

2010

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT
BILL 2010 (NO 3)**

EXPLANATORY STATEMENT

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Justice and Community Safety Legislation Amendment Bill 2010 (No 3)

Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2010 (No 3) (the Bill) amends a number of laws administered by the Department of Justice and Community Safety.

The detail of these amendments is listed below.

Transfer of Consumer Credit regulation to the Commonwealth

In June 2008 the Council of Australian Governments agreed to establish a national consumer credit system. Previously, the States and Territories were jointly responsible for the regulation of consumer credit under the Uniform Consumer Credit Code (the UCCC). National legislation has enacted the UCCC into Commonwealth legislation and establishes a national licensing regime.

The *National Consumer Credit Protection Act 2009* was passed by the Commonwealth Parliament on 26 October 2009. The transfer to the Commonwealth of full responsibility for regulation and enforcement of ACT consumer credit occurred on 1 July 2010. The repeal of the *ACT Consumer Credit (Administration) Act 1996*, *Consumer Credit (Administration) Regulation 1996*, *Consumer Credit Act 1995*, *Consumer Credit Regulation 1996*, *Credit Act 1985* and *Credit Regulation 1985* and transitional provisions included in this Bill facilitate a smooth hand-over from the ACT Government to the Commonwealth.

Evidence (Miscellaneous Provisions) Act 1991

Amendments are made to the Act to facilitate the giving and receiving of evidence in proceedings before Territory courts by audio and audiovisual links from places not covered by model legislation endorsed by the Standing Committee of Attorneys-General (SCAG) in 1997.

Justice Penfold recently held that evidence of a witness given by telephone from Victoria was not admissible because Victoria is not a ‘participating State’ for the purposes of Part 3 of the *Evidence (Miscellaneous Provisions) Act 1991* (*The Queen v DF* [2010] ACTSC 31 (15 April 2010)).

Part 3 allows Territory courts to take evidence by audiovisual and audio links from people interstate and allows the courts interstate to take evidence using the same means from people in the Territory. The provisions are largely based on a draft model Bill, endorsed by SCAG in 1997. Victoria is the only Australian jurisdiction which did not enact the model legislation as they already had legislation to facilitate the taking of evidence interstate.

The model legislation has a key component which means that the court of one jurisdiction can, in taking evidence from another jurisdiction, rely on the law of the jurisdiction to ensure that powers are supplemented. In this regard, the fact that the Victorian legislation does not have the same or even a similar operation to the model legislation means that an ACT court purporting to take evidence from Victoria does

not have the support it needs from the Victorian legislation to make that an effective activity. For example, there is nothing in the Victorian legislation that of itself would enable a person to be prosecuted for perjury in Victoria in respect of evidence given in Victoria to an ACT court.

The amendments will extend the scope of the existing legislation by providing that the location in Victoria, or another place not covered by the uniform scheme, where evidence is being taken is regarded as part of the ACT court for the purpose of conducting the proceeding. Accordingly, ACT laws relating to evidence, procedure, contempt and perjury will apply.

A minor amendment is also made to the Act to correct a minor reference error.

Amendments are also made to legislation across the ACT statute book consequential to the amendments made to the *Evidence (Miscellaneous Provisions) Act 1991* made by this Bill.

Supreme Court Act 1933

An amendment is made to the Act to ensure that a judge, in a trial by judge-alone, must take into account any warnings that would, under the Commonwealth *Evidence Act 1995*, have had to be given to a jury in the case.

Justice Penfold recently expressed doubt about the applicability of some provisions of the Commonwealth *Evidence Act 1995* to judge-alone trials conducted under sections 68B and 68C of the *Supreme Court Act 1933* (*The Queen v DF* [2010] ACTSC 31 (15 April 2010)).

Section 68C of the *Supreme Court Act 1933* specifies the procedures to be followed for a trial by judge-alone, including that the judge must take into account any warnings that would, under a Territory law, have had to be given to a jury in the case. The Commonwealth *Evidence Act 1995* is not captured within the definition of ‘Territory law’ in the *Legislation Act 2001*. The definition is amended to expand its scope to the Commonwealth Evidence Act.

Amendments are also made to clarify that in a judge-alone trial, in addition to requiring a judge to take into account a warning in considering his or her verdict, the judge must also take into account a direction or comment that, in a jury trial, they would be required to give or make to the jury. This puts the status of trials on equal footing, regardless of whether they are conducted before a judge or judge and jury.

Juries Act 1967

Currently, the prescribed scale of payments is set by regulation, pursuant to sections 51 and 52 of the *Juries Act 1967*. For most ACT legislation, the responsible Minister determines fees and similar amounts by way of a disallowable instrument. This legislative mechanism allows for indexed amounts to be updated annually without engaging Parliamentary Counsel drafting resources, and removes the need to secure agreement from two members of the Executive.

To streamline the administrative procedure for indexation of jury payments, section 51 of the *Juries Act 1967* is amended to allow the prescribed scale of jury payments to be made by Ministerial determination, through disallowable instrument. Determining the prescribed scale through disallowable instrument will allow for the scale to be indexed annually in a more efficient manner, whilst maintaining an appropriate level of Assembly scrutiny through tabling a disallowable instrument.

The amendments to the listed Acts and regulations above will ensure that legislation within the Justice and Community Safety portfolio is consistent with the rest of the ACT statute book.

Clause Notes

Clause 1 Name of Act

Provides that the name of the Act is the *Justice and Community Safety Legislation Amendment Act 2010 (No 3)*.

Clause 2 Commencement

Provides that section 3, section 4(1) and (2) and schedule 1 will commence on the day after notification. The remaining provisions will commence on the 28th day after notification.

Clause 3 Legislation amended

Provides that the Act amends legislation mentioned in schedules 1 -3.

Clause 4 Legislation repealed

Provides that the legislation named in this provision be repealed. Clauses 4(1) and (2) repeal ACT consumer credit legislation and related legislative instruments as most ACT consumer credit law will become redundant from commencement of the new Commonwealth law starting on 1 July 2010.

Clause 4(3) repeals the *Juries Fees Regulation 1968*, as the contents of the regulation will be remade in a disallowable instrument under amended section 51 of the *Juries Act 1967*.

Schedule 1 Amendments relating to repeal of consumer credit legislation

Part 1.1 Civil Law (Property) Act 2006

Clause 1.1 Section 5(3)

Amends the *Civil Law (Property) Act 2006* by removing section 5(3) which provides that the Act is subject to certain ACT consumer credit legislation. This subsection became redundant on commencement of the new Commonwealth law on 1 July 2010.

Part 1.2 Commercial Arbitration Act 1986

Clause 1.2 Section 4(4)

Amends the *Commercial Arbitration Act 1986* by removing section 4(4) which provides that that Act does not affect the operation of the *Credit Act 1985*, section 130 (Content of contracts of insurance). This section became redundant on commencement of the new Commonwealth law on 1 July 2010.

Part 1.3 Door-to-Door Trading Act 1991

Clause 1.3 Section 15(2)

Amends the *Door-to-Door Trading Act 1991* section 15(2) by substituting a reference to the *Credit Act 1985* and the ACT Consumer Credit Code with a reference to the National Credit Code as the latter is the relevant law in force.

Clause 1.4 Dictionary, note 2

Amends the *Door-to-Door Trading Act 1991* dictionary, note 2 by stating that the Legislation Act defines the National Credit Code as the National Credit Code is the relevant law in force from 1 July 2010 when the new Commonwealth consumer credit legislation commenced.

Part 1.4 Fair Trading Act 1992

Clause 1.5 Section 28A(5), definition of *continuing credit contract* and notes

Amends the *Fair Trading Act 1992* section 28A(5) definition of *continuing credit contract* so that it refers to the National Credit Code, section 204(1) as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.6 Section 51C

Amends the *Fair Trading Act 1992* section 51C Definitions – part 4A so that it refers to the National Credit Code, section 204(1) as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.7 Section 51D(3)

Amends the *Fair Trading Act 1992* section 51D(3) so that it refers to the National Credit Code, division 3 as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.8 Section 51E(1)

Amends the *Fair Trading Act 1992* section 51E(1) so that it refers to the National Credit Code, section 17(4) as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.9 Section 51E (2)

Amends the *Fair Trading Act 1992* section 51E(2) so that refers to the National Credit Code, section 17(6) as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.10 Section 51E (3)

Amends the *Fair Trading Act 1992* section 51E(3) so that refers to the National Credit Code, section 16 as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.11 Section 51E (4)

Amends the *Fair Trading Act 1992* section 51E(4) so that refers to the National Credit Code, section 16 or section 17 as this is the relevant law in force from 1 July 2010, when the new Commonwealth consumer credit legislation commenced.

Clause 1.12 Dictionary, note 2

Amends the *Fair Trading Act 1992* dictionary, note 2 which refers to the Consumer Credit (Australian Capital Territory) Code as the Code will no longer be defined in the Legislation Act as it is no longer in force following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.13 Dictionary, note 2

Amends the *Fair Trading Act 1992* dictionary, note 2 by inserting a reference to the National Credit Code as it will be defined in the Legislation Act as it is the relevant law in force following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.14 definition of *code*

Amends the *Fair Trading Act 1992*, dictionary definition of *code* so that it means the National Credit Code instead of the Consumer Credit (Australian Capital Territory) Code as the former is the relevant law in force at the time, following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Part 1.5 Fair Trading (Consumer Affairs) Act 1973

Clause 1.15 Section 8(2), definition of *consumer and trader* legislation, paragraph (a)

Amends the *Fair Trading (Consumer Affairs) Act 1973* section 8(2), definition of *consumer and trader legislation*, paragraph (a) by removing the reference to the consumer credit legislation as it is a reference to the ACT consumer credit legislation which is no longer in force following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.16 Section 10(1)

Amends the *Fair Trading (Consumer Affairs) Act 1973* section 10(1) by removing the reference to the *Consumer Credit (Administration) Act 1996* as it will no longer be the relevant law in force following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.17 Section 11

Amends the *Fair Trading (Consumer Affairs) Act 1973* section 11 by removing the reference to the *Consumer Credit (Administration) Act 1996* as it is no longer the relevant law in force following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.18 New schedule 3

Inserts a new schedule 3 into the *Fair Trading (Consumer Affairs) Act 1973* (the Act) to provide transitional provisions which will allow the smooth transition of responsibility for consumer credit administration and regulation from the ACT to the Commonwealth Government.

New section 3.1 provides the definitions of terms used for interpreting the new schedule 3.

New section 3.2 provides for the preservation of the financial counselling trust fund established under the *Consumer Credit (Administration) Act 1996*, section 124.

New section 3.3 allows for the ACT to disclose information to the Commonwealth about consumer credit matters so that the new Commonwealth law can be effectively administered and enforced in the ACT.

New section 3.4 provides that the Minister or a person authorised by the Minister may enter into an arrangement with the Australian Securities Investments Commission so that ASIC can exercise functions as an agent of the Territory. This will enable a fluid

transfer of enforcement power from the Territory to the Commonwealth with respect to consumer credit matters.

New section 3.5 provides that from the commencement of this Bill, a reference in another Act or document to the repealed consumer credit legislation is a reference to the new Commonwealth consumer credit law as the latter is the relevant law in force.

New section 3.6 provides that repealed ACT consumer credit legislation will continue to apply to pre-credit code contracts so that these contracts will continue to be dealt with under the repealed *Credit Act 1985* and *Credit Regulation 1985*. The Commonwealth consumer credit legislation does not deal with pre-credit code contracts.

New section 3.7 preserves the repealed finance broking provisions so that consumers continue to be protected from unfair finance broking commission charges until the Commonwealth law dealing with this subject commences.

New section 3.8 allows for regulations to be made with respect to any transitional matter where the regulations are necessary because of the repeal of the consumer credit legislation. This facilitates a smooth, efficient transition of responsibility for consumer credit from the ACT to the Commonwealth Government.

New section 3.9 sets the expiry of the new schedule 3 as 1 July 2013 to allow for a sufficient amount of time for administrative matters to be finalised and full responsibility for consumer credit to be smoothly transferred to the Commonwealth from the ACT.

Clause 1.19 Dictionary, note 2

Amends the *Fair Trading (Consumer Affairs) Act 1973* dictionary, note 2 so that it includes a reference to the definition of *territory law* in the Legislation Act as the new schedule 3 (inserted by clause 1.18) refers to territory law.

Part 1.6 Fair Trading (Consumer Product Standards) Regulation 2009

Clause 1.20 Section 8(a)

Amends the *Fair Trading (Consumer Product Standards) Regulation 2009* so that Section 8(a) refers to the National Credit Code instead of the Consumer Credit (Australian Capital Territory) Code as the former is the relevant law in force, following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Clause 1.21 Dictionary, note 2

Amends the *Fair Trading (Consumer Product Standards) Regulation 2009*, dictionary, note 2 so that it no longer refers to the Legislation Act definition of the

Consumer Credit (Australian Capital Territory) Code as this Code is no longer the relevant law in force, following commencement of the new Commonwealth consumer credit legislation on 1 July 2010.

Amends the *Payroll Tax Act 1987*, dictionary, note 2, to remove the reference to the Legislation Act definition of the *Consumer Credit (Australian Capital Territory) Code* as the latter is no longer the relevant law in force following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.22 Dictionary, note 2

Amends the *Fair Trading (Consumer Product Standards) Regulation 2009* so that the dictionary, note 2 refers to the National Credit Code instead of the Consumer Credit (Australian Capital Territory) Code as the former is the relevant law in force, following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Part 1.7 Firearms Act 1996

Clause 1.23 Section 13(2), definition of *credit contract*

Amends the *Firearms Act 1996*, section 13(2) definition of *credit contract* to refer to the National Credit Code instead of the *Credit Act 1985* as the former is the relevant law in force, following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.24 Dictionary, note 2

Amends the *Firearms Act 1996*, dictionary, note 2 to refer to the Legislation Act defining *National Credit Code* as section 13(2) of the *Firearms Act 1996* now uses this term.

Part 1.8 Legislation Act 2001

Clause 1.25 Dictionary, part 1

Amends the *Legislation Act 2001* dictionary, part 1 by removing the definitions of *Consumer Credit (Australian Capital Territory) Code* and *Consumer Credit (Australian Capital Territory) Regulation* as these are no longer relevant laws in force, following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.26 Dictionary, part 1, new definition of *National Credit Code*

Amends the *Legislation Act 2001* dictionary, part 1, by inserting a definition of the *National Credit Code* as this is the relevant law in force following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Part 1.9 Payroll Tax Act 1987

Clause 1.27 Section 4(8), definition of *credit contract*

Amends the *Payroll Tax Act 1987*, section 4(8), definition of *credit contract* to refer to the National Credit Code as this is the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.28 Section 4(8), definition of *regulated contract*

Amends the *Payroll Tax Act 1987*, section 4(8), to remove the definition of *regulated contract*. The definition refers to the *Credit Act 1985* which is no longer the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.29 Section 4(8), definition of *supply*

Amends the *Payroll Tax Act 1987*, section 4(8), definition of *supply* to remove the reference to a regulated contract. The term ‘regulated contract’ refers to the *Credit Act 1985* which is no longer the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.30 Dictionary, note 2

Amends the *Payroll Tax Act 1987*, dictionary, note 2, to remove the reference to the Legislation Act definition of *Consumer Credit (Australian Capital Territory) Code* as it is no longer the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.31 Dictionary, note 2

Amends the *Payroll Tax Act 1987*, dictionary, note 2, to refer to the definition of National Credit Code in the Legislation Act as this is the relevant law in force following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Part 1.10 Sale of Motor Vehicles Act 1977

Clause 1.32 Section 25B (6)

Amends the *Sale of Motor Vehicles Act 1977* to refer to the National Credit Code instead of the Consumer Credit (Australian Capital Territory) Code as the former is the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Clause 1.33 Dictionary, note 2

Amends the *Sale of Motor Vehicles Act 1977*, dictionary, note 2, to refer to the definition of National Credit Code in the Legislation Act as the National Code is the relevant law in force following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Part 1.11 Second-hand Dealers Regulation 2002

Clause 1.34 Dictionary, definition of *financial institution*, paragraph (b)

Amends the *Second-hand Dealers Regulation 2002* dictionary, definition of *financial institution*, paragraph (b) to refer to the *National Consumer Credit Protection Act 2009* (Cwlth) instead of the *Consumer Credit (Administration) Act 1996* as the former is the relevant law following commencement of the new Commonwealth consumer credit law on 1 July 2010.

Schedule 2 Amendments relating to Evidence (Miscellaneous Provisions) Act 1991

Part 2.1 Children and Young People Act 2008

Clause 2.1 Section 335(1) (a) and (b)

Amends section 335(1) of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.2 Commercial Arbitration Act 1986

Clause 2.2 Section 20A(1)

Amends section 20A(1) of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.3 Coroners Act 1997

Clause 2.3 Section 42A(1)

Amends section 42A(1) of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.4 Corrections Management Act 2007

Clause 2.4 Section 203(1)(a) and (b)

Amends section 203(1) of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.5 Crimes (Forensic Procedures) Act 2000

Clause 2.5 Section 38(2)(a), note 2

Amends the second note in section 38 and replaces it with a revised note consequential on the amendments made to the *Evidence (Miscellaneous Provisions) Act 1991* by this Bill (clauses 2.11 and 2.12).

Part 2.6 Crimes (Sentence Administration) Act 2005

Clause 2.6 Section 207(1)

Amends section 207(1) to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.7 Domestic Violence and Protection Orders Regulation 2009

Clause 2.7 Section 36

Amends section 36 of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Clause 2.8 Section 56(3)

Amends section 56(3) to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.8 Evidence (Miscellaneous Provisions) Act 1991

Clause 2.9 Section 18

Amends section 18 of the Act to make it clear that Part 3 will not exclude or limit the operation of Territory laws respecting the taking of evidence or making of submissions by audio or audiovisual link for a proceeding in the ACT.

Clause 2.10 Division 3.2 heading

Amends the heading of division 3.2 to more appropriately reflect the content of the division.

Clause 2.11 Section 20 heading

Amends the heading of section 20 to more appropriately reflect the content of the section.

Clause 2.12 Division 3.4

Amends division 3.4 to extend its operation to facilitate the giving and receiving of evidence in proceedings before their courts by audio and audiovisual links from places not covered by model legislation endorsed by SCAG in 1997.

Section 31 has been amended to ensure that the division applies to any proceeding before a Territory court.

Section 32 has been amended to provide that a Territory court can direct that a person appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from:

1. a place in the ACT that is outside the courtroom or other place where the court is sitting (scenario covered in existing section 32); or
2. a place outside the ACT but within Australia (other than a participating State) (new scenario created).

The existing test in subsection 32(2) will continue to apply unchanged. Accordingly, the Court will only be able to make a direction in the above scenarios if satisfied that:

1. the necessary facilities are available or can reasonably be made available; and
2. the evidence or submission can more conveniently be given or made from the place; and
3. the making of the direction is not unfair to any party opposing the making of the direction.

New subsection (4) is inserted to provide that the location where evidence is being taken is regarded as part of the ACT court for the purpose of conducting the proceeding. Accordingly, ACT laws relating to evidence, procedure, contempt and perjury will apply.

Clause 2.13 Section 36

Amends section 36 of the Act to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill

Clause 2.14 Section 82(4)

Amends section 82(4) to correct a minor reference error.

Part 2.9 Judicial Commissions Act 1994

Clause 2.15 Section 43A(1)

Amends section 43A(1) of the Act to replace incorrect references to provisions in the *Evidence (Miscellaneous Provisions) Act 1991* following a process of renumbering conducted by Parliamentary Counsel Office previously.

Part 2.10 Magistrates Court Act 1930

Clause 2.16 Section 72B(1)

Amends section 72B(1) to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Clause 2.17 Section 311(1)(a)

Amends subsection 311(1) to update the reference to section 20 and include a new reference to section 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made, to the heading of section 20 by clause 2.11 and, to division 3.4 by clause 2.12 of this Bill.

Clause 2.18 Section 316(2)(a)

Amends section 316(2) to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Part 2.11 Royal Commissions Act 1991

Clause 2.19 Section 34A(1)

Amends section 34A(1) to update the references to sections 20 and 32 of the *Evidence (Miscellaneous Provisions) Act 1991*, consequential on amendments made to the headings of these sections by clauses 2.11 and 2.12 of this Bill.

Schedule 3 Other amendments

Part 3.1 Juries Act 1967

Clause 3.1 Section 51

A new section 51 of the *Juries Act 1967* is substituted to allow the prescribed scale of jury payments to be determined by the Minister, by way of disallowable instrument. Currently, the payment scale is set by regulation. Setting the jury payment scale by way of disallowable instrument instead of regulation will allow the payment scale to be indexed annually in a more administratively efficient manner, whilst maintaining an appropriate level of Assembly scrutiny through tabling a disallowable instrument. The language used has been simplified in accordance with current drafting standards. The general legislative effect and intention of the section is maintained, the only change is the mechanism by which the jury payment scale is set.

Part 3.2 Supreme Court Act 1933

Clause 3.2 Section 68C(2) and (3)

Amends section 68C by repealing subsections (2) and (3) and replacing them with new subsections (2), (3) and (4). New subsections (2) and (3) replicate the existing subsections with a minor revision to update the language used.

Subsection (3) is also amended to clarify that where a judge is required to give a warning or direction, or make a comment, to the jury in a criminal proceeding, the judge is required to take the warning, direction or comment into account in considering his or her verdict in a judge-alone trial. This puts the status of trials on equal footing, regardless of whether they are conducted before a judge or judge and jury.

New subsection (4) provides that for section 68C *territory law* includes a reference to the Commonwealth *Evidence Act 1995*.

The amendment arises out of the ACT Supreme Court case of *The Queen v DF* [2010] ACTSC 31 (15 April 2010). In the case Justice Penfold expressed doubt about the applicability of some provisions of the Commonwealth *Evidence Act 1995* to judge-alone trials conducted under sections 68B and 68C of the Supreme Court Act. The provisions concerned are those expressed to apply where there is a jury (for instance, relevantly, sections 165 and 165B of the Evidence Act); those provisions would not apply of their own force in a trial by judge alone. The amendment removes from doubt the applicability of the Commonwealth Evidence Act to judge-alone trials.