

**2023**

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

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT  
BILL 2023 (No 2)**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004*, s 37)**

**Presented by  
Shane Rattenbury MLA**

# JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2023 (No 2)

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *Justice and Community Safety Legislation Amendment Bill 2023 (No 2)* as presented to the Legislative Assembly. It has been prepared 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 is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

## OVERVIEW OF THE BILL

The Bill is an omnibus bill which amends a range of legislation, primarily in the Attorney-General's portfolio, including:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Administration and Probate Act 1929*
- *Associations Incorporation Act 1991*
- *Casino Control Act 2006*
- *Discrimination Act 1991*
- *Domestic Violence Agencies Act 1986*
- *Family Provision Act 1969*
- *Freedom of Information Act 2016*
- *Human Rights Commission Act 2005*
- *Justices of the Peace Act 1989*
- *Land Titles Act 1925*
- *Legal Profession Act 2006*
- *Residential Tenancies Act 1997*
- *Residential Tenancies Regulation 1998*
- *Supreme Court Act 1933*
- *Trustee Act 1925*
- *Unit Titles (Management) Act 2011*
- *Wills Act 1968*

Schedule 1 of the Bill makes technical amendments to certain Acts listed above and to the *Electoral Act 1992* and the *Information Privacy Regulation 2014*.

## CONSULTATION ON THE PROPOSED APPROACH

The amendments in the Bill were developed in targeted consultation within Government and with relevant community stakeholders where appropriate. In some cases, minor and technical amendments were identified by the Government agency that administers or operates under the relevant Act, or by the Parliamentary Counsel's Office.

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

The amendment to the *ACT Civil and Administrative Tribunal Act 2008* was proposed by the ACT Civil and Administrative Tribunal to assist in the digitisation of the Tribunal, reduce administrative burden and improve public accessibility to approved forms.

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

The ACT Government's Better Regulation agenda includes reviewing the Model Rules for incorporated associations under the *Associations Incorporation Act 1991*.<sup>1</sup> From January to April 2023, the Government ran a public consultation seeking submissions on proposed changes to the Model Rules. As part of that consultation, stakeholder feedback was invited on a proposed deregulatory change to require associations to provide their annual financial returns to the Registrar-General on request, instead of requiring every association to lodge its returns after the end of each financial year. A sound majority of submissions favoured the change.

The amendment to the *Associations Incorporation Act 1991* gives effect to this proposal, as a red-tape reduction measure for associations and to reduce administrative burden within Government, in a low-risk regulatory context.

### ***Casino Control Act 2006***

The amendment to the *Casino Control Act 2006* was proposed by the Canberra Casino, with a view to aligning their financial reporting periods with Iris Group.

### ***Discrimination Act 1991***

The amendment to the *Discrimination Amendment Act 1991* clarifies the intended operation of religious bodies exceptions.

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

The amendment to the *Freedom of Information Act 2016* was proposed by the ACT Ombudsman to clarify that documents in respect of which legal professional privilege is claimed must be provided to the Ombudsman for consideration as part of

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<sup>1</sup> See ACT Government, Chief Minister, Treasury and Economic Development Directorate, 'ACT Government Better Regulation Taskforce' <<https://www.cmtedd.act.gov.au/policystrategic/better-regulation-taskforce>>.

a review. The ACT Government Solicitor's Office was consulted on the proposed amendments.

### ***Human Rights Commission Act 2005***

The amendments to the *Human Rights Commission Act 2005* were proposed by the ACT Human Rights Commission to enable the Commission to have more flexibility in managing the complaints process for vulnerable people, recognising that different approaches may be needed where a vulnerable person may be at risk, where it may be difficult to engage with them directly or where intervention by another statutory authority may be warranted.

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

The ACT Law Society and ACT Bar Association were consulted on the amendment to the *Legal Profession Act 2006* to remove the requirement for approved forms to be notifiable instruments, as they are the organisations impacted by the change. These organisations are supportive of the amendment.

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

The ACT Human Rights Commission, Canberra Community Law (**CCL**), the Real Estate Institute of the ACT (**REIACT**), Legal Aid ACT, Better Renting and Shelter ACT were consulted on the amendments to the *Residential Tenancies Act 1997* as relevant to their interests. These organisations are supportive in principle of the amendments.

### ***Supreme Court Act 1933***

The amendment to the *Supreme Court Act 1933* was proposed by and developed in consultation with ACT Courts and Tribunal, with a view to clarifying the operation of the provision that governs the declaration of vexatious litigants.

### ***Unit Titles (Management) Act 2011***

Stakeholders including ACAT, Master Builders Association, Owners Corporation Network, Property Council of the ACT, Strata Community Association ACT, Housing Industry Association, Planning Institute of the ACT, Real Estate Institute of the ACT, Legal Aid ACT and the ACT Law Society were consulted on the amendments to the *Unit Titles (Management) Act 2011*. Stakeholders supported the changes in principle as they will enable owners corporations to operate with more certainty and less risk.

### **Wills and succession laws**

The amendments to succession laws (the *Administration and Probate Act 1929*, *Family Provision Act 1969* and the *Trustee Act 1925*) were proposed by the ACT Law Society's Elder Law and Succession Committee. Some of these amendments (as noted in the relevant clause notes below) will implement recommendations from a national harmonisation report under the auspices of the Standing Council of Attorneys-General (National Committee for Uniform Succession Laws, Report No.116, *Uniform Succession Laws: Intestacy*, 2007).

The ACT Law Society's Elder Law and Succession Committee was also consulted on the amendments to the *Wills Act 1968* to create a single, centralised Wills Register for the ACT.

## **CONSISTENCY WITH HUMAN RIGHTS**

### **Rights engaged**

The Bill engages the following rights under the *Human Rights Act 2004*:

- Section 8 - Recognition and equality before the law (*promoted*)
- Section 9 – Right to life (*promoted*)
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment etc. (*promoted*)
- Section 12 – Privacy and reputation (*limited*)
- Section 16 – Freedom of expression (*promoted*)
- Section 17 – Right to participate in public life (*promoted*)

### **Rights Promoted**

#### ***Discrimination Act 1991***

##### Section 8 – recognition and equality before the law

The Bill promotes the right to recognition and equality before the law, namely the right to equal and effective protection against discrimination on any ground, by clarifying the types of religious bodies that may rely on particular exceptions to discrimination law.

The Bill makes it clear that a religious body whose sole or main purpose is commercial cannot rely on any of the exceptions under section 32(1) of the *Discrimination Amendment Act 2023*, including the exception relating to the provision of accommodation for members of a relevant class of people.

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

##### Section 16 – freedom of expression and section 17 – right to participate in public life

The Bill promotes the right to freedom of expression and the right to participate in public life by supporting public access to government information by clarifying the current requirements of the *Freedom of Information Act 2016*. It is necessary for a person to have access to information about the conduct of public affairs in order to take a meaningful part in those affairs. The amendments will ensure an effective review process of government decision-making by the ACT Ombudsman, including whether a document is subject to legal professional privilege or should be disclosed in response to an FOI request.

## ***Human Rights Commission Act 2005***

### **Section 9 – Right to life**

The Bill promotes the right to life by allowing the ACT Human Rights Commission to consider risks to vulnerable people when making decisions under the *Human Rights Commission Act 2005* about whom to advise about a complaint, how to advise them, and whether or not the consent of the vulnerable person should be sought before commencing an investigation.

The amendments acknowledge that there may be circumstances where informing the respondent to a complaint, or the vulnerable person, may result in a risk to the safety of the vulnerable person, particularly where there are concerns about abuse or threats towards the vulnerable person. Providing the Commission with some discretion about when to notify parties or obtain consent will help to mitigate that risk.

### **Section 10 – Protection from torture and cruel, inhuman or degrading treatment**

The Bill promotes the right to protection from cruel, inhuman or degrading treatment by seeking to reduce the risk of violence or abuse towards vulnerable people. As with the right to life, the Bill allows the ACT Human Rights Commission to consider the safety of vulnerable people when making decisions under the Human Rights Commission Act about whom to advise about a complaint, how to advise them and whether or not the consent of the vulnerable person is required to deal with a complaint.

### **Rights Limited**

The preamble to the HRA notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 28 of the HRA requires that any limitation on a human right be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R. v. Oakes*, [1986] 1 S.C.R. 103 at 70. A party must show:

*“... [f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.*

The Bill engages and may limit the right to privacy and reputation (Section 12).

## ***Human Rights Commission Act 2005***

### **Section 12 – Privacy and reputation**

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

Everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The Bill limits this right by expanding the circumstances in which the ACT Human Rights Commission may deal with a vulnerable person complaint without the consent of the vulnerable person themselves.

This limits the vulnerable person's right to privacy and right not to have their family and home interfered with because in considering a complaint, the ACT Human Rights Commission may ask for information, documents and other things in relation to the vulnerable person and make recommendations about their situation.

#### ***2. Legitimate purpose (s 28(2)(b))***

The purpose of the limitation is to allow the Commission to dispense with requirement to seek and obtain the consent of the vulnerable person in circumstances where the Commission is not able to access the vulnerable person to obtain consent or where seeking to obtain consent could result in a risk of harm to the person. This will allow the Commission to investigate a complaint without exacerbating the risk to the vulnerable person, support the protection of vulnerable people.

#### ***3. Rational connection between the limitation and the purpose (s 28(2)(d))***

Although section 98 of the Human Rights Commission Act makes it an offence to cause or threaten to cause a detriment to someone because of their participation in a complaint to the ACT Human Rights Commission, this of itself may not be enough to mitigate the risk of threats or abuse towards a vulnerable person in some circumstances.

Removing the requirement to seek and obtain consent prior to considering a vulnerable person complaint in certain circumstances, particularly where there is a risk to the vulnerable person, will support the right to life and the right to protection from torture and cruel, inhuman or degrading treatment. Changing the threshold from "personal safety" to "risk of harm" acknowledges that there may be circumstances where a vulnerable person is at risk of types of harm other than physical harm such as financial abuse, emotional abuse or coercive control. Financial abuse can include a person being pressured to change their will in favour of someone, having an enduring power of attorney (and access to e.g. bank accounts or superannuation) exploited or being pressured into "family agreements" such as transferring property

into someone else's name.<sup>2</sup> These types of abuse could be exacerbated or accelerated if the respondent to the complaint becomes aware of the complaint before an investigation is able to be conducted.

#### 4. *Proportionality (s 28(2)(e))*

It is important to balance protecting vulnerable people with respecting their autonomy and right to make their own decisions. The Australian Law Reform Commission (**ALRC**) has recommended that schemes safeguarding vulnerable people "should specifically require an adult safeguarding agency to obtain a person's consent before taking action to support or protect them".<sup>3</sup>

However, the ALRC has also noted that "there are circumstances in which abuse and neglect should be investigated and acted upon even without the affected adult's consent...consent should not be required where the at-risk adult is being subject to 'serious' physical or sexual abuse or neglect; where the safeguarding agency has been unable to contact the adult, despite extensive efforts to do so; and where the adult lacks the ability to give consent".<sup>4</sup>

This amendment ensures that the ACT Human Rights Commission, as a safeguarding agency, is able to investigate a vulnerable person complaint in situations where obtaining consent is not possible or seeking consent may result in a risk of harm to the vulnerable person.

The amendment is sought by the Human Rights Commission based on the practical experience of managing vulnerable persons complaints, and instances where the requirement to obtain consent has made it more difficult to investigate and protect vulnerable people in coercive situations. In these cases there may be a range of concerns and identified risks of harm, but it might be difficult for the Commission to establish a risk to personal safety of the vulnerable person.

The amendment acknowledges that abuse is not limited to physical abuse, and other types of abuse such as financial abuse, emotional abuse and coercive control cause harm to the vulnerable person, and that there may be a range of risks in a particular situation. In this context, the limitation on the right to privacy is considered reasonable and proportionate as it will assist the Commission to exercise appropriate judgement to ensure that the complaints process is effective in protecting the vulnerable person.

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<sup>2</sup> Emeritus Professor Rosalind F Croucher AM, "Elder Financial Abuse-Insights from the ALRC's Elder Abuse Inquiry", *ACT Human Rights Commission* <<https://humanrights.gov.au/about/news/speeches/elder-financial-abuse-insights-alrcs-elder-abuse-inquiry>>.

<sup>3</sup> "Elder Abuse-A National Legal Response (ALRC Report 131)", *Australian Law Reform Commission* <<https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/14-safeguarding-adults-at-risk/consent-6/>>.

<sup>4</sup> Ibid.



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

### Section 12 – Privacy and reputation

#### *1. Nature of the right and the limitation (ss 28(2)(a) and (c))*

Everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. This Bill limits this right by creating a new ground on which a tenancy may be terminated by the Commissioner for Social Housing (the **Commissioner**) thereby limiting the person's right to privacy.

Reforms to the *Residential Tenancies Act 1997 (RTA)* earlier in 2023 introduced a new tenancy termination provision for the Commissioner which enables the termination of a tenancy where a period of temporary housing assistance has ended and the person is not eligible for ongoing housing assistance. However, the reforms did not cover the circumstance where the person receiving temporary housing assistance fails to apply for ongoing assistance (and so their eligibility cannot be assessed).

#### *2. Legitimate purpose (s 28(2)(b))*

This amendment has a legitimate purpose, that is to allow the Commissioner to recover possession of a property after the tenant has been given a short-term period to adjust to their changed circumstances, and where the person has not requested ongoing assistance. This ensures the Commissioner can allocate public housing to those who have been assessed as most in need, which is a core purpose of the *Housing Assistance Public Rental Housing Assistance Program (2013 (No 1) (the Program))*.

#### *3. Rational connection between the limitation and the purpose (s 28(2)(d))*

There is a rational connection between allowing for the termination of a tenancy in circumstances where the Commissioner has provided a temporary period of housing assistance and the tenant fails to apply for ongoing assistance, and the purpose of ensuring that public housing is allocated to those most in need.

The connection is that if a person cannot be assessed as eligible for ongoing housing assistance (because they have failed to apply) the Commissioner needs a lawful power to end the tenancy so that the rental property can be used in the most effective way possible to achieve the overarching goals of the Program.

#### *4. Proportionality (s 28(2)(e))*

The new tenancy termination ground will only apply in limited circumstances, where a remaining resident has been offered a temporary period of housing assistance (after there has been a tenancy breakdown) and they fail to apply for ongoing

assistance. Multiple safeguards have been built into the laws in recognition of the potential vulnerability of the tenant and their right to privacy and home.

These include that the person must be put on notice at the start of the temporary housing assistance period that if they fail to apply for ongoing housing assistance within 6 weeks, the Commissioner may terminate the agreement.

Further, if the tenant fails to do this, the Commissioner must give the tenant at least 26 weeks' notice before the tenancy ends, ensuring that the tenant has an extended period of time in which to prepare to move and to source alternative accommodation. The notice to vacate must include the details of legal or advocacy services that may support the tenant.

In addition, if the tenant does apply for ongoing housing assistance before the end of the 26 week notice period, the notice to vacate will be automatically withdrawn (and a statement to this effect must be included in the notice to vacate). Where the Commissioner finds that the tenant is ineligible for ongoing assistance, the Commissioner is nonetheless required to provide notice for the later of the end of the period of the first notice to vacate or an additional 12 weeks.

Finally, if the Commissioner applies to the ACT Civil and Administrative Tribunal (**ACAT**) seeking a termination and possession order under the new termination provision in the Bill, ACAT will be required to consider whether the termination is reasonable and proportionate, having regard to the factors set out in section 47 of the RTA (including the history and length of the tenancy, any hardship to the tenant, and the object of the Program and the Commissioner's statutory functions).

These safeguards ensure any potential limitation on the right to privacy is limited.

## ***Wills Act 1968***

### **Section 12 – Privacy**

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

Everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. This Bill limits this right by enabling the disclosure of private personal information (in Wills) by the Supreme Court to the Public Trustee and Guardian (**PTG**) for the establishment of a single centralised Wills register in the ACT.

#### ***2. Legitimate purpose (s 28(2)(b))***

The amendment has a legitimate purpose, in that it will create a legislative framework supporting the PTG to create a centralised Wills register for the ACT. The ability to easily locate a person's Will after their death is important, because if a Will cannot be found then the person is deemed to have died intestate (without a Will), and their estate may not be distributed according to their true intentions.

By supporting the PTG to create a single centralised Wills register and enabling the transfer of personal private information held in Wills from the Supreme Court to the PTG, it will be easier to locate Wills deposited in the register and thus reduce the number of citizens who die intestate.

*3. Rational connection between the limitation and the purpose (s 28(2)(d))*

There is a rational connection between enabling the disclosure of private personal information in Wills by the Supreme Court to the PTG and the purpose of creating a single centralised Wills register. The connection is that the disclosure will allow the PTG to add Wills that were deposited with the Supreme Court to the centralised register.

*4. Proportionality (s 28(2)(e))*

This limitation is considered reasonable and proportionate in the circumstances. There is no less restrictive way that Wills held by the Supreme Court may be entered into the centralised Wills Register under development by the PTG. The Bill includes specific authorising provisions for the purposes of privacy law to permit the disclosure to occur. This promotes transparency on the public record as to the disclosure. Moreover, the PTG has rules about who may access its register. These rules are designed to protect the privacy of the testator and limit the disclosure of personal information.

The potential for the Supreme Court to write to testators to advise of the disclosure of their Wills to the PTG was considered, but was deemed not feasible or necessary in all of the circumstances. This includes the large number of Wills held by the Court, the passage of time since many were deposited, the potential difficulties in locating contact details for some testators, and the fact that the disclosure is occurring to another government agency for safekeeping purposes. In addition, it is relevant that testators voluntarily deposited their Wills with the Supreme Court for safekeeping. In this context, transferring the Wills to another government agency for safekeeping is broadly consistent with the initial purpose for which the Will was originally deposited.

## Justice and Community Safety Legislation Amendment Bill 2023 (No 2)

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Justice and Community Safety Legislation Amendment Bill 2023 (No 2)**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Part 1 Preliminary

#### 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 Bill 2023 (No 2)* (the **Act**).

#### Clause 2 Commencement

This clause provides for commencement of different provisions in the Act.

The provisions in the Act, except for those outlined below, commence on the day after the Act's notification day.

Part 6 commences immediately after the commencement of the *Discrimination Amendment Act 2023*, section 9.

Section 54 commences by Ministerial notice. If section 49 has not commenced within 18 months beginning on the Act's notification day, it automatically commences on the first day after that period. The delayed commencement for section 49 (new section 32 in the *Wills Act 1968*) is intended to allow time for the transfer of information about Wills held by the Supreme Court to the Public Trustee and Guardian (**PTG**) for inclusion in the centralised Wills Register operated by the PTG.

Schedule 1, Part 1.7 commences on the later of the commencement of the *Planning (Consequential Amendments) Bill 2023*, part 1.40 and the commencement of this Act, section 3.

#### 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*
- *Administration and Probate Act 1929*
- *Associations Incorporation Act 1991*
- *Casino Control Act 2006*
- *Discrimination Act 1991*
- *Domestic Violence Agencies Act 1986*
- *Family Provision Act 1969*
- *Freedom of Information Act 2016*
- *Human Rights Commission Act 2005*
- *Justices of the Peace Act 1989*

- *Land Titles Act 1925*
- *Legal Profession Act 2006*
- *Residential Tenancies Act 1997*
- *Residential Tenancies Regulation 1998*
- *Supreme Court Act 1933*
- *Trustee Act 1925*
- *Unit Titles (Management) Act 2011*
- *Wills Act 1968*

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

This clause is a formal provision identifying that the Act repeals notifiable instruments made under the following provisions:

- the *ACT Civil and Administrative Tribunal Act 2008*, section 117, and
- the *Legal Profession Act 2006*, section 587.

These notifiable instruments are approved form made under these Acts by the ACT Civil and Administrative Tribunal, the ACT Law Society or the ACT Bar Association. The Bill is removing the requirement for these forms to be notifiable instruments.

### **Part 2            ACT Civil and Administrative Tribunal Act 2008**

#### **Clause 5      Approved forms Section 117 (3) and note**

This clause omits section 117 (3) and its note. The requirement for approved forms to be notified is administratively burdensome for the Tribunal and does not support the future digitisation of the Tribunal. This omission will ensure the Tribunal can use ‘smart forms’ which are more accessible for users but cannot be notified on the ACT Legislation Register.

### **Part 3            Administration and Probate Act 1929**

#### **Clause 6      Interpretation for pt 3A Section 44, definition of *personal chattels***

This clause substitutes a new definition of *personal chattels* into section 44. The current definition is inclusive: it lists specific items that are *personal chattels* (e.g. china, jewellery, pictures). This can lead to uncertainty where a deceased person held property that does not readily fall within the items in the list. The new definition of *personal chattels* is exclusive, such that any tangible personal property held by the deceased will be considered a chattel, except for listed exceptions.

This amendment is intended to minimise ambiguity when distributing personal property of an intestate estate. It implements a recommendation from a national harmonisation report under the auspices of the Standing Council of Attorneys-General (National Committee for Uniform Succession Laws, Report No.116, *Uniform Succession Laws: Intestacy*, 2007).

#### **Clause 7      New section 49DA**

This clause inserts a new provision that will govern how a person's share in an intestate estate is to be distributed when the person forfeits or disclaims their share.

The *Administration and Probate Act 1929* currently has no rules to deal with the situation where a person disclaims, or refuses to accept, their interest in an intestate estate. There is similarly no rule in relation to forfeiture (the law requires a person to forfeit their inheritance where the person is criminally responsible for that person's death). This leads to uncertainty in these circumstances.

The new rule will provide that a person who disclaims or forfeits their share of an estate is treated as having predeceased the intestate. In effect, this means the person will be left out of consideration when distributing the estate, but their children may still inherit (rather than the disclaimer's share passing to more remote relatives).

This amendment implements a recommendation from a national harmonisation report under the auspices of the Standing Council of Attorneys-General (National Committee for Uniform Succession Laws, Report No.116, *Uniform Succession Laws: Intestacy*, 2007).

#### **Clause 8      Section 64**

This clause substitutes new section 64 to clarify and improve the process pursuant to which the executor or administrator of an estate can issue a public notice of intention to distribute the estate. The public notice process facilitates the identification of potential claimants against the estate so their claims may be assessed prior to the estate being distributed. Where the executor or administrator issues a public notice under section 64, they will be indemnified from liability in respect of any claims not notified.

The new section 64 has been updated as follows:

- The provision confirms that the public notice process is optional and not mandatory.
- The notice period required where a public notice is issued is set as 1 month (for consistency with similar notice requirements in other aspects of ACT succession law).
- The timeframe within which the executor or administrator may distribute the estate is amended, so that it is the later of the end of the period fixed in the

notice, or 6 months after the day that probate or administration is granted (rather than 6 months after the day of death). This is for consistency with the timeframe for claims under the *Family Provision Act 1969*.

- The requirement for executors to run searches on the Births, Deaths and Marriages Register prior to issuing the public notice has been removed, as these are of partial utility, being limited to the ACT.

These amendments will make it easier for executors and administrators to utilise the public notice process under section 64 in appropriate cases.

**Clause 9      People entitled to inspect will of deceased person**  
**Section 126 (3), definition of *interested person*, new paragraph (j)**

This clause amends section 126 (3) to provide for regulations to prescribe additional classes of person who are entitled to inspect a will of a deceased person.

**Clause 10      New section 129**

This clause inserts a general regulation making power which is already contemplated by the Act but does not exist.

**Part 4              Associations Incorporation Act 1991**

**Clause 11      Offences against Act – application of Criminal code etc**  
**Section 3A, note 1, new dot point**

This clause amends the note in section 3A to confirm that the *Criminal Code 2002* applies to the offence in section 79 of failing to lodge statements and reports with the Registrar-General on request.

**Clause 12      Sections 79 and 80**

Currently, incorporated associations are required to have an independent third party check their annual returns (annual financial statements), under section 74 of the *Associations Incorporation Act 1991*. The third party is either a reviewer (for small associations) or an auditor (for medium or large associations).

This clause substitutes new sections 79 and 80, so that incorporated associations are no longer required to lodge their annual returns (as reviewed or audited) with the Registrar-General after the end of the financial year.

The removal of the lodgement requirement is a red-tape reduction measure for associations (and minimises administrative burden on Access Canberra). Incorporated associations will still be required to complete their annual returns, and have them reviewed or audited, under section 74.

New section 79 will instead require that incorporated associations must lodge annual returns for any financial year that ended within the last 7 years, within 2 weeks if



requested by the Registrar-General. This is a risk mitigation measure that will enable the Registrar-General to investigate where there is any evidence that an incorporated association is not properly preparing their annual returns or having them reviewed or audited.

The penalty unit for failure to comply with a request from the Registrar-General has remained unchanged from the previous offence of failing to lodge annual returns.

### **Clause 13    Cancellation of Incorporation Section 93 (1) (e) and (f)**

This is a consequential amendment to clause 12. Currently, failing to lodge annual returns with the Registrar-General for 2 years, or lodging annual returns for 3 years with an auditor or reviewer report that states that that compliance with the Act cannot be determined, are grounds for the Registrar-General to commence the process of cancelling an association's incorporation.

This clause updates section 93 so that this process may instead be engaged where an association has not lodged annual returns as required by the Director-General, or has lodged such returns in relation to the last 3 years and a reviewer or auditor has been unable to determine if the association has been complying with the Act.

### **Clause 14    Section 93 (3) (e)**

This is a consequential amendment to clauses 12 and 13. Currently, section 93 (3) allows the Registrar-General (after following the notice requirements in the Act) to cancel an association's incorporation, unless the Registrar-General is satisfied of certain matters. Those matters include whether the association has lodged annual returns.

The Bill will update section 93 (3) (e) so that the Registrar-General may cancel an association's incorporation unless the Registrar-General is satisfied that the association has lodged annual returns pursuant to a request under the revised section 79, and where those returns have not been confirmed as compliant with the Act, that the association has taken reasonable steps to make sure that their returns will be compliant in future.

### **Clause 15    New section 93 (9)**

This clause is a consequential amendment to clauses 12 and 13. This clause inserts a new definition for annual accounts documents. Annual accounts documents are defined to mean the documents mentioned in section 79 (1).

### **Clause 16    Dictionary, definition of *annual return***

This is a consequential amendment to clause 15. This clause omits the definition of *annual return* as it is now defined in new section 93 (9).

## **Part 5 Casino Control Act 2006**

### **Clause 17 Dictionary, definition of financial year**

Currently, the *Casino Control Act 2006* defines *financial year* to mean a period of 12 months ending on 31 December.

This clause amends the definition of *financial year* to mean a period prescribed by regulation or a period of 12 months beginning on 1 July, in line with the definition in the *Legislation Act 2001*.

## **Part 6 Discrimination Act 1991**

### **Clause 18 Religious bodies New section 32 (1) (ea)**

This clause inserts new section 32 (1) (ea) into the *Discrimination Amendment Act 2023*. This amendment is further to recent reforms which narrowed certain exceptions for religious bodies to better protect equality rights for other individuals, and moved religious bodies exceptions to the same section for ease of navigation. This section is a special measures exception from discrimination law for religious bodies who provide accommodation for members of a relevant class of people. Currently this section is located in section 32(4) which means that it is not clear that religious bodies whose sole or main purpose is a commercial purpose are excluded from the relying on this exception. This amendment clarifies that the exception does not apply to religious bodies whose sole or main purpose is commercial.

## **Part 7 Domestic Violence Agencies Act 1986**

### **Clause 19 New section 19**

This clause inserts a general regulation making power which is already contemplated by the Act but does not exist.

## **Part 8 Family Provision Act 1969**

### **Clause 20 Eligibility Section 7 (3) (b)**

Section 7 of the *Family Provision Act 1969* specifies the persons who are entitled to make application to the Supreme Court for provision out of the estate of a deceased person.

This clause will substitute section 7(3) (b) to make it clear that a grandchild may only make a claim on the estate of a deceased grandparent where they were dependent on that grandparent immediately prior to their death (unless their parent who was a child of the deceased is no longer alive). This will make ACT succession law clearer and fairer and align it with other Australian jurisdictions.

## **Part 9        Freedom of Information Act 2016**

### **Clause 21    Section 68**

This clause amends section 68 of the *Freedom of Information Act 2016* (**FOI Act**) to provide that the ACT Ombudsman may access information in respect of which legal professional privilege is claimed, when reviewing freedom of information decisions. This amendment provides clarity on the current requirements of the FOI Act and supports the ACT Ombudsman to exercise their statutory functions effectively.

## **Part 10       Human Rights Commission Act 2005**

### **Clause 22    Commission's obligation to be prompt and efficient New section 45 (5)**

This clause inserts new section 45(5) to allow the Commission to notify the complainant orally that a vulnerable person complaint will be considered as a commission-initiated consideration (**CIC**), and, where there is a risk to the vulnerable person, to dispense with the requirement to notify the parties to the complaint that the CIC will be considered.

### **Clause 23    Consideration without complaint or appropriate complainant Section 48 (2)**

This clause is a technical amendment to make it clear that the commission may consider a vulnerable person complaint as a CIC.

### **Clause 24    Section 51A heading**

This clause updates the heading of section 51A to refer to the referral of children and young people service complaints as advocacy matters, to distinguish it from new section 51B.

### **Clause 25    New section 51B**

This clause creates a clear pathway for the disability and community services commissioner to refer a vulnerable person complaint, or a matter that forms part of the complaint, to the public advocate for advocacy if satisfied it is appropriate.

### **Clause 26    Referral to appropriate statutory office-holder Section 52A (4)**

This clause is a consequential amendment, which updates section 52A (4) so that it refers to new section 51B as well as section 51A. The intention is to make it clear that the general referral pathway to appropriate statutory office-holders in section 52A is in addition to, and does not limit, the more specific referral pathways in sections 51A and 51B.

**Clause 27    Dealing with vulnerable person complaints**  
**New section 52B (2) (b)**

This clause expands the circumstances under which the commission need not seek or obtain consent from the vulnerable person to include where there is a risk of harm to the vulnerable person, where the person is not capable of giving free or voluntary consent or where the commission cannot access the person to seek their consent.

**Clause 28    Commission-initiated reports**  
**Section 84 (1), new example**

This clause inserts a new example of the types of situations where the commission may give a commission-initiated report to anyone the commission considers appropriate. The example makes it clear that the commission may give a commission-initiated report about a vulnerable person complaint to the ACT Civil and Administrative Tribunal which has powers to, on its own initiative, hold a hearing to consider the appointment of a guardian or manager or make an order about an enduring power of attorney.

**Part 11        Justice of the Peace Act 1989**

**Clause 29    New section 9**

This clause inserts a general regulation making power which is already contemplated by the Act but does not exist.

**Part 12        Land Titles Act 1925**

**Clause 30    Crown grants and certain Crown leases under Act**  
**Section 17 (1)**

This clause amends section 17 (1) by removing the requirement to provide grants of Crown leasehold in duplicate. As the ACT Government continues to increase its ability to deal electronically with land title transactions, this requirement is no longer necessary.

**Clause 31    Section 17 (2) and note**

This is a consequential amendment to clause 30. This clause amends section 17 (2) to provide that the registrar-general must tell the grantee, in writing, about the registration as there is no longer a requirement to provide grants of Crown leasehold in duplicate.

The clause also removes the note as it is no longer standard drafting practice to include notes about fee determinations.

### **Clause 32    Section 17 (3)**

This is a consequential amendment to clause 30. As there is no longer a requirement to provide grants of Crown leasehold in duplicate, this clause amends section 17 (3) by omitting the words ‘either part of’.

### **Clause 33    Sections 20 and 35**

This is a consequential amendment to the amendment to clause 30. As there is no longer a requirement to provide grants of Crown leasehold in duplicate, this clause amends sections 20 and 35 by omitting the words ‘duplicate or’.

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

### **Clause 34    Approved forms – councils Section 587 (3) and note**

This clause omits section 587 (3) and its note. Section 587 (3) requires approved forms to be notified on the ACT Legislation Register. This requirement is administratively burdensome and reduces flexibility for the councils of the ACT Law Society and ACT Bar Association to amend and create new approved forms. Removing this requirement will streamline processes for the councils and support any future changes to utilising ‘smart forms’ which are unable to be notified on the Legislation Register.

## **Part 14        Residential Tenancies Act 1997**

### **Clause 35    Terms included in residential tenancies agreement Section 8 (1) (c)**

This is a technical amendment to make the word “clause” in section 8 (1) (c) plural. This is consequential to clause 42 which inserts new clause 106A into the Standard Terms.

### **Clause 36    Section 8 (4), new definition of *temporary housing assistance termination clauses***

This clause substitutes a new definition of *temporary housing assistance termination clauses*. This is a minor amendment to make the definition plural and is consequential to clause 42 which inserts new clause 106A into the Standard Terms.

### **Clause 37    Lessor’s obligations New section 12 (3) (ha)**

This amendment is consequential to clause 42 which inserts new clause 106A into the Standard Terms.

This amendment inserts new subsection 12 (3) (ha), which requires that where a tenant is receiving temporary housing assistance, the lessor (the Commissioner for

Social Housing) must provide to the tenant a statement explaining that their tenancy may be terminated on 26 weeks' notice if the tenant does not apply for ongoing housing assistance within 6 weeks. This is an important safeguard for tenants, to ensure they are aware of the need to apply for ongoing housing assistance and that otherwise their tenancy may be terminated.

**Clause 38    Payment of bond money into trust account  
Section 27 (2)**

This amendment corrects a cross-referencing error in the Act.

**Clause 39    No breach of standard residential tenancy terms  
Section 47 (6), definition of *temporary housing assistance*  
*termination clause***

This clause substitutes section 47 (6) and makes minor amendments to present the definitions as singular.

**Clause 40    New section 163A**

This amendment inserts a new transitional provision into the Act.

A key aim of the 2023 reforms was to remove all forms of 'no cause evictions' from ACT law. However, due to technicalities under the Act in how the standard residential tenancy terms apply to fixed term tenancies, as opposed to periodic tenancies, there is some doubt as to whether the 2023 reforms effectively removed 'no cause evictions' from fixed term tenancies.

For the avoidance of doubt, this amendment clarifies that no cause evictions are removed from all fixed term tenancies from 1 April 2023.

**Clause 41    Standard residential tenancy terms  
Schedule 1, clause 98**

This amendment clarifies the rules around service of notices. The amendment inserts new clause 98 and requires that at the commencement of a tenancy, lessors and tenants must give each other: an address for the service of termination notices, and an address for the service of any other notice. The law requires that notices to vacate must be served personally or via post (and cannot be served via email).

This change is intended to highlight at the outset for the parties the difference between termination notices, and other types of notices (e.g. notices of routine inspections and notices to remedy). This promotes awareness of the stricter service rule for termination notices, while permitting flexibility for other types of notices.

**Clause 42    Schedule 2, new clause 106A**

This clause inserts new clause 106A into Schedule 2 of the Act, to rectify an oversight in the *Residential Tenancies Legislation Amendment Act 2023*.

The 2023 Amendment Act created new grounds for the Commissioner for Social Housing (the **Commissioner**) to terminate tenancies, to promote the efficient management of public housing stock, following the removal of ‘no cause’ evictions which the Commissioner used in limited circumstances. One of those new grounds permits the Commissioner to terminate a tenancy where a person is receiving temporary housing assistance but is found not to be eligible for ongoing assistance under Housing ACT legislation. Temporary housing assistance is used following a breakdown in tenancy situation, such as where a tenant dies and another resident remains in the property.

However, the 2023 Amendment Act did not provide for the situation where a person who is receiving temporary housing assistance fails to apply for ongoing assistance, despite being required by the Commissioner for Social Housing to do so. In such circumstances, the Commissioner cannot assess the person’s eligibility. It is important for the Commissioner to be able to end the tenancy, so the property may be reallocated to a person who is eligible for assistance.

This amendment clarifies that if a tenant in public housing who is receiving temporary housing assistance does not apply for ongoing housing assistance within 6 weeks after the start of the temporary housing assistance, then the Commissioner can issue them with a notice to vacate the property within 26 weeks. If the tenant applies for ongoing housing assistance in this period, and the Commissioner determines that they are not eligible for assistance, the Commissioner may give the tenant a second notice to vacate for the later of: the end of the 26 week notice period under the first notice to vacate, or 12 weeks.

The amendment provides safeguards for tenants, which include a requirement for the notice to vacate to include the detail of legal and advocacy support services and provision for the notice to vacate to be automatically withdrawn where the tenant applies for ongoing housing assistance within the 26 week notice period.

#### **Clause 43    Schedule 2, clause 107 (1) to (3)**

For clarity of interpretation, this amendment makes minor and technical changes to the layout of the provision and substitutes ‘lessor’ with ‘housing commissioner’.

#### **Clause 44    Dictionary, definition of *defective termination notice*, paragraph (c), new notes**

This clause inserts a new note in the dictionary under the definition of *defective termination notice*. The purpose of this note is to draw the reader’s attention to the potential for subordinate legislation, including the *Residential Tenancies Regulation 1998*, to contain rules that apply to provisions in the Act.

## **Part 15      Residential Tenancies Regulation 1998**

### **Clause 45      Section 5A**

This amendment substitutes new section 5A, to clarify the rules around rent increases in periodic tenancies.

Currently, the formula in the Regulation does not confirm the end date to be used in the calculation of the prescribed amount. Because landlords must give tenants 8 weeks' notice of a proposed rent increase, it is unclear whether the landlord may seek to rely on the increase in CPI using the most recently published CPI data at the point at which the notice is issued, or at the point when the rent increase takes effect. This amendment confirms that the correct date to be used when calculating the prescribed amount is the date the rent increase notice is issued.

## **Part 16      Supreme Court Act 1933**

### **Clause 46      Vexatious litigants Section 67A (3) and (4)**

This clause omits section 67A (3) and (4). Section 48 of the *Legislation Act 2001* provides general provisions governing notifiable instruments and these requirements are duplicated in section 67A (3) and (4). To ensure consistency across the statute book, these provisions will be omitted, with the new note inserted in clause 47 of the Bill indicating these powers are contained in section 48 of the Legislation Act.

### **Clause 47      Section 67A (10) and note**

This clause substitutes section 67A (10) and its note. The current drafting of section 67A (10) requires a court order making, varying or revoking a declaration of a person as a vexatious litigant to be a notifiable instrument, subject to any order of the court.

This amendment clarifies that only the declaration, and not an order of the court, should be notified. This will promote efficiency for the Supreme Court to be able to declare people as vexatious litigants and make it easier for the Court to update notifiable instruments if further conditions are imposed on a vexatious litigant, or if the declaration should apply to more matters.

This clause also inserts a new note in section 67A (10) to support the changes being made in clause 46 to omit sections 67A (3) and (4).

This note is being introduced to ensure any individuals who read this provision, such as individuals who may have been declared a self-represented litigant, can understand the provisions governing a declaration and understand that a declaration can include certain conditions, or only apply to a particular matter.



## **Part 17      Trustee Act 1925**

### **Clause 48      Distribution after notice Section 60 (2)**

This clause updates the wording of section 60 (2) of the *Trustee Act 1925*, which refers to section 64 of the *Administration and Probate Act 1929*, so that it is clear that the public notice process in section 64 is optional and not mandatory. This is a minor consequential amendment to clause 8.

## **Part 18      Unit Titles (Management) Act 2011**

### **Clause 49      Notice of reduced quorum decisions and adjournments Section 3, section 3.10 (1)**

Schedule 3, section 3.10 of the *Unit Titles (Management) Act 2011* (**UTMA**) imposes strict notice requirements for decisions made at reduced quorum meetings of an owners' corporation. Stakeholders have advised that in many unit-titled buildings, it is very difficult to get quorum (as many apartment owners do not attend meetings) and that, in practice, reduced quorum meetings are the norm.

Currently, the UTMA provides that unit owners must receive notice of decisions made at a reduced quorum meeting of an owners' corporation within 7 days after the meeting. The purpose of this is to enable owners to challenge the reduced quorum decision, pursuant to the petition process in section 3.11 in Schedule 3. Stakeholder feedback indicates that in practice, owners very rarely do so. However, where an owner does not provide an email address for service of notices, this notice requirement is extremely difficult for owners' corporations to meet, due to legislative presumptions that notices sent by post are received in 7 days.

A recent Tribunal decision (*Spedding V The Owners – Units Plan 3941 (Unit Titles)* [2022] ACAT 49) confirmed that the UTMA rules operate to invalidate any decisions made at reduced quorum owners' corporation meetings if the notice requirement is not met.

To support the effective operation of owners' corporations and minimise the risk of reduced quorum decisions being found to be invalid, the Bill will increase the timeframe for notices of a reduced quorum decision to be sent from 7 days to 14 days.

Unit owners will retain the ability to institute a petition disallowing a reduced quorum decision within 28 days of it being made, pursuant to section 3.11 in Schedule 3.

### **Clause 50      New section 3.10 (1A)**

As outlined in relation to clause 49, the Bill amends the requirements for owners' corporations to give notice of reduced quorum decisions to improve certainty and minimise the risk of owners' corporation decisions being held invalid. To this end,

this clause amends section 3.10 (1A) to provide that the timeframe for notifying unit owners of a reduced quorum decision is met when the notice is sent, rather than when it is received.

## **Part 19      Wills Act 1968**

### **Clause 51      Court may authorise will to be made, altered or revoked for person without testamentary capacity Section 16A (6)**

This amendment is consequential to the amendments to sections 32 to 34 of the *Wills Act 1968*, per clauses 54 and 55.

As the power to deposit Wills with the Supreme Court will eventually be removed from section 32, the reference to a Will being deposited under section 32 has been removed, while still allowing for Wills made or altered under section 16A to be deposited with the Registrar.

### **Clause 52      Retention of will Section 16G (1)**

This amendment is consequential to the to the amendments to sections 32 to 34 of the *Wills Act 1968*, per clauses 54 and 55.

As the power to deposit Wills with the Supreme Court will eventually be removed from section 32, this amendment removes the reference to section 32 in section 16G, but retains the ability of the Supreme Court to hold or deal with a Will deposited under Part 3A in accordance with the Court's current powers.

### **Clause 53      Section 16G (2)**

This amendment is consequential to the amendments to sections 32 to 34 of the *Wills Act 1968*, per clauses 54 and 55.

As section 32 will eventually be updated to remove reference to the Registrar maintaining an index of Wills, this amendment removes this language from section 16G. The amendment also omits the requirement to record the date when the Will was destroyed, as new section 32 will impose this requirement instead.

### **Clause 54      Sections 32 to 34**

This clause omits sections 32 to 34 of the *Wills Act 1968* and substitutes new section 32. The changes:

- remove the ability for the Supreme Court to accept Wills for deposit from the public;
- enable the Supreme Court to transfer Wills, or data in respect of Wills, held by it to the Public Trustee and Guardian consistently with information privacy laws;

- retain a power for the Supreme Court to destroy Wills in its possession, after a deceased person's estate has been distributed, on order from a judge; and
- require the Supreme Court to keep records of:
  - any Will deposited with the Public Trustee and Guardian;
  - any Will given to a person; and
  - any Will that is destroyed.

These changes are intended to support the creation of a single, centralised Wills Register for the ACT, which will be managed by the Public Trustee and Guardian. The Public Trustee and Guardian currently operates a Wills Register under the *Public Trustee and Guardian Act 1985*, where members of the public can (for a fee) deposit a Will and where searches for a Wills may be undertaken.

In November 2018, the Legislative Assembly Standing Committee on Justice and Community Safety recommended that a program be introduced to enable more citizens to deposit their Wills with the Public Trustee and Guardian to prevent Wills from being lost or destroyed. These changes further that objective by ensuring that there will be a single Government agency offering a centralised Wills Register service. The use of the Public Trustee and Guardian Wills Register is not mandatory, and members of the public may still hold their Wills in other places.

This clause has delayed commencement of up to 18 months (as per clause 2 of the Bill). This is intended to allow time for the transfer of information about Wills held by the Supreme Court to the Public Trustee and Guardian for inclusion in the centralised Wills Register (pursuant to clause 55), prior to the Supreme Court's current powers in relation to Wills being amended. Once it commences, new section 32 will ensure that the Supreme Court retains appropriate powers to manage Wills held by it.

#### **Clause 55    New section 36**

This clause inserts new section 36 into the *Wills Act 1968*. This is a temporary provision which will expire on the commencement of clause 54. New section 36 is intended to authorise the Supreme Court, consistently with privacy laws, to transfer Wills, or identifying information about Wills, held by the Court to the Public Trustee and Guardian, for the purpose of their inclusion in the Wills Register maintained by the Public Trustee and Guardian.

#### **Clause 56    Dictionary, note 2**

This clause makes a minor update to note 2 in the Dictionary to the *Wills Act 1968*, to inform readers that *judge* is a term defined in the *Legislation Act 2001*.

### **Schedule 1    Technical Amendments**

- *ACT Civil and Administrative Tribunal Act 2008*
- *Electoral Act 1992*
- *Human Rights Commission Act 2005*

- *Information Privacy Regulation 2014*
- *Land Titles Act 1925*
- *Legal Profession Act 2006*
- *Unit Titles (Management) Act 2011*

For the Acts listed above, the Bill makes a range of technical amendments. These include:

- removing outdated references to ACT Government Directorates,
- fixing erroneous cross references, and
- correcting the order of paragraphs and punctuation errors.