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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2017  
(No 2)**

**REVISED EXPLANATORY STATEMENT**

Presented by  
Gordon Ramsay MLA  
Attorney-General



# JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2017 (No 2)

## **Introduction**

This revised Explanatory Statement is for the Justice and Community Safety Legislation Amendment Bill 2017 (No 2) (the Bill) as presented in the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **Overview of the Bill**

The Bill makes amendments to a number of laws in the Justice and Community Safety portfolio. The amendments are intended to improve the operation of each amended law without amounting to a major change in policy.

## **Summary of amendments**

### ***Associations Incorporation Act 1991***

The Bill amends the *Associations Incorporation Act 1991* to disqualify from office a person who has been disqualified from managing a corporation under Commonwealth law where they have been disqualified at the Commonwealth level on grounds common to those under ACT law.

This aligns with recent amendments to the *Associations Incorporation Reform Act 2012* (Vic). The Commonwealth Government has requested that all jurisdictions implement this change to their corresponding associations incorporation legislation.

### ***Associations Incorporation Regulation 1991***

The Bill makes consequential amendments to the *Associations Incorporation Regulation 1991* resulting from the amendments to the Associations Incorporation Act.

### ***Co-operatives National Law (ACT) Act 2017***

The Bill amends the *Co-operatives National Law (ACT) Act 2017* to allow for fees, allowances and expenses to be prescribed by disallowable instrument, rather than by regulation.

This aligns with normal ACT Government practice. It will allow for greater administrative efficiency and make it easier to locate the source of authority for the fees, allowances and expenses under the Co-operatives National Law (ACT).

### ***Co-operatives National Law (ACT) Regulation 2017***

To reflect the changes to the Co-operatives National Law (ACT) Act, the Bill repeals section 11 and schedule 1 of the *Co-operatives National Law (ACT) Regulation 2017*, which provide for and set out the prescribed fees under the Regulation.

### ***Coroners Act 1997***

The Bill amends the *Coroners Act 1997* to:

- remove the ability to prescribe by regulation operations or procedures that, although completely or partially contributing to a person's death, do not need to be the subject matter of an inquest; and
- remove the mandatory requirement for a hearing to be held when a person dies under, or as a result of the administration of, an anaesthetic.

### ***Coroners Regulation 1994***

The Bill also repeals the *Coroners Regulation 1994* as a result of the amendment made to section 13 (1) (c) of the Coroners Act.

### ***Court Procedures Act 2004***

The Bill amends the *Court Procedures Act 2004* to:

- clarify the principal registrar's powers relating to hiring staff;
- allow the principal registrar to delegate his or her functions to members of the ACT Courts and Tribunal (ACTCT) staff; and
- regulate the use of electronic devices in courtrooms.

### ***Crimes Act 1900***

The Bill amends the *Crimes Act 1900* to change the references to 'director-general' in section 49E to 'regulator'.

### ***Emergencies Act 2004***

The Bill omits section 29 (3) (d) from the *Emergencies Act 2004* to remove the concept of the bushfire abatement zone from the Act. This addresses an oversight when section 29 (3) (d) was not removed by the *Emergencies Amendment Act 2016* as intended.

### ***Family Violence Act 2016***

The *Family Violence Act 2016* contains the provisions that relate to the National Domestic Violence Order scheme (the NDVO scheme).

The NDVO scheme, agreed by the Council of Australian Governments (COAG) on 11 December 2015, will help domestic violence orders be recognised across all states and territories and improve information sharing on a national level with the aim of improving safety for women and children escaping domestic violence.

Jurisdictions are working towards a single commencement date for the NDVO scheme to avoid uncertainty and confusion about recognition of orders between jurisdictions. The proposed national commencement date for the NDVO scheme is 25 November 2017.

The national recognition provisions in part 9 of the Family Violence Act commence on 19 August 2017 but will not be operational until a regulation is made under the Act recognising interstate family violence orders or registered foreign orders. To ensure that interstate domestic violence orders can be registered in the ACT between 19 August 2017 and 25 November 2017, a transitional regulation will be made under the Family Violence Act to ensure there is no break in the court's ability to register interstate orders.

The Bill amends the Family Violence Act to reflect the transitional regulation, ensuring that the statute book accurately reflects how the Act operates in practice.

### ***Freedom of Information Act 2016***

The Bill amends the *Freedom of Information Act 2016* to:

- exclude certain organisations from the operation of the Freedom of Information Act;
- allow Information Officers to delegate some functions associated with processing an access application;
- extend the period of time for notifying the applicant that their access application has been received;
- allow the Ombudsman to delegate its functions under the Freedom of Information Act;
- omit a criminal offence;
- insert a presumption into schedule 1 that it is against the public interest to disclose information in possession of a court or tribunal unless that information is administrative in nature;
- apply the presumption against disclosure of adoption records to the person whom the information is about;
- extend the operation of the presumption against disclosure applying to mandatory reporting under the *Children and Young People Act 2008* to include voluntary reports;
- insert a presumption into schedule 1 that it is against the public interest to disclose information in the possession of the ACT Ombudsman relating to the Ombudsman's role under the Reportable Conduct Scheme; and
- make the principal registrar the principal officer for all ACT courts and the ACT Civil and Administrative Tribunal (ACAT).

### ***Guardianship and Management of Property Act 1991***

The Bill updates references to 'public trustee' in the *Guardianship and Management of Property Act 1991* to 'public trustee and guardian'. These references were overlooked when the *Protection of Rights (Services) Legislation Amendment Act 2016* created the new agency of the Public Trustee and Guardian to implement a new model for statutory rights protection.

### ***Legal Profession Act 2006***

Section 413 of the *Legal Profession Act 2006* allows the Law Society Council and Bar Council to deal with complaints against Australian legal practitioners summarily where the council is satisfied that:

- there is a reasonable likelihood that the practitioner will be found guilty by the ACAT of unsatisfactory professional conduct;
- the practitioner is generally competent and diligent; and
- no other material complaints have been made against the practitioner.

The Bill introduces a discretion into section 413 for the Councils to deal with unsatisfactory professional conduct where there has been a material complaint against the practitioner and the Council is satisfied that the complaint can nevertheless be adequately dealt with under that section.

### ***Liquor Act 2010***

The Bill amends section 216 of the *Liquor Act 2010* to broaden the membership of the Liquor Advisory Board (LAB).

### ***Road Transport (General) Act 1999***

The Bill amends the *Road Transport (General) Act 1999* to:

- allow the road transport authority (RTA) to accept a known user declaration from someone nominating themselves as the driver of the car at the time of the offence; and
- insert the ability to discontinue court proceedings where there is an infringement notice management plan in place.

### ***Road Transport (Offences) Regulation 2005***

The Bill makes a consequential amendment to the *Road Transport (Offences) Regulation 2005* that is required as a result of the amendments to the Road Transport Act relating to known user declarations, and removes subsections 14H(d) and (e) from the Road Transport (Offences) Regulation.

### ***Territory Records Act 2002***

The Bill makes a consequential amendment to the *Territory Records Act 2002* resulting from amendments to the Freedom of Information Act and makes additional minor and technical amendments to the Territory Records Act to ensure consistency across the statute book prior to the commencement of the Freedom of Information Act.

## **Human Rights Implications**

### ***Associations Incorporation Act 1991 and Associations Incorporation Regulation 1991***

The amendments to the Associations Incorporation Act and the Associations Incorporation Regulation automatically vacate a person from their position as public officer of an incorporated association if the person is disqualified from being an officer of a corporation under Commonwealth law. The amendments also create a new criminal offence for continuing to act or taking up a position as an office holder of an incorporated association while disqualified under Commonwealth law.

These amendments may engage the following rights under HRA:

□ the right to liberty and security of person (s 18); and □  
the right to a fair trial (s 21).

Although these amendments impose the additional punishment of automatic disqualification from office of an incorporated association, they do not engage the right to be tried or punished more than once (s 24). In this context, punishment means to impose a sanction purely for one or more of the purposes of sentencing under s 7(1) of the *Crimes (Sentencing) Act 2005*. Where the measure has a legitimate policy objective that is not designed to exclusively punish the offender, the right is not engaged. For example, in 2010 the Victorian Supreme Court held that preventing a child sex offender from obtaining child related employment was not double punishment because that restriction was intended to limit reoffending.<sup>1</sup> This argument applies in this present context, as the policy objective behind extending the Commonwealth law's automatic disqualification to officers of ACT incorporated associations is aimed at limiting the opportunities to reoffend. Any limitation is further reduced by confining automatic disqualification only to those grounds at the Commonwealth level that are already covered under the ACT Associations Incorporation Act.

#### Right to liberty and security of person

The amendments may engage but do not limit the right to liberty and security of person.

While the amendments create a new criminal offence, a person's liberty will only be deprived following a finding of guilt 'on the grounds and in accordance with the procedures established by law' (HRA, s 18 (2)).

#### Right to fair trial

As some of the situations where a person is disqualified under Commonwealth law do not rely on the decision of a court, the amendments may engage and limit a person's right to a fair trial as they impact on a person's right to have obligations recognised by law decided by a competent, independent and impartial court or tribunal after a fair and public hearing (HRA, s 21 (1)).

Section 28 of the HRA allows the legislature to reasonably limit human rights by laws that can be demonstrably justified in a free and democratic society. In deciding whether a limit is reasonable, consideration must be given to the nature of the right, the importance of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose and any less restrictive means reasonably available to achieve the purpose.

The limitation placed on the right to a fair trial by the amendments to the Associations Incorporation Act and the Associations Incorporation Regulation is reasonable for the reasons set out below. *Nature of the right*

The right to a fair trial is a basic human right. Article 10 of the *Universal Declaration of Human Rights* states:

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<sup>1</sup> *WBM v Chief Commissioner of Police* [2010] VSC 219.

‘Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.’

This right is also captured in the *International Covenant on Civil and Political Rights* which states at Article 14.1:

‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’

### *Importance of the purpose of the limitation*

The automatic disqualification from office imposed by these amendments is necessary to uphold the integrity of associations in the ACT, so that the community can have faith that the organisations they are dealing with are being managed by competent and law-abiding citizens. This is particularly important for associations, which are often acting as non-profit organisations, raising money for charitable purposes.

### *Nature and extent of the limitation*

While these amendments make disqualification automatic in some circumstances, the nature and extent of this limitation is reasonable because:

1. The Associations Incorporation Act contains existing grounds on which a person is automatically vacated from office, and the grounds for automatic disqualification imposed by these amendments are confined to those common under the Commonwealth and ACT laws. These amendments simply recognise that if a person commits these acts while an officer of a corporation under Commonwealth law, they should be prevented from holding an equivalent office of an incorporated association. This change arises from a recent case in Victoria in which a person disqualified at the Commonwealth level sought to manage a new incorporated Association under Victorian law. Victoria has since amended its legislation to prevent this reoccurring.
2. The amendments provide a person the opportunity to seek leave of the Supreme Court to continue to act or take up a position as an officer of an incorporated association under new section 63B. This is consistent with the person’s right to a fair trial.

### *Relationship between the limitation and its purpose*

The circumstances where these amendments apply the Commonwealth law’s automatic disqualification to ACT incorporated associations involve conduct directly related to the management of an incorporated association. They have already been legislated as appropriate grounds of disqualification in ACT law. To limit the circumstances which present opportunities to commit these actions, it is important to impose this automatic disqualification in order to ensure consistency across the ACT and Commonwealth levels of government on disqualification of those no longer fit and proper to manage incorporated bodies. Further, as these amendments align the ACT legislation with Commonwealth legislation, and, in time, are likely to align with the equivalent legislation in other jurisdictions, this national campaign may provide jurisdictions with the opportunity to share information about relevant offences.



This creates further visibility for regulators to monitor and control undesirable and sometimes criminal behaviour in this setting. All of these factors will play a part in limiting this type of behaviour.

*Other less restrictive means*

There are no other less restrictive avenues to achieve the purpose, as no other measure will be as timely in achieving the purpose of maintaining the integrity of those managing incorporated bodies.

These amendments represent a reasonable and justifiable limitation on the right to a fair trial, which is outweighed by the importance of preventing unscrupulous behaviour in positions of management. In addition, the right is largely protected by the opportunity provided to an affected person to seek the leave of the Supreme Court to continue to act in the position of management despite the automatic disqualification being imposed.

***Court Procedures Act 2004***

The amendments to the Court Procedures Act restricting the use of electronic devices in court may also engage the right to a fair trial under section 21 of the HRA. However these amendments do not limit this right, as it is likely that one or all of the following exceptions under section 21 (2), which allow the press and the public to be excluded from all or part of a trial, apply:

- to protect morals, public order or national security (HRA, s 21 (2) (a));
- if the interests of the private lives of the parties require the exclusion (HRA, s 21 (2) (b)); and
- if, and to the extent that, the exclusions is strictly necessary ... because publicity would otherwise prejudice the interests of justice (HRA, s 21 (2) (c)).

Otherwise, the amendments represent a proportionate limitation under section 28 of the HRA to protect the security of the courts and the parties' right to privacy and to promote the proper administration of justice.

In considering the reasonableness of a limitation on a human right, the importance of the purpose of the limitation must also be considered (HRA, s 28(2)(b)).

These amendments support the right to a fair trial by allowing the court to make additional rules that facilitate the fair, safe and orderly management of court premises. The increasing use of mobile electronic devices such as smartphones as recording devices has created a risk to fair court proceedings. Electronic devices can be used to capture the identity of jurors and transmit witness evidence to upcoming witnesses. Electronic devices can also make sounds that may disturb the orderly conduct of court proceedings.

In deciding whether a limit to a right is reasonable, the relationship between the limitation and its purpose (HRA, s 28(2)(d)) and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (HRA, 28(2)(e)) must be considered. Given the technical and ever-changing context of court security, particularly in relation to the use of electronic devices, the amendment takes the least restrictive means reasonably available by leaving scope for the rules to flexibly adapt to technological advances.

Any limitation to the right to a fair trial would be minimal, as rules on court security and the use of electronic devices would frequently fall within the exclusion to the right to a fair trial specified in s 21 of the HRA. Any limitations contained in rules that do not fall within that exclusion would be for the purpose of enhancing the right to a fair trial, and the safe and orderly conduct of court proceedings.

Therefore, any limitation to the right to a fair trial is reasonable and proportionate.

### ***Freedom of Information Act 2016***

The amendments to the Freedom of Information Act that limit or prevent public access to documents of the Judicial Council, the ACT Law Society, the ACTLCT and the Ombudsman may engage:

- the right to privacy (HRA, s 12);
- the right to seek and receive information within the context of freedom of expression (HRA, s 16(2)); and
- the right to take part in conduct of public affairs (s 17(a)).

The amendment applying the presumption against disclosure of adoption records to the person whom the information is about may engage and limit children's rights (HRA, s 11(2)), rights to equality and non-discrimination (HRA, s 8) and the right to freedom of expression (HRA, s 16). This limitation is a reasonable limitation as a person, including a child or young person, is provided an alternative avenue to access the information under the Adoptions Act. Already section 12 of the Freedom of Information Act excludes information held in a health record under the *Health Records (Privacy and Access) Act 1997*, as there is an existing scheme for accessing government information. This change is consistent with that approach, and based on concerns that a release under the Freedom of Information Act would not have the same protections as one under the Adoptions Act. While it is recognised that there are more stringent requirements for release under the Adoptions Act which may limit rights, including rights to equality, children's rights and freedom of expression, these limitations are considered in the circumstances to be reasonable as the Adoptions Act also includes safeguards to address potential issues involved in the release of sensitive adoption material. This includes the provision of counselling services.

### **Right to privacy and Protection of Children**

The amendments to the Freedom of Information Act arguably promote the right to privacy by making it more difficult for members of the public to access information of a confidential nature. This is justified given the particularly sensitive personal information held by the Judicial Council, the ACT Law Society, the ACTLCT and the Ombudsman.

The amendment to the Freedom of Information Act relating to the presumption against disclosure for reporting under the Children and Young People Act may also engage and promote the right to privacy, as the presumption against disclosure is being extended to include the identities of people making voluntary reports under the Children and Young People Act. This amendment also ensures the Freedom of Information Act does not create a disincentive to those voluntarily reporting concerns about the safety of children and young people, also supporting the protection of children (HRA, s 11(2)).

## Seek and receive information

If amendments to the Freedom of Information Act engage the right to seek and receive information in the context of the right to freedom of expression, the limitation on this right is justified pursuant to section 28 of the HRA for the following reasons.

### *Nature of the right*

The right to seek and receive information is part of the right to freedom of expression, including a positive right to access government-held information.<sup>2</sup>

### *Importance of the purpose of the limitation*

The government can lawfully restrict the right to seek and received information if the restriction is necessary to protect the rights of others or to protect public order, public health, public morality or national security.<sup>3</sup>

The purpose of the limitation imposed by these amendments in relation to personal information held by the Judicial Commission, the ACT Law Society, the ACTLCT and the Ombudsman is to protect the right to privacy. It is also aimed at protecting public order in relation to other documents held by these organisations that are inherently confidential due to the nature of the work these organisations undertake.

### *Nature and extent of the limitation*

The limitation imposed by these amendments is only absolute in relation to the ACT Law Society and the Judicial Commission, as the amendments exclude these organisations from the Freedom of Information altogether. That is because both of these organisations, while established to carry out a public purpose, were not intended to have their records publically accessible. This is evident under the *Freedom of Information Act 1989*, where both organisations are excluded from the Act's operation. In addition, these organisations hold particularly sensitive information; the ACT Law Society in relation to practitioners being investigated for professional misconduct and the Judicial Commission in relation to sensitive court proceedings and personal information about judiciary members under investigation.

The limitations placed on access to information in possession of a court or tribunal and relating to the Ombudsman's role under the Reportable Conduct Scheme are not absolute. While the information is taken to be against the public interest to disclose, it is still possible, under the public interest test, to access this information. This limitation is therefore justified as it simply requires that, due to the sensitive nature of the information in question, special consideration be given to all the relevant issues relating to the request for information prior to the information being released to a member of the public.

In relation to the right to access the information held by a court or tribunal, the right is further protected by the usual court processes established to allow considered access to such documents in the setting of court proceedings.

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<sup>2</sup> See for example ACT Human Rights Commission, *Factsheet: Right to Freedom of Expression (s. 16)* at <http://hrc.act.gov.au/wp-content/uploads/2015/03/Section-16-Right-to-Freedom-of-Expression.pdf>, accessed 22 August 2017.

<sup>3</sup> *Ibid.*

### *Relationship between the limitation and its purpose*

The purpose of protecting this information from unfettered public scrutiny pursuant to the Freedom of Information Act is directly related to the limitation proposed in the Bill. As the right to access is established under the Freedom of Information Act commencing on 1 January 2018, the only way to overturn this is in the way proposed—via an amendment to the Act.

### *Other less restrictive means*

There are no other less restrictive means available to achieve the desired result. The Freedom of Information Act limits access to information in three ways:

1. where information is excluded from operation of the Act;
2. via a presumption that disclosure of the information is contrary to the public interest; and
3. by protecting the information via a factor favouring non-disclosure.

The amendments protect information held by the Judicial Council and the ACT Law Society under category 1. As discussed above, this is the appropriate level of protection in light of the nature of these organisations and for the particularly sensitive information that these organisations hold.

The amendments protect information held by the ACTLCT and the Ombudsman in its role under the Reportable Conduct Scheme under category 2. As discussed above, this is the appropriate level of protection in light of the sensitive information that these organisations hold and, in relation to the ACTLCT, in light of other avenues for access available to users of the courts.

### Take part in the conduct of public affairs

If amendments to the Freedom of Information Act engage the right to take part in the conduct of public affairs, the right is not limited as the right does not necessarily contemplate a right to access information or documents.<sup>4</sup>

### ***Legal Profession Act 2006***

The amendments to the Legal Profession Act may engage the right to a fair trial but any limitation is reasonable, as a person who is the subject of disciplinary proceedings under section 413 of the Legal Profession Act has the right to appeal to the ACAT under section 416.

### ***Road Transport (General) Act 1999***

The amendments to the Road Transport (General) Act to discontinue a proceeding in relation to certain scenarios involving an INMP may engage the right to a fair trial but they do not limit this right. The right is protected, as a person must take positive action to enter into an INMP, choosing this course of action over continued court proceedings.

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<sup>4</sup> *Law Society of the ACT & Treasury Directorate and NRMA Insurance (Appeal)* [2013] ACAT 36 (21 May 2013).

## **Climate Change Impacts**

This Bill has no identified climate change impacts.

## **CLAUSE NOTES**

### **Part 1      Preliminary**

#### **Clause 1      Name of Act**

This clause names this Act the *Justice and Community Safety Legislation Amendment Act 2017 (No 2)*.

#### **Clause 2      Commencement**

This clause provides for the commencement of this Act.

As the provisions amending the *Family Violence Act 2016* rely on a regulation made under section 115 of the Family Violence Act, the provisions commence on the commencement of that regulation or the commencement of section 3 of this Act, whichever is later.

As the provisions amending the *Freedom of Information Act 2016* and the *Territory Records Act 2002* rely on the Freedom of Information Act commencing, the provisions commence on the commencement of section 3 of the Freedom of Information Act or the commencement of section 3 of this Act, whichever is later.

The remaining provisions of this Act commence on the seventh day after the day the Act is notified on the Legislation Register.

#### **Clause 3      Legislation amended**

This clause provides that this Act amends the legislation in parts 2 to 17.

#### **Clause 4      Legislation repealed**

This clause provides that this Act repeals the *Coroners Regulation 1994*.

### **Part 2      *Associations Incorporation Act 1991***

Part 2 amends the *Associations Incorporation Act 1991* to prevent a person from managing an incorporated association in the ACT where that person has been disqualified from holding office for a corporation or an Aboriginal and Torres Strait Islander corporation under Commonwealth law. This will prevent a person disqualified from holding office under Commonwealth law from continuing to hold or taking up a similar position under ACT law.

**Clause 5      New section 3A**

This clause inserts new section 3A, which sets out that the *Criminal Code 2002* and the Legislation Act apply in relation to offences against the Associations Incorporation Act. This ensures that the automatic disqualification introduced in new section 63B is compliant with the Criminal Code.

**Clause 6      New section 63B**

This clause makes it an offence to accept an appointment or act as the public officer or a committee member of an incorporate association while disqualified from managing a corporation or an Aboriginal and Torres Strait Islander corporation under specific provisions of part 2D.6 of the *Corporations Act 2001* (Cwlth) or part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth) relating to convictions, bankruptcy, personal insolvency and repeated contraventions of those Commonwealth Acts, without leave of the Supreme Court.

**Clause 7      Vacancy in office of public officer**

**New section 64 (2) (fa)**

This clause automatically vacates the office of a public officer of an incorporated association if the public officer is disqualified from managing a corporation or an Aboriginal and Torres Strait Islander corporation under specific provisions in part 2D.6 of the Corporations Act (Cwlth) and part 6-5 of the Corporations (Aboriginal and Torres Strait Islander) Act (Cwlth) relating to convictions, bankruptcy, personal insolvency and repeated contraventions of those Commonwealth Acts.

**Part 3      *Associations Incorporation Regulation 1991***

Part 3 makes consequential amendments to the *Associations Incorporation Regulation 1991* resulting from the amendments to the Associations Incorporation Act.

**Clause 8      Model rules**

**Schedule 1, section 16 (e)**

Clause 8 omits section 16 (e) of schedule 1, which refers to automatic vacancy from office for committee members who become bankrupt or personally insolvent. This section is no longer required as a result of the amendment in clause 9 which expands schedule 1, section 16 (g) to include disqualification resulting from bankruptcy or personal insolvency.

**Clause 9      Schedule 1, section 16 (g)**

Clause 9 amends section 16 (g) of schedule 1 to expand the circumstances where, under the Model Rules, disqualification from office under the Associations Incorporation Act results in

an automatic vacancy from office for committee members of an incorporated association. The amended section 16 (g) includes automatic vacancy from office where a person is disqualified under the Corporations Act (Cwlth) or the Corporations (Aboriginal and Torres Strait Islander) Act (Cwlth) for those grounds that also exist under the Associations Incorporation Act.

#### **Part 4            *Co-operatives National Law (ACT) Act 2017***

Part 4 amends the *Co-operatives National Law (ACT) Act 2017* to allow fees, allowances and expenses for co-operatives in the ACT to be determined by disallowable instrument rather than regulation. This simplifies the process and brings the Co-operatives National Law (ACT) into line with other ACT laws that prescribe fees.

#### **Clause 10        Exclusion of Legislation Act**

##### **New section 8 (2A)**

Clause 10 inserts section 8 (2A) into the Co-operatives National Law (ACT) Act to override section 8 (1), which excludes the Legislation Act from applying to the Co-operatives National Law (ACT), for the modifications listed. This applies the Legislation Act, part 6.3 and chapter 7, which govern prescribing fees by disallowable instrument, to the listed modifications introduced into the Co-operatives National Law (ACT) by part 4 of this Act.

New modifications 1.1AA and 1.5B are not listed in clause 10. The Legislation Act does not need to apply to these new modifications, as they do not relate to the act of prescribing a fee.

#### **Clause 11        Modifications—Co-operatives National Law**

##### **Schedule 1, new modification 1.1AA**

This clause introduces the definition of disallowable instrument into the Co-operatives National Law (ACT).

#### **Clause 12        Schedule 1, new modifications 1.1A to 1.1E**

This clause makes fees under sections 26 (1) (b) (ii), 31 (b) (ii), 37 (b) (ii), 57 (2) (b) and 57 (3) (b) of the Co-operatives National Law (ACT) determined by disallowable instrument rather than regulation.

#### **Clause 13        Schedule 1, new modifications 1.5A to 1.5D**

This clause introduces modifications 1.5A to 1.5D into the Co-operatives National Law (ACT).

Modifications 1.5A, 1.5C and 1.5D make fees under sections 92 (8) (b), 214 (5) (b) and 243 (2) (c) of the Co-operatives National Law (ACT) determined by disallowable instrument rather than regulation.

Modification 1.5B introduces a requirement under section 214 (1) (a) (v) of the Co-operatives National Law (ACT) for co-operatives to make disallowable instruments made under the National Law available to a member for inspection free of charge.

**Clause 14      Schedule 1, new modification 1.12A**

This clause makes allowances and expenses under section 522 (4) (b) of the Co-operatives National Law (ACT) determined by disallowable instrument rather than regulation.

**Clause 15      Schedule 1, new modifications 1.15 and 1.16**

This clause makes fees under sections 601 and 604 (b) of the Co-operatives National Law (ACT) determined by disallowable instrument rather than regulation.

**Part 5            *Co-operatives National Law (ACT) Regulation 2017***

Part 5 makes consequential amendments to the *Co-operatives National Law (ACT) Regulation 2017* resulting from the amendments to the Co-operatives National Law (ACT) Act.

**Clause 16      Prescribed fees**

**Section 11**

**Clause 17      Prescribed fees**

**Schedule 1**

As the amendments in part 4 make fees under the Co-operatives National Law (ACT) Act prescribed by disallowable instrument rather than regulation, clauses 16 and 17 in part 5 remove prescribed fees from the Regulation.

**Part 6            *Coroners Act 1997***

Part 6 amends the coroner's jurisdiction over certain deaths under the *Coroners Act 1997*.

**Clause 18      Coroner's jurisdiction in relation to deaths**

**Section 13 (1) (c)**

This clause removes the ability of the legislature to exempt by regulation certain operations or procedures from being considered by the coroner under an inquest. This recognises that deaths completely or partly attributable to an operation or procedure should always be the subject of an inquest, and there should be no right for the treating doctor to certify otherwise.



## **Clause 19      Decision not to conduct a hearing**

### **Section 34A (2)**

This clause removes the requirement for deaths under anaesthetic to automatically go to a hearing before the coroner. This brings the ACT into line with other jurisdictions, such as New South Wales. It also recognises the significant clinical improvements in anaesthesia and their increasingly common use.

This amendment does not affect the requirement for the coroner to hold an inquest into deaths resulting from the administration of anaesthetic, as deaths where anaesthetics may play a contributory role remain reportable to the coroner. For these deaths, the coroner also retains discretion to hold a hearing where the coroner believes it reasonable to do so.

## **Part 7              *Court Procedures Act 2004***

Part 7 amends the *Court Procedures Act 2004* in relation to court security and the role of the principal registrar.

## **Clause 20      Administrative functions of principal registrar**

### **Section 11B (2) (a) and note**

This clause clarifies the principal registrar's power to employ staff, by replacing the power to appoint, engage and employ a person employed to assist a Registrar with a general power to employ staff on behalf of the Territory.

This clause closely mirrors the clearer corresponding powers for the solicitor-general to employ staff under section 22 of the *Law Officers Act 2011*.

Like the previous section 11B (2) (a), this includes the power to exercise the powers of the head of service relating to the appointment, engagement and employment of staff.

## **Clause 21      New section 11B (3)**

This clause contains a consequential amendment to section 11B (3) resulting from the amendment to section 11B (2) (a), so that staff employed by the principal registrar are employed under the Public Sector Management Act.

## **Clause 22      New section 11BA**

This clause clarifies that the principal registrar is able to delegate his or her functions to a member of the principal registrar's staff. This aligns with other statutory office holders and will allow the principal registrar to exercise the principal registrar's other functions more efficiently. The ability to delegate will also ensure that in circumstances where the principal registrar is temporarily away from the office, business will be able to continue as usual.

## **Clause 23      Subject matter for rules**

## **Schedule 1, section 6, new paragraph (ia)**

This clause adds security of court premises, including the use of electronic devices, as a new subject matter for court rules in schedule 1 of the Court Procedures Act. This allows the rulemaking committee to better regulate court security, particularly in the context of an increasing use of mobile electronic devices as recording devices, which has created a risk to fair court proceedings.

### **Part 8            *Crimes Act 1900***

#### **Clause 24        *Court may order corporation to take certain actions***

##### **Section 49E (7) and (8)**

This clause replaces references to ‘director-general’ in sections 49E (7) and (8) of the *Crimes Act 1900* with ‘regulator’.

The references to director-general are ambiguous. While the director-general of the Justice and Community Safety (JACS) Directorate has administrative responsibility of the Crimes Act, it does not make sense that the JACS director-general would be responsible for matters relating to industrial manslaughter.

This amendment aligns with amendments to section 49E(7) made by the *Work Health and Safety (Consequential Amendments) Act 2011* to replace the term ‘director-general for the *Work Safety Act 2008*’ with ‘regulator under the *Work Health and Safety Act 2011*’. This is also consistent with the dictionary in the Work Health and Safety Act where ‘regulator means the director-general’.

### **Part 9 *Emergencies Act 2004***

#### **Clause 25        *Chief officer—fire and rescue service***

##### **Section 29 (3) (d)**

This clause repeals section 29 (3) (d) from the *Emergencies Act 2004* to clarify that the bushfire abatement zone is the responsibility of the ACT Rural Fire Service, not ACT Fire & Rescue.

This follows amendments to the Emergencies Act made by the *Emergencies Amendment Act 2016*. Despite one of the intentions of these amendments being to remove the concept of the bushfire abatement zone from the Emergencies Act, the references in section 29 (3) (d) remained. This amendment fixes this discrepancy.

### **Part 10           *Family Violence Act 2016***

Part 10 amends the *Family Violence Act 2016* to accommodate the national approach to a single commencement date for the National Domestic Violence Order scheme while ensuring that there is no break in the court’s ability to register interstate orders.

**Clause 26      Section 198 heading**

This clause changes the heading of section 198 to reflect that the section, with the addition of the term ‘operational date’ inserted by clause 27, will list multiple definitions.

**Clause 27      Section 198, new definition of *operational date***

This clause defines ‘operational date’, a term which is introduced by these amendments, as the commencement day for a section 115 regulation prescribing a corresponding law.

**Clause 28      Existing registered orders under repealed Act  
Section 200 (1) (a) and (b)**

This clause ensures that the transitional provisions in section 200 (1) (a) and (b) of the Family Violence Act extending existing orders under part 12 of the repealed *Domestic Violence and Protection Orders Act 2008* continue until the operational date, despite the commencement of part 9 of the Family Violence Act.

**Clause 29      Preservation of repealed Act, pt 12  
Section 200A**

This clause ensures that the transitional provisions in section 200A of the Family Violence Act extending the application of part 12 of the repealed *Domestic Violence and Protection Orders Act* to existing orders continue until the operational date, despite the commencement of part 9 of the Family Violence Act.

**Part 11          *Freedom of Information Act 2016***

Part 11 makes minor and technical amendments to the *Freedom of Information Act 2016* prior to its commencement on 1 January 2018.

**Clause 30      Meaning of agency  
Section 15 (2), definition of *territory authority***

This clause explicitly excludes the ACT Judicial Council and the Law Society of the ACT from the definition of ‘agency’ in section 15 of the *Freedom of Information Act*. This recognises that these bodies, although instituted under statute, are not public entities intended to be subject to the Government’s freedom of information regime.

It is unnecessary to exclude the ACT Bar Association from section 15 as it is not created under statute and therefore is not a territory authority falling within the definition of agency.

It is also unnecessary to specifically exclude the principal officer of the Judicial Council from section 15, as the principal officer can rely on the Judicial Council’s exclusion from section 15. The reference in section 15 to statutory office holders is also not directly relevant, as the

principal officer of the Judicial Council is not established by the *Judicial Commissions Act 1994* and is therefore not a statutory office holder.

**Clause 31 Information officers—functions**

**New section 19 (2) and (3)**

This clause inserts a provision into the Freedom of Information Act to allow Information Officers to delegate part of their authority to deal with access applications. Delegations will authorise support staff to assist Information Officers by identifying, locating, collating and examining documents within the scope of an access application.

The authority to decide an access application or refuse to deal with an application will remain with the Information Officer, informed by support staff's recommendations.

**Clause 32 Sections 32 (2), 57 (5) and 58 (5)**

This clause extends the timeframe for providing a notice acknowledging receipt of an access application to not later than 10 working days after the application is received. This increases the timeframe by five business days.

This timeframe allows for both Australia Post delivery timeframes, where the postal timeframe for priority letters is up to three business days after the day of posting and regular letters is up to six business days after the day of posting, as well as the time required to prepare the notice to the applicant.

**Clause 33 Ombudsman—functions**

**New section 64 (2)**

This clause allows the Ombudsman to delegate its functions under the Freedom of Information Act to a member of the Ombudsman's staff.

This is consistent with section 32 of the *Ombudsman Act 1989*, which provides that 'the ombudsman may delegate the ombudsman's functions under this Act to a member of the ombudsman's staff'.

**Clause 34 Preventing disclosure of information**

**Section 91**

This clause omits section 91, which makes it an offence for a person to engage in conduct with the intention of preventing disclosure of government information where that disclosure 'would, or could reasonably be expected to, be required' under the Freedom of Information Act.

Disclosure that 'could reasonably be expected to be required under this Act' is an ambiguous and low threshold. For example, where the ACAT overturns an Information Officer's

decision to withhold information, the Information Officer will have technically contravened section 91. This threshold also assumes Information Officers will apply the public interest test uniformly.

This will not affect other offence provisions in part 9, which cover unscrupulous behaviour such as knowingly making a decision contrary to the Freedom of Information Act.

**Clause 35      Schedule 1, new section 1.1A**

This clause inserts a new provision into the Freedom of Information Act to state that the Act does not apply to documents in the possession of a court or tribunal (including a registry or other office of a court or tribunal and the staff of the registry or office) unless the documents are administrative in nature.

Excluding non-administrative material held by the ACTLCT preserves judicial and tribunal independence by removing documents lodged, tendered or created in court or ACAT proceedings from the scope of access applications. This exclusion upholds the separation of powers and recognises the ACTLCT's authority to control proceedings before them.

Individuals may already apply for judicial and quasi-judicial documents under self-contained processes in the *Court Procedure Rules 2006* as well as via an administrative regime in the ACAT. The Judicial Council also provides scrutiny for the conduct of judicial officers and represents a more appropriate model to promote transparency and accountability without affecting judicial independence.

**Clause 36      Information disclosure of which is prohibited under law**  
**Schedule 1, section 1.3 (1)**

This clause amends schedule 1, section 1.3 (1) of the Freedom of Information Act relating to adoption records so that the presumption against disclosure for this information extends to the person whom the information is about.

This aligns with the advice of the Government Solicitor's Office that this information should be accessed via the self-contained access regime under the *Adoption Act 1993*, which includes access to counselling and age limitations, rather than the Freedom of Information Act.

This will ensure that a person cannot use the Freedom of Information Act to access information that they would otherwise not be entitled to access under the Adoption Act.

**Clause 37      Identities of people making disclosures**  
**Schedule 1, section 1.9 (b)**

This clause amends schedule 1, section 1.9 (b) to apply to voluntary as well as mandatory reports under the *Children and Young People Act 2008*.

These reports concern a person's reasonable belief that a child or young person has experienced, or is experiencing, physical or sexual abuse. Schedule 1, section 1.9 (b) establishes a presumption against releasing any information that might identify a person who made a mandatory report under the Children and Young People Act.

This amendment recognises that, given the sensitivity and public interest in reporting abuse, the same protections of identity should apply for people making voluntary reports.

**Clause 38      Information in possession of ombudsman**  
**Schedule 1, section 1.12, new paragraph (c)**

This clause inserts a new provision into schedule 1 of the Freedom of Information Act to explicitly state that disclosure of information held by the Ombudsman to support its obligations in relation to the Reportable Conduct Scheme is taken to be contrary to the public interest.

When performing this function, the Ombudsman may receive or generate sensitive information about private organisations. Such information would not likely be administrative information and it would rarely be in the public interest to disclose it.

It is unnecessary to apply schedule 1, section 1.12 to the ombudsman in its role as principal officer of the Judicial Council. Firstly, the roles of ACT Ombudsman and principal officer of the Judicial Council are separate and distinct roles. Secondly, clause 30 excludes the Judicial Council from the operation of the Freedom of Information Act, therefore also excluding the principal officer of the Judicial Council.

**Clause 39      Dictionary, definition of *principal officer*, paragraphs (b) to (d)**

This clause amends the dictionary of the Freedom of Information Act to make the principal registrar the principal officer for the Freedom of Information Act and consolidate responsibility for ACTLCT records management.

This brings the Freedom of Information Act into line with section 8 of the Territory Records Act. This also aligns with 2015 amendments to the Freedom of Information Act 1989, which inserted a definition of principal officer in the case of a court to mean the principal registrar appointed under section 11A of the Court Procedures Act.

**Part 12      *Guardianship and Management of Property Act 1991***

**Clause 40      Surviving or substitute guardians etc**  
**Section 32 (4)**

This clause removes the term '(the public trustee)' from section 32 (4) of the *Guardianship and Management of Property Act 1991*. It is no longer required as a result of the public trustee being referred to as the 'public trustee and guardian' throughout the Act.

**Clause 41      Section 32 (6)**

This clause updates references to ‘public trustee’ to ‘public trustee and guardian’. These references were overlooked when the *Protection of Rights (Services) Legislation Amendment Act 2016* created the new agency of the Public Trustee and Guardian to implement a new model for statutory rights protection.

**Part 13          *Legal Profession Act 2006***

**Clause 42      Summary conclusion of complaint procedure by fine etc  
Section 413 (1) (c)**

This clause introduces into section 413 of the *Legal Profession Act 2006* a discretion for the Law Society Council and the Bar Association Council to summarily deal with a complaint against a practitioner, even where there have been other complaints made against the practitioner.

This clause is aimed at preventing relatively minor disciplinary matters being referred to the ACAT simply because a section 413 sanction has been applied to the practitioner in relation to a previous complaint.

**Part 14          *Liquor Act 2010***

Part 14 amends the *Liquor Act 2010* to diversify the membership of the liquor advisory board (LAB).

**Clause 43      Section 216 (1) (d) (v) and (vi)**

This clause removes limitations on the organisations or individuals who can:

- represent club licensees; and
- represent on licensees other than club licensees.

This will ensure that representatives of these sectors are not limited to members of peak bodies or organisations specified in the legislation, as is currently the case (with the board including members representing ClubsACT and the Australian Hotels Association (ACT branch)).

**Clause 44      New section 216 (1) (d) (viiiia)**

This clause provides for the LAB to include a member, being a representative of the late night economy.

**Clause 45      Section 216 (1) (d), new example**

This clause provides an example of a representative of the late night economy, being a nightclub licensee.

#### **Clause 46      New part 23**

This clause inserts transitional provisions into the Liquor Act so that the appointments of members to represent ClubsACT and the Australian Hotels Association (ACT branch), in place at the commencement of these amendments, continue for the remaining term of those appointments.

#### **Part 15            *Road Transport (General) Act 1999***

Part 15 amends the *Road Transport (General) Act 1999* to alter the meaning of ‘known user declaration’ and allow for court proceedings to be discontinued due to an infringement notice management plan (INMP).

#### **Clause 47      Definitions—pt3**

##### **Section 21A, definition of *known user declaration***

This clause updates the definition of ‘known user declaration’ under section 21A of the Road Transport (General) Act to allow the road transport authority to accept a declaration from the person who was responsible for a vehicle at the time of an offence.

This updates the current system, which requires the owner of the vehicle to issue a known user declaration stating that they were not in control of the vehicle, and nominating the person responsible. This delays the infringement notice getting to the correct person, which is particularly problematic for camera offences, where infringement notices must be issued to the person responsible within 28 days.

#### **Clause 48      Procedure if liability disputed**

##### **Section 53 (3)**

#### **Clause 49      Section 53 (4)**

Clauses 48 and 49 allow court proceedings to be discontinued (rather than continually adjourned) under section 53 where, prior to hearing, an INMP is entered into or an infringement notice is added to an INMP.

This is designed to allow court proceedings to be discontinued before the INMP is complete, avoiding delays of sometime up to several years.

#### **Part 16            *Road Transport (Offences) Regulation 2005***

#### **Clause 50      Known user declaration—Act, s 21A, def *known user declaration*, par (c)**

##### **Section 14G (a) and (b)**



This clause makes a consequential amendment to the *Road Transport (Offences) Regulation 2005* relating to known user declarations. This amendment results from the amendments to the Road Transport (General) Act.

**Clause 51**      **Sold vehicle declaration—Act, s 21A, def *sold vehicle declaration*, par (c)**  
**Section 14H (d) and (e), except notes 1 and 2**

This clause removes subsections 14H (d) and (e) from the Road Transport (Offences) Regulation as the requirements in those subsections are already covered by sections 73 and 74 of the *Road Transport (Vehicle Registration) Regulation 2000*. This reduces regulatory burden and red tape.

**Part 17**      ***Territory Records Act 2002***

Part 17 makes consequential and other minor and technical amendments to the *Territory Records Act 2002*.

**Clause 52**      **Meaning of *agency***  
**Section 7, definition of *agency*, paragraph (b)**

This clause makes a minor and technical amendment to the Territory Records Act to ensure consistency across the statute book prior to the commencement of the Freedom of Information Act. This amendment reinstates a consequential amendment to the *Public Sector Management Amendment Act 2016*, which was inadvertently replaced by a consequential amendment to the Freedom of Information Act, now commencing on 1 January 2018. This consequential amendment will commence with the Freedom of Information Act, therefore superseding the outdated consequential in the Freedom of Information Act.

**Clause 53**      **Meaning of *principal officer***  
**Section 8, definition of *principal officer*, paragraphs (a) to (e)**

This clause amends the meaning of ‘principal officer’ in the Territory Records Act to align with the amendment to the dictionary of the Freedom of Information Act in clause 39.

**Clause 54**      **Section 8 (j)**

For the reasons provided above in relation to clause 52, clause 54 makes a minor and technical amendment to the Territory Records Act to ensure consistency across the statute book prior to the commencement of the Freedom of Information Act.