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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2019**

**EXPLANATORY STATEMENT**

**Presented by  
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## **JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2019**

### **INTRODUCTION**

This explanatory statement is for the Justice and Community Safety Legislation Amendment Bill 2019 (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, and to a law in the Chief Minister's portfolio. The amendments are intended to improve the operation of each amended law without amounting to a major change in policy.

### **SUMMARY OF AMENDMENTS**

#### ***ACT Civil and Administrative Tribunal Act 2008 and the Human Rights Commission Act 2005***

The Bill amends the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) and the *Human Rights Commission Act 2005* to clarify the process for the ACT Civil and Administrative Tribunal (ACAT) to make orders pursuant to agreements reached during conciliation by the Human Rights Commission of discrimination complaints or retirement villages complaints (the latter being provided for in the Retirement Villages Legislation Amendment Bill 2018, should it become law). The amendments will assist those seeking to enforce a conciliation agreement by providing for the necessary clarity in the way the agreement is framed in orders.

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

The existing reporting requirements under the *Coroners Act 1997* lack clarity regarding when a responsible Minister must table a Government response to a coroner's report. The Bill amends the Coroners Act to remove the pathway for the coroner to provide a copy of the report to the responsible Minister, clarify the respective roles of the coroner, the Attorney-General, and other ministers, and strengthens the requirement for the Government to respond to a coroner's reports raising matters of public safety.

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

The *Emergencies Act 2004* provides that a relevant chief officer may direct the occupier of a premises to provide fire appliances at the premises. Under this legislation, an occupier of premises where a fire appliance is directed to be installed under must maintain the fire

appliance to a reasonable standard. Currently, the concept of “reasonable standard” is not defined.

The Bill amends the Emergencies Act to prescribe a reasonable standard as the relevant Australian Standards, or an alternative standard made by regulation. The regulation making power is included in the amendment as the Australian Standards often change, and the regulation making power will enable efficient change of the definition of reasonable standard to reflect any such updates to the Australian Standards.

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

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

- add to the list of functions of information officers the function to deal with requests to amend personal information, and make it clear that the information officer can delegate the administrative aspects of this function to support staff;
- allow the respondent to an access application to request additional time before the end of the period of any previously granted time, and correct a technical anomaly with the current drafting of these provisions; and
- align the provisions in the FOI Act with the presumption in the *Children and Young People Act 2008* that disclosure of all sensitive information is taken to be contrary to the public interest.

### ***Judicial Commissions Act 1994***

The *Judicial Commissions Act 1994* allows complaints about matters relating to the behaviour, or physical or mental capacity, of a judicial officer, to be made to and determined by the Judicial Council. A ‘judicial officer’ under this Act does not expressly include a coroner. However, as coroners are magistrates by virtue of section 5(1) of the Coroners Act, complaints about coroners are within the jurisdiction of the Judicial Council.

The Bill amends the Judicial Commissions Act to clarify that coroners who are magistrates are judicial officers for the purposes of the Judicial Commissions Act.

### ***Juries Regulation 2018***

Part-time teachers and members of the emergency services are currently not entitled to the same exception from jury service under the *Juries Regulation 2018* to which full-time teachers and members of the emergency services are entitled. The amendment extends the jury exemption to part-time emergency services staff and teachers, but not casual or volunteer staff in those professions.

### ***Legal Aid Act 1977***

The Bill makes a number of amendments to the *Legal Aid Act 1977* to ensure that it operates efficiently and effectively. The amendments will:

- allow matters to be referred to Legal Aid for family dispute resolution without the need for a grant of legal assistance;
- allow Legal Aid review committees to be convened more flexibly by using any combination of members from each of the three panels as long as there is at least one legal practitioner; and
- ensure that legal expertise and a legal practitioner’s ability to meet other needs (for example, where the client comes from a particularly disadvantaged situation) are considered by Legal Aid ACT when allocating legal assistance work to a private legal practitioner.

### ***Legal Profession Regulation 2007***

The Bill amends the *Legal Profession Regulation 2007* to:

- clarify that a written notice of withdrawal from a trust account must refer to the proposed withdrawal and set out when it will occur; and
- add legal practice as an in-house lawyer as a qualification for an unrestricted practising certificate.

### ***Magistrates Court Act 1930***

The *Fair Work Act 2009* (Cwlth) (FWA) provides that some fair work claims, such as in relation to unpaid wages and other entitlements, can be considered by an eligible State or Territory court. This Bill makes a minor amendment to the *Magistrates Court Act 1930* to clarify that the Magistrates Court can exercise the civil claims jurisdiction that has been conferred on it by the FWA.

### ***Notaries Public Act 1984***

The Bill amends the *Notaries Public Act 1984* to align the oaths and affirmations in this Act with modern text as recently uniformly updated in other Territory legislation.

### ***Residential Tenancies Act 1997***

The *Residential Tenancies Amendment Act 2018* commenced in December 2018. This legislation replaced conditional termination and possession orders (CTPO) with a new type of order called a payment order. CTPOs were used for managing rental arrears, and gave the tenant an opportunity to address rental arrears before their tenancy was terminated.

Before the passage of this legislation the ACAT had to consider certain criteria when determining whether to order a CTPO. This included a consideration of whether the tenant was reasonably likely to pay the rent that had become payable as well as pay future rent as it became payable.

The Bill amends the *Residential Tenancies Act 1997* to reinstate this criterion for the making of a payment order.

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

The *Territory Records Act 2002* (sections 8(b) and (h)) confer the role of ‘principal officer’ on the Head of Service for the purposes of ensuring compliance with territory records obligations by the public service, and by royal commissions, boards of inquiry, judicial commissions and judicial councils. It is not practicable for the Head of Service to ensure compliance across all administrative units of ACT Government, or to ensure compliance by all royal commissions, boards of inquiry, judicial commissions and judicial councils. It is more appropriate for this responsibility to fall with the director-general of the most relevant agency.

Accordingly, the Bill amends the *Territory Records Act* to provide that the ‘principal officer’ is the director-general of the most relevant administrative unit.

### ***Victims of Crime Act 1994***

The Bill makes a number of amendments to the *Victims of Crime Act 1994* in relation to the operation of the Victims Advisory Board (VAB). The amendments will:

- make the relevant director-general responsible for making, and ending, appointments of ACT Government and ACT Policing representatives on the VAB, removing the need for the Minister for Justice, Consumer Affairs and Road Safety to make (or end) these appointments;
- include a representative of the Sentence Administration Board (SAB) as a member of the VAB;
- make the Coordinator-General for Family Safety (CGFS) an ex-officio member of the VAB; and
- provide for the formal appointment of two Indigenous Representatives of two different genders to the VAB.

### ***Consequential amendments***

The Bill also make amendments to update gendered references to marriage in the following acts:

- *Confiscation of Criminal Assets Act 2003*;
- *Discrimination Act 1991*; and
- *Evidence Act 2011*.

This amendment reflects changes made by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cwlth) to enable same sex marriage and remove gendered references from the *Marriage Act 1961* (Cwlth).

## **HUMAN RIGHTS IMPLICATIONS**

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

The amendment to the FOI Act reflected in clause 17 will prevent a person to whom particular information relates from accessing that information if it is sensitive information. This aligns the provisions in the FOI Act with the presumption in the *Children and Young People Act 2008* that disclosure of all sensitive information is taken to be contrary to the public interest. This amendment may engage the right to privacy and reputation in section 12 of the *Human Rights Act 2004* (the HRA).

This amendment potentially limits the right to privacy and reputation, as this right includes the right to take control of who knows, possesses or handles your personal information. This amendment prevents a person from accessing information about themselves, in the limited circumstances where this information is sensitive information as defined under the *Children and Young People Act*.

The purpose of this amendment is to protect sensitive information under the *Children and Young People Act* from being divulged through the freedom of information process. Sensitive information under the *Children and Young People Act* includes care and protection reports, appraisal reports and interstate care and protection reports. The disclosure of this information to the person to whom it relates could reveal the identity of a mandatory or voluntary reporter, or sensitive information concerning other third parties. The protection of the identity of mandatory or voluntary reporters is crucial to ensuring a robust and effective reporting system. Further, the disclosure of such information engages the right to privacy of reporters (or other third parties mentioned in the sensitive information).

This potential limitation is proportional as it restricts the right to information in the narrow circumstance where a person seeks to access information under the FOI Act. Persons may seek access to information concerning them under the *Children and Young People Act*, which contains access rules specifically adapted to the care and protection context. Those rules are designed to balance the right of the person to whom the information relates to seek access to it with the rights of other potentially affected parties and the need to ensure the integrity of the care and protection system overall.

### ***Juries Regulation 2018***

The amendment to the *Juries Regulation* extends the jury exemption rules to part-time emergency services staff and teachers. This amendment supports the right to recognition and equality before the law by treating part-time and full-time workers in the education and emergency services sectors equally. The existing distinction may be discriminatory as the majority of part-time employees are women.

However, by granting the jury exemption rules to full-time and part-time workers, and excluding casual workers and volunteers, this amendment may engage the right to

recognition and equality before the law under section 8 of the HRA in respect of the treatment of casual and volunteer workers, to whom the exemption will not extend.

The *Juries Act 1967* provides that each person whose name is on the roll of electors in the ACT is liable to serve as a juror, except where that person is disqualified or exempt. This obligation on ACT electors illustrates that it is critical that a cross-section of society is available to perform jury duty. Therefore, exemptions for jury duty must be limited so as to ensure that representation of the ACT community is achieved.

The Fair Work Ombudsman in public content states that a casual employee does not have a firm commitment in advance from an employer about how long they will be employed for, or the days (or hours) they will work. A casual employee also does not commit to all work an employer may offer. In comparison, full-time and part-time employees have ongoing employment (or a fixed-term contract) and can expect to work regular hours each week.

Given that casual employees or volunteers do not necessarily have ongoing employment and regular work hours, it is reasonable not to extend the exemption from jury duty to them, in comparison with full-time and part-time workers. Teaching and emergency service providers are less likely to be significantly affected by the absence of a casual employee or volunteer due to the time commitment required by jury duty.

Generally jurors are paid fees out of public funds, and employers are not allowed to dismiss or otherwise penalise an employee because of a jury summons. These protections and support for those who undertake jury duty support the proportionality of the limitation of the right to recognition and equality before the law in respect of casual or volunteer workers.

#### ***Victims of Crime Act 1994***

The members of the Victims Advisory Board include appointments by the director-general from within government, and appointments by the minister in particular categories, who cannot be public servants. This amendment may engage the right to recognition and equality before the law under section 8 of the HRA, because of the exclusion of public servants from the ministerial appointments to the Board.

The Victims Advisory Board provides a platform to formulate protocols and procedures for the treatment of victims of crime and advises the Attorney-General on the development of policies and plans to promote the interests of victims of crime.

The appointments to the Board by the director-general are primarily made up of public servants within the ACT Government. Therefore, the exclusion of public servants reflected in clause 40 for the Ministerial appointments seeks to ensure the diversity of board members, and encourage representation from the ACT Government and the Canberra community. The diversity of board members is important to ensuring that the diverse interests of victims within the ACT are present on the Board.

## CLAUSE NOTES

### Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Justice and Community Safety Legislation Amendment Act 2019* (the Act).

### Clause 2 Commencement

This clause provides that the Act will commence on the 7<sup>th</sup> day after its notification day.

### Clause 3 Legislation amended

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

- *ACT Civil and Administrative Tribunal Act 2008*
- *Coroners Act 1997*
- *Emergencies Act 2004*
- *Freedom of Information Act 2016*
- *Human Rights Commission Act 2005*
- *Judicial Commissions Act 1994*
- *Juries Regulation 2018*
- *Legal Aid Act 1977*
- *Legal Profession Regulation 2007*
- *Magistrates Court Act 1930*
- *Notaries Public Act 1984*
- *Residential Tenancies Act 1997*
- *Territory Records Act 2002*
- *Victims of Crime Act 1994*

This clause notes that this Act also amends other legislation as per schedule 1.

### Clause 4 New section 55A

This clause inserts a new section 55A into the ACT Civil and Administrative Tribunal Act, which clarifies the process for the ACAT to make orders pursuant to agreements about complaints reached in conciliation before the Human Rights Commission.

- (1) Section 55A(1) provides that the section will apply if a conciliation agreement about a complaint is given to the ACAT under the Human Rights Commission Act, section 62(3)(b).
- (2) Section 55A(2) provides that the ACAT must keep a copy of the conciliation agreement.
- (3) Section 55A(3) provides that on application by a party, the ACAT may make an order it considers appropriate to give effect to the agreement.
- (4) Section 55A(4) provides that a decision of the ACAT to refuse to make an order under the section does not affect the validity of the conciliation agreement.



The intent of these provisions is to permit the ACAT to make orders that will give effect to a conciliated agreement on a complaint and that are within the scope of the ACAT's powers in respect of such complaints, with such orders being enforceable in the same way as any other order of the Tribunal.

The clause is drafted to allow the section to deal with complaints for retirement villages in the same way as discrimination complaints. This allows for the section to apply to retirement village complaints if the Legislative Assembly passes the Retirement Villages Legislation Amendment Bill 2018.

**Clause 5      Report after inquest or inquiry  
Section 57 (4)**

This clause omits section 57(4) of the Coroners Act.

**Clause 6      Section 57 (5)**

This clause substitutes a new section 57(5) into the Coroners Act. The substituted clause implements a requirement that if a report under this section contains comments or recommendations about a matter of public safety, or findings about a risk to public safety, the Attorney-General or another Minister must present the report and a statement of the Minister's response to the Legislative Assembly within specified timeframes.

**Clause 7      Section 57 (6)**

This clause omits the words 'the responsible Minister' from the section 57 (6) of the Coroners Act and substitutes with 'the Minister presenting the report'. This substitution gives effect to the amendments in clause 6.

**Clause 8      Section 57 (7)**

This clause omits section 57(7) of the Coroners Act to align with the amendments to the Coroners Act outlined in clause 6.

**Clause 9      Offences about fire appliances  
Section 95 (2) (b)**

This clause substitutes a new section 95(2)(b) into the Emergencies Act. Currently, section 95(2)(b) provides that a person commits an offence if they do not maintain a fire appliance to a reasonable standard. The substituted provision provides that a person commits an offence if they do not maintain the fire appliance in accordance with a proper maintenance standard. A proper maintenance standard is defined by amendments made in clause 10.

**Clause 10      New section 95 (7) and (8)**

Clause 11 inserts new provisions 95(7) and 95(8) into the Emergencies Act. New provision 95(7) defines 'proper maintenance standard' for the purposes of the new section 95(2)(b), outlined in clause 9.

A proper maintenance standard is defined as Australian Standards AS 1851 (Routine service of fire protection systems and equipment) as in force from time to time, AS/NZS 2293.2 (Emergency evacuation lighting for buildings Inspection and maintenance) as in force from time to time, a standard approved for the fire appliance as part of a building approval issued for the premises under the *Building Act 2004* section 28, or a standard of maintenance prescribed by regulation. This regulation making power is included as the Australian Standards are often updated, and as such a regulation making power will enable efficient change of the definition of reasonable standard to reflect such an update.

The new provision 95(8) provides that the Legislation Act, section 47(6) does not apply in relation to an Australian Standard, or an Australian/New Zealand Standard, applied, adopted or incorporated as in force from time to time under this section.

**Clause 11 Dictionary, note 2**

This clause inserts definitions of “AS” and “AS/NZS” by reference to sections 164(1) and (2) of the Emergencies Act respectively.

**Clause 12 Information officers—functions  
New section 19 (1) (ba)**

This clause inserts a new provision 19(1)(ba) to the Freedom of Information Act. This new provision includes ‘to deal with requests made of the agency under part 6’ as a function of an information officer.

**Clause 13 Section 19 (2)**

This clause inserts the words ‘(ba)’ after the words ‘subsection (1)(a)’ into 19(2) of the Freedom of Information Act. This insertion allows an information officer to delegate the function of dealing with requests made of the agency under part 6, to a staff member in the information officer’s agency. This clause is ancillary to the new provision 19(1)(ba) being included in the Freedom of Information Act, outlined in clause 12.

**Clause 14 New section 19 (3) (c)**

This clause inserts a new section 19(3)(c) into the Freedom of Information Act. The effect of this insertion is to state that the information officer cannot delegate the function of ‘deciding a request to amend personal information’. This clause is ancillary to the new provision 19(1)(ba) being included in Freedom of Information Act, outlined in clause 12.

**Clause 15 Deciding access—respondent may ask for additional time to decide  
Section 41 (1) and (2)**

This clause substitutes section 41(1) and (2) of the Freedom of Information Act. Previously, these provisions operated so that a respondent could ask the applicant for an additional stated amount of time to decide an access application at any time before the end of the period for deciding an access application set out in section 40. The respondent is able to ask the applicant for additional time more than once. The practical effect of these provisions is that all requests for additional time by the respondent have to be made within the original time period set out in section 40, which is 20 working days, or 35 working days if the respondent has to consult with a third party.

The new sections 41(1) and (2) clarify that a respondent to an access application may ask the applicant for an additional time to decide an application before the end of the period for deciding the application under section 40, or for a second or subsequent request, before the end of the additional time last granted.

**Clause 16      Section 41 (3)**

This clause omits the words ‘under subsection (1)’ from section 41(3) of the Freedom of Information Act. This is ancillary to the new sections 41(1) and (2) outlined in clause 15.

**Clause 17      Information disclosure of which is prohibited under law  
Schedule 1, section 1.3 (2)**

This clause substitutes a new schedule 1, section 1.3(2) to the Freedom of Information Act. The substituted section provides that information disclosure taken to be contrary to the public interest includes information that is protected information under the Children and Young People Act, other than information that is disclosed to a person to whom it relates and is not sensitive information under the Children and Young People Act, section 845.

**Clause 18      Conciliated agreements  
Section 62 (4)**

This clause omits section 62(4) from the Human Rights Commission Act. This is to align the Human Rights Commission Act with amendments to the ACT Civil and Administrative Tribunal Act outlined in clause 4.

**Clause 19      Section 62, new note**

This clause inserts a note into section 62 of the Human Rights Commission Act. Section 62 relates to conciliated agreements. The note states that the ACAT may make an order in accordance with a conciliation agreement for a complaint as per the ACT Civil and Administrative Tribunal Act, new section 55A as outlined in clause 4.

**Clause 20      Dictionary, definition of *judicial officer*, paragraph (c)**

This clause substitutes a new dictionary definition of judicial officer at paragraph (c) in the Judicial Commissions Act from ‘a magistrate’ to ‘a magistrate (including coroner)’. The effective of the new definition is to confirm that magistrates who are coroners as judicial officers for the purposes of the Judicial Commissions Act.

**Clause 21      Exempt people  
Schedule 1, table 1.3, item 8, column 2**

This clause substitutes the words in schedule 1, table 1.3, item 8, column 2 of the *Juries Regulation 2018* from ‘a person with full-time duties as a member of an emergency service’ to ‘a person engaged in full-time or part-time duties as a member of an emergency service (not including on a casual or volunteer basis)’. The effect of this substitution is to include part-time emergency service workers as people exempt from jury duty for the purposes of the Juries Act 1967.

**Clause 22      People who may claim exemption**

### **Schedule 1, table 1.4, item 3, column 2**

This clause omits the words ‘engaged in full-time teaching of organised classes’ and substitutes ‘engaged in full-time or part-time teaching of organised classes (not including on a casual or voluntary basis)’ in schedule 1, table 1.4, item 3 of the *Juries Regulation 2018*. The effect of this is to include persons who are engaged in part-time time teaching of organised classes as people who may claim an exemption from jury duty for the purposes of the Juries Act.

### **Clause 23 Arranging for services of private legal practitioners Section 31B (2)**

This clause inserts the words ‘needs and’ before ‘interests of the person’ in section 31B(2) of the Legal Aid Act. The effect of this insertion is to include a person’s needs and interests as principal considerations when arranging for services of privacy legal practitioners under section 31B of the Legal Aid Act.

### **Clause 24 Section 31B (3)**

This clause substitutes a new section 31B(3) to the Legal Aid Act. The new section provides that the commission must, after taking into account the considerations mentioned in 31B(2), ensure that selection of a listed practitioner to provide legal assistance is made having regard to a practitioner’s expertise.

### **Clause 25 Section 35B**

This clause substitutes a new section 35B of the *Legal Aid Act 1977* so that the commission can provide approved negotiation to all parties in a matter or proceeding whether or not a party is receiving legal assistance from the commission for the matter or proceeding.

### **Clause 26 Section 37**

This clause substitutes a new section 37 into the Legal Aid Act. This new section outlines the establishment and constitution of review committees. Previously, committees had to be made up of a person from the Bar Association Panel, the Law Society panel and the community panel. The new section 37 has the effect that a review committee can be established from any combination of the panels, as long as at least one legal practitioner is on the committee.

### **Clause 27 Meetings of review committee Section 80 (8)**

This clause amends section 80 of the Legal Aid Act which provides the quorum requirements for a meeting of a review committee, as a result of the amendments in clause 26. The quorum will be required to be made up of 2 members, at least one of whom is a legal practitioner.

**Clause 28**      **Criteria for grant or renewal of unrestricted practising certificate—Act, s 35**

**Table 10, item 3, column 2, new paragraph (b) (iiia)**

This clause inserts a new paragraph (b)(iiia) into section 10, table 10, item 3 of the *Legal Profession Regulation 2007*. This paragraph (b)(iiia) inserts that a person who has been engaging in legal practice as an in-house lawyer is a qualified person for the purposes of section 10, table 10 of the Legal Profession Regulation.

**Clause 29**      **Withdrawing trust money for legal costs—  
Act, s 229 (1) (b)**

**Section 62 (3) (b) (ii)**

This clause substitutes the words ‘a written notice of withdrawal’ with ‘written notice of the proposed withdrawal and when it will occur’ in section 62(3)(b)(ii) of the Legal Profession Regulation. This substitution clarifies that a written notice of a withdrawal from a trust account must refer to the proposed withdrawal and set out when it will occur.

**Clause 30**      **Personal actions at law—amount or value  
Section 257 (5), new example**

This clause inserts an example in section 257(5) of the Magistrates Court Act. The example inserted refers to the Court’s jurisdiction under the *Fair Work Act 2009* (Cwlth), chapter 4, part 4.1 (Civil remedies) to make orders in relation to contraventions of certain civil remedy provisions under that Act.

**Clause 31**      **Schedule 1**

This clause substitutes a new schedule 1 of the Notaries Public Act. The previous schedule 1 of the Notaries Public Act provided the following;

‘Oath

I swear by Almighty God that I will not make or attest any act, contract or instrument in which I know there is violence or fraud; and in all things I will act uprightly and justly in the office of a notary public according to the best of my skill and ability.

Affirmation

I solemnly declare and affirm that I will not make or attest any act, contract or instrument in which I know there is violence or fraud; and in all things I will act uprightly and justly in the office of a notary public according to the best of my skill and ability.’

The new schedule 1 of the Notaries Act provides the following;

‘Notaries’ oath

I swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognised by the person’s religion) that I will not make or attest

any act, contract or instrument in which I know there is violence or fraud; and in all things I will act uprightly and justly in the office of a notary public according to the best of my skill and ability.

#### Notaries' affirmation

I solemnly declare and affirm that I will not make or attest any act, contract or instrument in which I know there is violence or fraud; and in all things I will act uprightly and justly in the office of a notary public according to the best of my skill and ability.'

The effect of the new schedule is to update the oaths and affirmations in the Notaries Public Act with modern text as uniformly updated in other Territory legislation.

### **Clause 32 Failure to pay rent—payment order**

#### **New section 49A (2A)**

This clause inserts a new section 49A (2A) into the Residential Tenancies Act. The new section provides that the ACAT must not make a payment order unless satisfied that the tenant is reasonably likely to make the payments required under the order. This test is intended to reintroduce the standard previously applicable under section 49 of the Residential Tenancies Act for the making of conditional termination and possession orders prior to the entry into force of the *Residential Tenancies Amendment Act 2018*.

### **Clause 33 Meaning of *agency***

#### **Section 7, definition of *agency*, paragraph (b)**

This clause replaces the current definition of “agency” as the “public service” in paragraph (b) of section 7 of the Territory Records Act with a definition of “agency” as an “administrative unit”. This is more appropriate given that in practice it falls to individual administrative units across the public service to comply with their obligations under the Territory Records Act.

### **Clause 34 Meaning of *principal officer***

#### **Section 8, definition of *principal officer*, paragraph (b)**

This clause substitutes a new section 8, definition of principal officer, paragraph (b) in the Territory Records Act. The new provision provides that the principal officer for an administrative unit is the director-general of the administrative unit.

### **Clause 35 Section 8, definition of *principal officer*, paragraph (h)**

This clause substitutes a new section 8, definition of principal officer, paragraph (h) in the Territory Records Act. The new provision provides that the principal officer for a royal commission, board of inquiry, judicial commission or the judicial council is the director-general of the administrative unit that provides secretariat support to the royal commission, board of inquiry, judicial commission or the judicial council.

**Clause 36 Dictionary, note 2**

This clause inserts “administrative unit”, “director-general” (by reference to section 163 of the Act) and “Executive” as defined terms into the Dictionary of the Territory Records Act.

**Clause 37 Membership of board  
New section 22C (1) (ba)**

This clause inserts a new section 22C(1)(ba) into the Victims of Crime Act. This new section includes the coordinator-general for family safety as a member of the Victims Advisory Board.

**Clause 38 Section 22C (2)**

This clause omits section 22C(2) of the Victims of Crime Act. This section has been omitted as the section previously gave the director-general power to delegate their functions under the Act to a public servant. This section is unnecessary as this power is provided for under the *Public Sector Management Act 1994* section 20(1).

**Clause 39 Appointed members of board  
Section 22D (1)**

This clause substitutes a new section 22D(1) in the Victims of Crime Act. The effect of new section 22D(1) is to have the director-general appoint the ACT Government and ACT Policing representatives to the Victims Advisory Board. Previously, the Minister was required to appoint these members.

The new section 22D(1)(d) includes a representative from the sentence administration board to be appointed to the Victims Advisory Board. Previously, such a representative was not included in the appointed members of the Victims Advisory Board.

The new section 22D(1A)(b) includes that two people of different gender who, in the Minister’s opinion, represent the interests of indigenous communities, are to be appointed to the Victims Advisory Board by the Minister. Previously, the section only provided for one Indigenous representative. The intent of the new provision is to recognise the different experiences of Aboriginal and Torres Strait Islander persons of different gender in a culturally appropriate way. The new provision also allows for the appointment of people who are gender non-binary, in order to ensure an inclusive approach to appointments.

**Clause 40 Section 22D (3) and (4), except notes**

This clause substitutes section 22D(3) and (4) with a new section 22D(3) in the Victims of Crime Act. The new section provides that a member appointed under subsection (1A) (which deals with Ministerial appointments) must not be a public servant.

**Clause 41 Term of appointment  
New section 22G (1A)**

This clause provides for the director-general to end the appointment of a member of the Victims Advisory Board if the member is no longer a representative of the entity the member was appointed to represent. This amendment is made for consistency with the

amendment in clause 39, new section 22D(1), which provides for certain appointments to the Board to be made by the director-general rather than the Minister. It is appropriate for appointments made by the director-general to be ended by the director-general.

**Clause 42 Section 22G (2)**

This clause provides for the Minister to end the appointment of a member of the Victims Advisory Board appointed by the Minister in certain circumstances. This preserves existing policy but is a consequential amendment in light of the amendment described in clause 41 in respect of director-general appointments.

**Clause 43 Section 22G (3)**

This clause omits the opening words of section 22G(3), which currently provide that the Minister may end appointments of members of the Victims Advisory Board in certain circumstances, and substitutes new opening words which will provide that the director-general or the Minister may end appointments of members of the Board. This amendment will ensure that appointments are ended by the person who made them. There is no change to the circumstances in which a member's appointment may be ended, as set out in the remainder of section 22G(3).

**Clause 44 Dictionary, note 2**

This clause inserts the "DPP" into the Dictionary to the Victims of Crime Act.

**Schedule 1 Other amendments**

**Clause [1.1] Section 12 (2), example**

This clause omits the word 'husband' and substitutes the word 'spouse' in section 12(2) of the *Confiscation of Criminal Assets Act 2003*. The purpose of this substitution is to remove gendered references to marriage as a result of the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cwlth).

**Clause [1.2] Dictionary, definition of *relationship status*, paragraph (i)**

This clause substitutes the word 'widowed' with 'the surviving spouse' in the dictionary, definition of relationship status, paragraph (i) of the *Discrimination Act 1991*. The purpose of this substitution is to remove gendered references to marriage as a result of the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cwlth).

**Clause [1.3] Section 73 (1) (b)**

This clause substitutes the words 'whether a man and a woman cohabitating a particular time were married to each other at the time' with 'whether 2 people cohabitating at a particular time were married to each other at the time' in section 73(1)(b) of the *Evidence Act 2011*. The purpose of this substitution is to remove gendered references to marriage as a result of the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cwlth).