 sets the expiry of new Schedule 2 as 1 July 2013 to allow for a sufficient amount of time for administrative matters to be finalised and full responsibility for trade measurement to be smoothly transferred to the Commonwealth from the ACT.

**Clause 1.24 – Dictionary, definition of *fair trading legislation*, new paragraph (aa)**

Amends the dictionary definition of *fair trading legislation* in the *Fair Trading (Consumer Affairs) Act 1973*. The amendment adds the *Eggs (Labelling and Sale) Act 2001* to the list of legislation which gives meaning to the term *fair trading legislation* when it is used in the *Fair Trading (Consumer Affairs) Act 1973*.

The effect of this amendment is to ensure that part 3 of the *Fair Trading (Consumer Affairs) Act 1973* applies to the regulation of the sale of eggs so that inspectors under the *Fair Trading (Consumer Affairs) Act 1973* will be able to use these powers to investigate possible breaches regarding the display and sale of eggs.

## **Part 1.4 Magistrates Court Act 1930**

### **Clause 1.25 – New division 2.2.3A**

Inserts new division 2.2.3A into the *Magistrates Court Act 1930*. New division 2.2.3A inserts sections 9C – 9J to establish a regime to allow for the formal exchange of judicial officers between State and Territory courts.

Section 9C inserts definitions for the following terms for division 2.2.3A:

- ACT court;
- corresponding court;
- court;
- judicial exchange arrangement;
- judicial officer;
- participating jurisdiction; and
- this jurisdiction.

Section 9D enables the ACT Attorney General to enter into arrangements with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between ACT courts and corresponding courts. However, such an arrangement cannot provide for the transfer of a judicial officer to a federal court of the Commonwealth.

Section 9E enables the ACT Chief Magistrate to appoint a judicial officer from a corresponding court as a judicial officer of an ACT court. Such an appointment must be in accordance with a judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court. An appointment cannot be for a term longer than 6 months at any one time and cannot extend beyond the retirement age for a judicial officer of an ACT court.

Section 9F provides that a judicial officer from a corresponding court who is appointed to act as a judicial officer of the ACT court is taken for all purposes to be a judicial officer of the ACT court, and has all the applicable powers, authorities, privileges and immunities. However, ACT laws in relation to remuneration, superannuation and removal or suspension from office do not apply to such an officer.

Section 9G provides that, for the purposes of laws relating to remuneration, superannuation and removal or suspension from office, the service of an ACT judicial officer in a corresponding court is taken to be service as a judicial officer of the ACT court.

Section 9H confirms that the doctrine of incompatibility of office does not prevent a judicial officer appointed to a court or tribunal from being appointed to any other court or tribunal and that such an appointment does not result in the surrender or vacation of the first judicial office. The new provision extends to all tribunals having judicial or quasi-judicial functions. It also applies to all permanent, acting or temporary appointments and to appointments in other jurisdictions outside the ACT.

Section 9I provides that the new arrangements provided for in preceding sections do not limit or affect any other arrangements which provided for the cross-appointment of judicial officers in the ACT and in other jurisdictions.

New section 9J allows the table contained in schedule 2 (list of participating courts and tribunals) to be amended by regulation. It is appropriate and convenient for the list of participating courts and tribunals to be amended by way of regulation, as it allows the list to be updated promptly on receiving advice from participating jurisdictions, ensuring the ACT legislation remains consistent with other jurisdictions. This provision is consistent with the model judicial exchange bill agreed to by the Standing Committee of Attorneys-General.

#### **Clause 1.26 – New schedule 2**

Inserts new schedule 2 into the *Magistrates Court Act 1930*. The new schedule inserts a table which lists specific courts falling under the definitions of *ACT court* and *corresponding court* for the purposes of new section 9C.

### **Part 1.5 Prohibited Weapons Act 1996**

#### **Clause 1.27 – Section 4(1)(b)**

Amends section 4(1)(b) of the *Prohibited Weapons Act 1996*. The amendment inserts the words ‘or prohibited article’ after the words ‘prohibited weapon’ in paragraph (b). Paragraph (b) currently exempts members of foreign police services from the operation of the Act when those members are required to possess or use prohibited weapons for taking part in a training activity conducted by the Australian Federal Police and carried out in the ACT.

The amendment extends the operation of this exemption to prohibited articles, which includes items such as ‘an article or device intended for use to muffle, reduce or stop the noise created by firing a firearm’.

### **Part 1.6 Road Transport (Mass, Dimensions and Loading) Act 2009**

#### **Clause 1.28 – Section 414(1)**

Amends the *Road Transport (Mass, Dimensions and Loading) Act 2009* so that section 414(1) refers to the new Commonwealth law as this will be the relevant law in force at the time, following repeal of the Trade Measurement Acts on 1 July 2010.

#### **Clause 1.29 – Section 414(3)**

Amends the *Road Transport (Mass, Dimensions and Loading) Act 2009* so that a ‘measuring instrument’ means a measuring instrument under the new Commonwealth law as this will be the relevant law in force at the time, following repeal of the Trade Measurement Acts on 1 July 2010.

## **Part 1.7 Supreme Court Act 1933**

### **Clause 1.30 – Section 25**

The amendment to section 25 of the *Supreme Court Act 1933* is consequential to the amendment in clause 1.19 below. Section 25 provides that law and equity are to be administered according to sections 26 – 32 of the *Supreme Court Act 1933* in every civil cause or matter begun in the court. Section 25 is amended by replacing the reference to ‘sections 26 to 32’ with a reference to ‘section 26 to 34B’. It is convenient at this time to include section 33, which deals with conflict between law and equity, as a section to be considered in the concurrent administration of law and equity, as well as the new section 34.

### **Clause 1.31 – New section 34**

Inserts new section 34 into the *Supreme Court Act 1933*. New section 34 provides that the court has power to award damages in equity in addition to, in substitution for, an injunction or an order for specific performance. This is to remove any doubt as to the jurisdiction of the Supreme Court to award damages of this kind.

### **Clause 1.32 – New part 8A**

Inserts new part 8A into the *Supreme Court Act 1933*. New part 8A inserts sections 69A – 69H to establish a regime to allow for the formal exchange of judicial officers between State and Territory courts.

New section 69A inserts definitions for the following terms for part 8A:

- ACT court;
- corresponding court;
- court;
- judicial exchange arrangement;
- judicial officer;
- participating jurisdiction; and
- this jurisdiction.

New section 69B enables the ACT Attorney General to enter into arrangements with the Attorney General of a participating jurisdiction for the temporary transfer of judicial officers between ACT courts and corresponding courts. However, such an arrangement cannot provide for the transfer of a judicial officer to a federal court of the Commonwealth.

New section 69C enables the ACT Chief Justice to appoint a judicial officer from a corresponding court as a judicial officer of an ACT court. Such an appointment must be in accordance with a judicial exchange arrangement and with the concurrence of the senior judicial officer of the corresponding court. An appointment cannot be for a term longer than 6 months at any one time and cannot extend beyond the retirement age for a judicial officer of an ACT court.

New section 69D provides that a judicial officer from a corresponding court who is appointed to act as a judicial officer of the ACT court is taken for all purposes to be a judicial officer of the ACT court, and has all the applicable powers, authorities, privileges and immunities. However, ACT laws in relation to remuneration, superannuation and removal or suspension from office do not apply to such an officer.

New section 69E provides that, for the purposes of laws relating to remuneration, superannuation and removal or suspension from office, the service of an ACT judicial officer in a corresponding court is taken to be service as a judicial officer of the ACT court.

New section 69F confirms that the doctrine of incompatibility of office does not prevent a judicial officer appointed to a court or tribunal from being appointed to any other court or tribunal and that such an appointment does not result in the surrender or vacation of the first judicial office. The new provision extends to all tribunals having judicial or quasi-judicial functions. It also applies to all permanent, acting or temporary appointments and to appointments in other jurisdictions outside the ACT.

New section 69G provides that the new arrangements provided for in the preceding sections do not limit or affect any other arrangements which provided for the cross-appointment of judicial officers in the ACT and in other jurisdictions.

New section 69H allows the table contained in schedule 2 (list of participating courts) to be amended by regulation. It is appropriate and convenient for the list of participating courts and tribunals to be amended by way of regulation, as it allows the list to be updated promptly on receiving advice from participating jurisdictions, ensuring the ACT legislation remains consistent with other jurisdictions. This provision is consistent with the model judicial exchange bill agreed to by the Standing Committee of Attorneys-General.

### **Clause 1.33 – New schedule 2**

Inserts new schedule 2 into the *Supreme Court Act 1933*. The new schedule inserts a table which lists specific courts falling under the definitions of *ACT court* and *corresponding court* for the purposes of new section 69A.

## **Part 1.8 Trustee Companies Act 1947**

### **Clause 1.34 – New section 34B**

Inserts new section 34B into the *Trustee Companies Act 1947*. This legislative amendment is required pursuant to a Council of Australian Government (COAG) decision to transfer trustee company regulation from States and Territories to the Commonwealth, scheduled to commence in 2010. The *Justice and Community Safety Legislation Amendment Act 2009 (No 4)* contains a range of provisions repealing parts of the *Trustee Companies Act 1947* which will be superseded by new Commonwealth legislation.

Section 601WBA of the *Corporations Act 2001* (Cth) enables the Australian Securities and Investments Commission (ASIC) to make a compulsory determination that there is to be a transfer of estate assets and liabilities from a trustee company whose licence ASIC has cancelled (the transferring company) to another licensed trustee company (the receiving company). To make this determination, ASIC must be satisfied, amongst other things, that legislation to facilitate the transfer that satisfies the requirements of section 601WBC of the *Corporations Act* as amended has been enacted in the State or Territory in which the transferring company and receiving company is situated. Proposed section 34A of the Principal Act will satisfy the requirements of section 601WBC for Territory legislation when an ASIC certificate of transfer comes into force.

### **Clause 1.35 – Dictionary, definition of *trustee company***

Amends the dictionary definition of 'trustee company' to refer to Chapter 5D of the *Corporation Act 2001* (Cth), pursuant to the transfer of trustee company regulation to the Commonwealth.

## **Part 1.9      Wills Act 1968**

### **Clause 1.36 – New part 3A**

Inserts new part 3A into the *Wills Act 1968*. New part 3A consists of sections 16A-16I to introduce statutory wills provisions in the ACT.

New section 16A provides that the Supreme Court may make an order authorising a will to be made or altered for a person, including a child, who does not have testamentary capacity on application.

New section 16B confirms that an application under section 16A must be made with the leave of the Supreme Court and that the court must be given particular information, such as evidence that the person for whom the order is sought does not have testamentary capacity or any available evidence as to the wishes of the person for whom the order is sought.

On hearing an application for leave, then new section 16C enables the Supreme Court to allow a successful application for leave to proceed as an application for an order under section 16A. If the court is satisfied about the matters in section 16E, the order may be made. The new provision empowers the court to revise the terms of the any draft of the proposed will, alteration or revocation for which the approval is sought.

New section 16D enables the Supreme Court to have regard to particular information in its consideration of an application for an order under section 16A, and that it is not bound by the rules of evidence.

New section 16E provides that the Supreme Court must be satisfied about certain matters before considering an application, such as testamentary capacity and the appropriateness of the order.

New section 16F sets out the requirements of a properly executed will made or altered by an order under section 16A of the *Wills Act 1968*.

New section 16G provides that a will deposited with the registrar in accordance with Part 1.9 of the *Wills Act 1968* must not be delivered to the person for whom it was made. This is subject to whether the Supreme Court has made an order authorising the revocation of the whole of the will or the person has acquired or regained testamentary capacity. The section also states the requirements of the registrar for wills so deposited (such as entering particulars on an index).

New section 16H gives the court the power to order that a person who does not have testamentary capacity be separately represented if it appears this is necessary, as well as any other order the court sees fit to secure the separate representation.

New section 16I recognises valid statutory wills from other jurisdictions, where the deceased person was resident at the time the will was executed and defines statutory wills.

### **Clause 1.37 – Section 21**

Section 21 provides that a will or a part of a will is not revoked subject to other sections of the *Wills Act 1968*. This amendment includes the new section 16A, inserted by this Bill, as one of the sections that section 21 is subject to.